

THEMIS

ASSOCIATION OF JUDGES

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Response of the Polish authorities to the CJEU judgment of 19 Nov 2019

(the report containing translations of source documents)

updated for 11 January 2020

1) General description	2
2) Annex 1 - Communication of the Disciplinary Commissioner of the Ordinary Court Judges on the initiation of disciplinary proceedings against judge Paweł Juszczyzyn of 29 November 2019	7
3) Annex 2 – Order No. A-021-82/19 of the President of the District Court in Olsztyn of 29 November 2019 on suspension of judge Juszczyzyn	9
4) Annex 3 – Communication of the Disciplinary Commissioner of the Ordinary Court Judges on the opening disciplinary proceedings with respect to Rafał L., Wojciech M. and Kazimierz W., Judges of the Regional Court in Kraków	10
5) Annex 4 – “PiS is preparing a disciplining Act for judges” published in “Dziennik Gazeta Prawna” of 29 November 2019	11
6) Annex 5 – Letter of President of Judges Association “Iustitia” Krystian Markiewicz of 29 May 2019	12
7) Annex 6 – Communication of the Disciplinary Commissioner of the Ordinary Court Judges on the initiation of disciplinary proceedings against Krystian M., Judge of the Regional Court in Katowice of 3 December 2019	14
8) Annex 7 – communication of the Disciplinary Commissioner of the Ordinary Court Judges on the initiation of disciplinary proceedings against Anna B.-C., Judge of the Regional Court in Warsaw of 6 December 2019	16
9) Annex 8 - Communication of the Disciplinary Commissioner of the Ordinary Court Judges on the initiation of disciplinary proceedings against judges of the Court of Appeal in Katowice of 15 December 2019	18
10) Annex 9 – Communication of the Disciplinary Commissioner of the Ordinary Court Judges on the initiation of disciplinary proceedings against Ewa M., Judge of the Regional Court in Warsaw of 17 December 2019	19
11) Annex 10 - Letter from the National Prosecutor to the subordinate Prosecutors of 16 December 2019	20
12) Annex 11 - Communication of the Disciplinary Commissioner of the Ordinary Court Judges on the opening disciplinary proceedings with respect to judge of the Regional Court in Jelenia Góra Andrzej Żuk of 7 January 2020	21

1) General description.

In a ground breaking judgment of 19 November 2019, the Court of Justice of the European Union agreed with the reservations of the Polish Supreme Court that the Polish National Council of the Judiciary and the Disciplinary Chamber of the Supreme Court may not satisfy the requirement of independence under EU law. The Court has simultaneously authorized all Polish courts to determine whether judges appointed with the participation of the new NCJ are judges within the meaning of EU law and provided clear criteria according to which they are to assess the independence of these bodies.

The main reaction of the Polish government was to state that the system of courts is an internal matter of the member states and is not subject to the CJEU jurisdiction, so only the Polish Constitutional Tribunal can finally assess the independence of the National Council of the Judiciary and the status of candidates for judges appointed by it. Prime Minister Mateusz Morawiecki clearly stated that the government does not need to change Polish law to adapt it to the requirements of EU law specified in the CJEU judgment.

On 20 November, following the CJEU judgment, in order to verify the mandate of the judge who issued challenged first instance judgment, Paweł Juszczyszyn, judge of the Regional Court in Olsztyn, acting as a second instance court requested the Chancellery of the Sejm to provide letters of support for the members of the neo NCJ to examine the correctness of the appointment of members of the new National Council of the Judiciary.

This ruling provoked an immediate reaction from the politically subordinated bodies. Firstly, on 25 November, the Minister of Justice immediately recalled him from his secondment to adjudicate in the Regional Court and returned to the District Court in Olsztyn. Secondly, on 28 November, the deputy disciplinary commissioner initiated disciplinary proceedings with respect to the judge, simultaneously issuing an official communication in which he assessed the judge as having committed a crime of overstepping his powers as a public servant (**see Annex 1**).

Thirdly, on 29 November, the President of the District Court in Olsztyn, who is also a member of the neo NCJ (and who is allegedly wrongfully elected to this body, being so directly threatened by the judge's request), immediately suspended Judge Paweł Juszczyszyn from his judicial duties (**see Annex 2**). On the same day, Prime Minister Morawiecki publicly threatened all judges with disciplinary proceedings if they attempt to examine the independence of the neo NCJ in line with the CJEU judgment.

Similarly, on 26 November, disciplinary proceedings were initiated against 3 judges of the Kraków Regional Court of the second instance (Wojciech Maczuga, Kazimierz Wilczek and Rafał Lisak), who adjourned the proceedings in order to examine the status of an assessor, by establishing whether he was promoted by the neo NCJ or the "old" NCJ. They were charged with the disciplinary offence of overstepping their

powers, by awarding themselves the right to assess the correctness of the operation of constitutional bodies regarding the appointment of a court assessor (**see Annex 3**).

As revealed by the independent media on 29 November, representatives of the ruling camp are urgently preparing a bill providing for the imposition of prison sentences for judges for judgments that are inconvenient for the executive (so-called *lex Juszczyszyn*). The Ministry of Justice officially confirmed that preparatory work on the new bill is in progress. Under the current circumstances if such a law were to enter into force, this would mean an attempt to cut off Polish judges from the ability to apply European law in practice, through the use of criminal sanctions (**see Annex 4**).

As it transpired, the government's plans to change the law on the judiciary were slightly different, however, even more advanced. In other words, a draft comprehensive bill was submitted on 12 December 2019, which then voted on by the parliamentary majority on 20 December 2019, amending, among others the Act on the System of Ordinary Courts, the Act on the Supreme Court, the Act on the National Council of the Judiciary, the Act on the System of the Administrative Courts, and the Act on the Prosecutor's Office. This bill includes new types of disciplinary torts for judges (a request for a preliminary ruling to the CJEU or the Polish Supreme Court regarding the status of judges appointed with the participation of the neo NCJ has become a serious disciplinary offence punishable by expulsion from the profession), the bodies of judicial self-government were deprived of any significance (for instance, they lost the right to review candidates for judges and candidates for senior judicial positions, as well as the right to pass resolutions criticizing the changes in the justice administration), the new disciplinary proceedings against judges have become even more politicized (for instance, decisions on waiving a judge's immunity and the application of temporary detention of a judge will only be made by the Disciplinary Chamber of the Supreme Court, the establishment of which was in conflict with the Polish Constitution), an obligation has been imposed on judges to disclose their affiliation to judicial associations (information on this will be available online), which is in conflict with the Constitution, the President was granted the right to correct the defectiveness of the judicial nomination procedure. Most of these changes are in conflict with both the Polish Constitution and standards of European law.

Another disciplinary action strictly related to the CJEU judgment of 19 November was initiated on 3 December against the President of the Association of Polish Judges "Iustitia", Krystian Markiewicz. The official basis for the disciplinary proceedings was the letter he sent to the disciplinary court judges in May 2019 in which he appealed for the disciplinary judges to refrain from adjudicating until the CJEU resolves the doubts regarding the compliance with the European standards of the new mode of disciplinary proceedings against judges and the correctness of the method of appointing judges in the case of the politicization of the neo NCJ (**see Annex 5**). According to the main disciplinary commissioner, by sending this letter to 55 local disciplinary commissioners, Krystian Markiewicz "*incited everyone to commit a disciplinary tort involving not respecting the legal order of the Republic of Poland*". The initiation of

disciplinary proceedings against the president of the largest judicial association as late as after 6 months from these letters being sent and shortly after the decision of the CJEU of 19 November 2019 indicates that its real objective is to intimidate judges to prevent the implementation of that judgment. Simultaneously, the initiation of disciplinary proceedings against judge Markiewicz clearly falls within the chain of actions against judges Juszczyszyn, Maczuga, Wilczek, Lisak (**see Annex 6**).

Piotr Schab, the Disciplinary Commissioner, initiated disciplinary proceedings on 6 December 2019 against a judge of the Regional Court in Warsaw, Anna Bator Ciesielska, presenting her with five charges. Two of the charges against her apply to judgments that she issued in September and October 2019, in which she referred questions to the Court of Justice of the European Union for a preliminary ruling regarding, *inter alia*, the status of the neo National Council of the Judiciary and the competence of the Minister of Justice to delegate judges to adjudicate in a higher court, and suspended the proceedings until the European Court responded. Also, this time, in his communication, the disciplinary commissioner assessed that the judge's action had exhausted not only the features of a disciplinary tort, but also the crime of overstepping powers under Article 231 of the Penal Code (**see Annex 7**).

On 12 December 2019, the disciplinary commissioner, Przemysław Radzik, presented disciplinary charges against two judges of the Court of Appeal in Katowice, Aleksandra Janas and Irena Piotrowska for breaching the dignity of the judicial office and overstepping their rights for the ruling which they issued in the implementation of the judgment of the CJEU of 19 November 2019. This action constituted repression against judges for the fact that they had the courage to refer a request for a preliminary ruling to the Polish Supreme Court about the legality of the neo NCJ and the legality of a judge promoted by the neo NCJ who was a part of their bench. The disciplinary commissioner also requested the suspension of both judges from their official duties and assessed that the action of the judges simultaneously constituted an offence under Article 231 of the Penal Code (**see Annex 8**).

Subsequently, on 18 December 2019, Disciplinary Commissioner Piotr Schab, applied to the Disciplinary Chamber of the Supreme Court to suspend judges Aleksandra J and Irena P. from their judicial duties.

On 16 December 2019, Disciplinary Commissioner Michał Lasota pressed charges on Judge Ewa Malinowska from the Warsaw Regional Court regarding a disciplinary offence involving the breach of the dignity of the judicial office. Judge Malinowska's action involved issuing a negative opinion on the candidacy of a judge who was working on secondment at the Ministry of Justice, in January 2019, while she was acting as an inspecting judge. Her negative opinion arose from the substantive assessment of his work. The disciplinary commissioner assessed the fact that, at the end of her opinion, Judge Malinowska wrote that judges should refrain from applying for vacancies announced by the neo NCJ as a disciplinary tort, as, according to the commissioner, this "undermined the status and functioning of the constitutional body

of the state in the form of the National Council of the Judiciary”. It is hardly a coincidence that Judge Malinowska presented her opinion on the candidate who was being assessed in January 2019, whereas disciplinary charges were pressed on her as late as after the CJEU judgment of 19 November 2020, namely almost a year later **(see Annex 9)**.

On 16 December 2019, Deputy Prosecutor General Bogdan Świączkowski issued a written order for all Polish prosecutors to report all situations to the district prosecutors in which judges question the legality of the Disciplinary Chamber of the Supreme Court or the legality of judges of the Supreme Court or judges of the ordinary courts selected with participation of neo NCJ. Bogdan Świączkowski also ordered prosecutors to submit requests for the exclusion of such judges from benches and to report cases of such activities of judges to the disciplinary commissioners and the Department of Internal Affairs of the National Prosecutor's Office **(see Annex 10)**. It is not difficult to guess that such applications are to be made in order to immediately initiate disciplinary and criminal proceedings against judges who implement the recommendations contained in the CJEU judgment of 19 November 2019.

It soon became apparent that the obligation for prosecutors to report judges was strictly enforced by the prosecution office management. When the head of the District Prosecutor's Office in Zgorzelec, Artur Barcella, asked the superior prosecutor for the legal grounds of the obligation to denounce judges in connection with a case being handled by the judge of the District Court in Jelenia Góra, Andrzej Żuk, he refused to provide him with such information. When the same prosecutor subsequently failed to provide his superiors with information that Judge Andrzej Żuk referred a request for a preliminary ruling to the Polish Supreme Court and did not request the judge's exclusion from the adjudicating panel, his superior requested the Prosecutor General to dismiss Artur Barcella from the post of head of the District Prosecution Office in Zgorzelec.

On 7 January 2019, Disciplinary Commissioner Przemysław Radzik pressed disciplinary charges against a judge of the Regional Court in Jelenia Góra, Andrzej Żuk, for breaching the dignity of the judicial office and overstepping his rights for a ruling which the judge issued in the implementation of the judgment of the CJEU of 19 November 2019. The judge, acting as the second instance court, referred a request for a preliminary ruling to the Polish Supreme Court about the legality of the neo NCJ and the legality of a judge promoted by the neo NCJ, who issued the first instance judgment. In the official communication, the disciplinary commissioner assessed that the judge's action simultaneously constituted an offence under Article 231 of the Penal Code, which involves overstepping the powers of a public official, which further justifies the jurisdiction of the Disciplinary Chamber of the Supreme Court **(see Annex 11)**.

The above administrative and disciplinary measures, actual actions, as well as legislative work clearly indicate a drastic escalation of the intimidation and harassment of judges defending the rule of law and independence of the judiciary in Poland, which

has been ongoing for 4 years. The recent situation, however, creates the impression that a witch hunt for judges has started. It should be emphasized that, after the judgment of the CJEU of 19 November 2020, literally every judge who, in line with the guidelines contained in that judgment, took any steps to examine the legal status of judges nominated or promoted with the participation of the neo NCJ, encountered an immediate, sharp response from the disciplinary commissioner. In some cases, the disciplinary commissioners also took steps against judges who had taken such action earlier, even if a long time had elapsed, which is particularly obvious with respect to Judge Ewa Malinowska. This time, the political authority, returning to method of operation which was characteristic of the Communist era, has been taking steps which are unacceptable in a democratic state governed by the rule of law and deprived the judges of the right to issue any judgment which could be inconvenient for the authorities. These actions, taken in connection with the judicial activity of judges, unacceptably interfere with judicial independence. They are also intended to intimidate other Polish judges so as to prevent them from executing the judgment of the Court of Justice of the European Union. Given the above actions, a rhetorical question arises: from now on, will every Polish judge, who does not adjudicate in accordance with the guidelines of the executive or just tries to implement EU law, be immediately repressed by unreasonable disciplinary proceedings and removed from adjudicating?

2) Annex 1 - communication of the Disciplinary Commissioner of the Ordinary Court Judges on the initiation of disciplinary proceedings against judge Paweł Juszczyński of 29 November 2019,

DISCIPLINARY COMMISSIONER

OF THE ORDINARY COURT JUDGES

COMMUNICATION

**of the Disciplinary Commissioner of the Ordinary Court Judges
on the initiation of disciplinary proceedings against Paweł J., Judge of the District
Court in Olsztyn**

I declare that Judge Michał Lasota, the deputy disciplinary commissioner of the ordinary court judges, initiated disciplinary proceedings against Paweł J., a judge of the District Court in Olsztyn, on 28 November 2019 and pressed charges on him of having committed disciplinary offences under Article 107 § 1 of the Act on the System of Ordinary Courts of 27 July 2001 (Journal of Laws of 2019, item 52) by the fact that:

1) he overstepped his authority on 20 November 2019 in Olsztyn such that, as a public official, namely as a judge in the panel of the Regional Court in Olsztyn, as the presiding judge and rapporteur, while examining the case of case reference IX Ca 1302/19 regarding the defendant's appeal against the judgment of the District Court in Lidzbark Warmiński of 7 June 2019 in the case of case reference I C 517/19, the panel of which included a judge as the presiding judge and rapporteur, whose application for appointment to the office of judge was presented to the President of the Republic of Poland by a resolution of the National Council of the Judiciary on 9 January 2019, he brought about a decision being issued without legal grounds, by which the Head of the Chancellery of the Sejm was ordered "to present original or officially certified copies of documents in the form of documents submitted to the Chancellery of the Sejm in connection with the announcement by the Marshal of the Sejm of the Republic of Poland of 4 January 2018 of the start of the procedure of nominating candidates to the membership of the National Council of the Judiciary to be elected from among the judges (official journal, Monitor Polski, item 10) with the applications and lists of citizens and lists of judges supporting the candidates for membership of the National Council of the Judiciary, as referred to in Article 11a and Article 11b of the Act on the National Council of the Judiciary of 12 May 2011 (consolidated text, Journal of Laws of 2019, item 84, as amended), who were subsequently elected to the National Council of the Judiciary under a resolution of the Sejm of the Republic of Poland of 6 March 2018 on the election of members of the National Council of the Judiciary (official journal Monitor Polski, item 276) and the declarations of citizens or judges on the withdrawal of support for these candidates, and to submit these documents to the Regional Court in Olsztyn to attach them to the file of case reference IX Ca 1302/19 upr. - within one week of service of a copy of this order to the Chancellery of the Sejm – under the sanction of the application of a fine in the event of the

unreasonable refusal to present all the documents referred to above”, awarding himself the power to assess the correctness, including the legality of the choice of members of the National Council of the Judiciary, and thereby awarding himself the right to assess the correctness, including the legality of the President of the Republic of Poland exercising the prerogative of appointing judges, acting to the detriment of the public interest expressed in the correct functioning of the judiciary, thereby breaching the dignity of the office;

2) he presented assertions and assessments related to his office regarding his secondment to the office of judge in the Regional Court in Olsztyn, as well as the cancellation of the secondment, to representatives of the media, which were then published in conflict with the provision of Article 89 § 1 of the Act on the System of Ordinary Courts of 27 July 2001.

Notwithstanding the above, the Deputy Disciplinary Commissioner of the Ordinary Court Judges pressed two further charges of disciplinary torts on Judge Paweł J. pursuant to Article 107 § 1 of the Act on the System of Ordinary Courts of 27 July 2001, regarding the provision of false testimony about the factual circumstances of motions submitted to exclude him from participation in two criminal proceedings.

Given that the first of the above disciplinary charges simultaneously constituted the exhaustion of the features of a crime of an abuse of power by a public official, which is prosecuted *ex officio* (Article 231 § 1 of the Penal Code), the Disciplinary Chamber of the Supreme Court has the jurisdiction to consider the case in the first instance.

(-) Regional Court Judge Piotr Schab

DISCIPLINARY COMMISSIONER
OF THE ORDINARY COURT JUDGES

Link to the original publication in Polish:

<http://rzecznik.gov.pl/wp-content/uploads/2019/11/Komunikat-Pawel-J-Olsztyn.pdf>

3) Annex 2 – Order No. A-021-82/19 of the President of the District Court in Olsztyn of 29 November 2019 on suspension of judge Juszczyzyn,

Order No. A-021-82/19
of the President of the District Court in Olsztyn
of 29 November 2019

legal grounds:

- the Act on the System of Ordinary Courts of 27 July 2001;
- the Regulation of the Minister of Justice of 18 June 2019 and the rules of operation of the ordinary courts.

§ 1

Pursuant to Article 130 § 1 of the Act on the System of Ordinary Courts of 27 July 2001 (consolidated text Journal of Laws of 2019, item 52 as amended), I order the immediate suspension of Judge Paweł Juszczyzyn in the performance of his official duties for the period from 29 November 2019 to 29 December 2019, until a resolution is issued by the Disciplinary Chamber of the Supreme Court.

Justification

Judge Paweł Juszczyzyn was accused of disciplinary delicts (torts) in proceedings RDSP 711-112/19, by way of a decision of the Deputy Disciplinary Commissioner of the Ordinary Court Judges of 28 November 2019. In view of their kind, including the fact that one of the disciplinary charges constitutes the simultaneous description of a crime prosecuted *ex officio*, the gravity of the court and the official interests require that a suspension is immediately ordered in the performance of the judge's official activities in accordance with the wording of Article 130 1 of the Act on the System of Ordinary Courts (consolidated text, Journal of Laws of 2019, item 52, as amended), both in the District Court in Olsztyn and in the Regional Court in Olsztyn, including in the governing bodies of the courts.

The Order of the President of the Court is non-appealable and is immediately enforceable.

§ 2

The order becomes effective on the date of its signature.

PRESIDENT

of the Regional Court in Olsztyn

Judge Dr. Maciej Nawacki

<http://themis-sedziowie.eu/materials-in-english/order-no-a-021-8219-of-the-president-of-the-district-court-in-olsztyn-of-29-november-2019/>

4) Annex 3 – communication of the Disciplinary Commissioner of the Ordinary Court Judges on the opening disciplinary proceedings with respect to Rafał L., Wojciech M. and Kazimierz W., Judges of the Regional Court in Kraków

**DISCIPLINARY COMMISSIONER
OF THE ORDINARY COURT JUDGES**

Warsaw, dated 26 November 2019

**COMMUNICATION
of the Disciplinary Commissioner of the Ordinary Court Judges on the opening disciplinary proceedings with respect to Rafał L., Wojciech M. and Kazimierz W.,
Judges of the Regional Court in Kraków**

I declare that I presented charges to Rafał L., Wojciech M. and Kazimierz W., Judges of the Regional Court in Kraków, on 25 November 2019 regarding disciplinary offences involving the breach of the dignity of the office by the fact that, on 6 September 2019, during an appeal hearing in Krakow, as public officials – members of the adjudicating panel – in the case of the Regional Court in Kraków of case reference IV Ka 194/19, they overstepped their powers, whereby they awarded themselves the right to assess the correctness of the operation of constitutional bodies regarding the appointment of a court assessor in the first instance at the District Court in Chrzanów, thereby breaching the provision of Article 106i § 1 of the Law on the System of Ordinary Courts of 27 July 2001 (Journal of Laws of 2019, item 52 as amended, hereinafter “SOC”), they took part in issuing a decision to defer a hearing in order to establish whether circumstances arise which could suggest the incorrect appointment of this assessor, which constituted illegal interference with the statutory procedure of appointing judges and court assessors to adjudicating panels, as specified in Article 46a § 1 and Article 47b § 1 SOC and could have led to a breach of the provision of Article 178, para. 1 of Constitution of the Republic of Poland and breached Article 89 § 1 SOC, thereby constituting an action to the detriment of the public interest expressed in the correct functioning of the justice administration, which exhausted the provision of Article 107 § 1 SOC.

(-) Regional Court Judge Piotr Schab

Disciplinary Commissioner

of the Ordinary Court Judges

Link to the original publication in Polish:

<http://rzecznik.gov.pl/wp-content/uploads/2019/11/Komunikat-Sędziowie-SO-Kraków-Asesor.pdf>

5) Annex 4 – “PiS is preparing a disciplining Act for judges”

Published in „Dziennik Gazeta Prawna” of 29 November 2019

According to DGP’s information, the Law and Justice Party (PiS) is preparing a bill to stop the undermining of the activities and judgments of the judges nominated by the new NCJ by the remaining judges. The bill could be presented to the Sejm next week as a deputies’ bill. It could contain two solutions based on German and French laws. “Decided solutions are needed to bring the legal chaos under control, which could spread if some judges decide arbitrarily whether they recognise others,” says a government official.

The first solution applies to the ability to punish judges who fail to comply with the principles of the administration of justice and damage the interests of the parties. This applies to Section 339 of the German Criminal Code, which states that “A judge, another public official or an arbitrator who, in conducting or deciding on a legal matter, perverts the course of justice to the benefit or to the detriment of a party shall be liable to imprisonment from one to five years.” “*It is being considered whether we should introduce similar **regulations** in compliance with the constitution with the reservation that the court immunity here is far broader than in Germany,*” emphasises our interviewee.

The next consideration is taken from **French law**. This is Article 10 of the Act on the Status of the Judiciary, which specifies the matter of the apoliticality of judges. It contains a prohibition of “political considerations”, “demonstration of hostility to the principles or form of the government of the Republic”, “actions of a political nature which are incompatible with the requirement to demonstrate restraint imposed on judges because of their function” or “organised activities that can prevent or hinder the functioning of the judiciary”.

It is not yet known if both **solutions** or only one are to be included in the bill and in precisely what form. According to our information, the ministry of justice is involved in the work on the bill, while the prime minister’s people and the president’s people are being kept informed. According to our information, the signs are that the bill will be sent to the Sejm as a deputies’ bill and not a government bill. The aim of the bill is to stop the process of undermining the right of judges to adjudicate.

Law and Justice became afraid of the consequences of the **CJEU ruling**; the direct reason for this was the decision issued by Judge Paweł Juszczyszyn in Olsztyn ordering the disclosure of the list of judges who signed the letters of support for the candidates to the **NCJ**. It contains the statement that “the person issuing the judgment could have been an unauthorised person”.

“If such a bill actually appears in the Sejm, we shall certainly not leave it without an adamant response,” says Krystian Markiewicz, president of the Association of Polish Judges, ‘Iustitia’. However, as he points out, all activities undertaken by the association will be within the limits of the law. According to the judge, the introduction of solutions of this type is caused by the fact that the ruling party failed to intimidate the judges, despite all of the changes in the law made to date. “*Although I imagine that we shall now be imprisoned for our judgments, it seems that this is primarily about creating a chilling effect. After all, everything will still depend on the courts anyway,*” notes President Markiewicz.

He adds that ideas of this kind constitute evidence that the ruling party wants to take over the country in whole. “*Only the independent courts are still standing in the way,*” states the judge.

<http://themis-sedziowie.eu/materials-in-english/news-dgp-pis-is-preparing-a-disciplining-act-for-judges/>

6) **Annex 5 – letter of the President of Judges’ Association “Iustitia” Krystian Markiewicz of 29 May 2019,**



IUSTITIA

Association of Polish Judges

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Katowice, 29 May 2019

Judge

of the Disciplinary Court
at the Court of Appeal
in

Dear Sir,

Disciplinary proceedings have now become a tool of repression for the political authority against judges who conduct public activities or issue judgments which are not in line with the will of that authority.

Regardless of the decision that is issued, even if it is the fairest, it will pave the way to proceedings before the Disciplinary Chamber of the Supreme Court, which we believe to be an unconstitutional, exceptional court, selected in proceedings before an unconstitutional, politicised body referred to as the National Council of the Judiciary.

This can have irreversible, even tragic consequences for judges who are harassed for publicly standing up in defence of the rule of law or prosecuted for issuing specific judgments. Regardless of your decision, the transfer of files in disciplinary cases to a court of constitutionally doubtful foundations, with the members appointed in an unconstitutional manner, will burden you with being jointly responsible for the outcome of the proceedings before the Disciplinary Chamber.

The European Commission, which initiated the infringement procedure against Poland, has the same doubts about the status of the National Council of the Judiciary and the model of disciplinary proceedings based on the Disciplinary Chamber of the Supreme Court. The Court

of Justice of the European Union is simultaneously considering the case of the joined requests for preliminary rulings of reference C-585/18, C-624/18, C-625/18.

The Supreme Court submitted a further request for a prejudicial ruling to the Court of Justice of the European Union on 21 May 2019, in case III CZP 25/19, in connection with a judgment being issued by a panel containing a person appointed to the office of judge of the Supreme Court despite the challenge submitted to the Supreme Administrative Court against a resolution of the National Council of the Judiciary containing a motion to appoint that person to this office, to suspend the execution of that resolution and not to complete the proceedings before the Supreme Administrative Court until the act of appointment is served. The Supreme Court held that there was a gross breach of the law in the nomination proceedings, doubted that the court in which the person appointed with such a breach is an independent and impartial court, which is established previously by statute in the meaning of European Union law. Similar doubts apply to the people adjudicating in the Disciplinary Chamber.

Therefore, I urge you to refrain from adjudicating and presenting files with appeals of the parties to that Chamber and to suspend the proceedings until the status of the people appointed to the office of judge in the Disciplinary Chamber and the doubts about the structure of disciplinary proceedings in the Polish legal order are clarified by the Court of Justice of the European Union, or to refer further requests for preliminary rulings to the Court of Justice of the European Union to clarify the legal status of the Disciplinary Chamber and the people adjudicating in it, simultaneously suspending the disciplinary proceedings in the procedure of Article 22 §1 of the Criminal Procedures Code.

I appeal to your conscience and sense of responsibility as a judge: please do not be a party to processes in which the accused is deprived of the basic rights of an accused and do not legitimise an unconstitutional court!

President of the Association of Polish Judges 'Iustitia'

Krystian Markiewicz

7) Annex 6 – communication of the Disc. Commissioner of the Ordinary Court Judges on the initiation of disciplinary proceedings against Krystian M., Judge of the Regional Court in Katowice

**DISCIPLINARY COMMISSIONER
OF THE ORDINARY COURT JUDGES**

**COMMUNICATION
of the Disciplinary Commissioner of the Ordinary Court Judges
on the initiation of disciplinary proceedings against Krystian M.,
Judge of the Regional Court in Katowice**

I declare that, on 3 December 2019, Judge Przemysław W. Radzik, the deputy disciplinary commissioner of the ordinary court judges, initiated disciplinary proceedings against Krystian M., Judge of the Regional Court in Katowice, and pressed charges on him of having committed 55 disciplinary offences under Article 107 § 1 of the Law on the System of Ordinary Courts of 27 July 2001 (Journal of Laws of 2019, item 52, as amended) involving the fact that, on 29 May 2019, acting each time in various configurations of people, as President of the Association of Polish Judges, 'Iustitia', in letters dated as above that were publicised and addressed personally to specified presidents and judges of the disciplinary courts at the courts of appeal, he presented a political manifesto, in which, by questioning the independence and legality of the operation of a constitutional authority of the state, namely the National Council of the Judiciary, and undermining the constitutionality of the Disciplinary Chamber of the Supreme Court, he incited everyone to commit a disciplinary tort involving not respecting the legal order of the Republic of Poland by withholding from adjudicating and stopping to present appeals of parties and disciplinary case files to the Disciplinary Chamber of the Supreme Court and then to suspend disciplinary proceedings "until the status of the people appointed to the office of judge in the Disciplinary Chamber is clarified", by which he breached the principle of apoliticality of judges arising from Article 178, para. 3 of the Constitution and the obligation to behave in accordance with the judicial oath arising from the Law on the System of Ordinary Courts, including, in particular, the obligation to uphold the law, diligently perform the duties of a judge and the obligation to safeguard the gravity of the office of judge while in service and outside the service and not to even appear to not comply with the legal order, namely conduct that defies the dignity of a judge and undermines the confidence in his independence and impartiality and breaches the principles of professional ethics specified in § 5 para. 2, § 10 and 16 of the resolution of the National Council of the Judiciary on the adoption of the Set of Rules of Professional Ethics of Judges and Court Assessors.

In accordance with the principles of the set of rules of professional ethics of judges cited above:

- a judge should always be guided by the principles of honesty, dignity, honour and the sense of duty, as well as observing the principles of good practice;

- a judge should care for the authority of his office, the good of the court where he works, as well as the good of the justice administration and the systemic position of the judicial authority;
- a judge may not even appear to disregard the legal order by any conduct.

Simultaneously to this decision being issued, the Deputy Disciplinary Commissioner of the Ordinary Court Judges requested the President of the Supreme Court, who manages the work of the Disciplinary Chamber, to nominate a disciplinary court to hear the case in the first instance.

Immediately afterwards, the person handling the disciplinary proceedings will consider submitting a petition to the disciplinary court to suspend the accused judge in his official duties and to reduce his remuneration for the duration of this suspension (Article 129 § 1 of the Law on the System of Ordinary Courts).

(-) Regional Court Judge Piotr Schab

DISCIPLINARY COMMISSIONER
OF THE ORDINARY COURT JUDGES

Link to the original publication in Polish:

<http://rzecznik.gov.pl/wp-content/uploads/2019/12/Komunikat-Krystian-M.pdf>

8) Annex 7 – communication of the Disciplinary Commissioner of the Ordinary Court Judges on the initiation of disciplinary proceedings against Anna B.-C.

**DISCIPLINARY COMMISSIONER
OF THE ORDINARY COURT JUDGES**

COMMUNICATION

of the Disciplinary Commissioner of the Ordinary Court Judges on the initiation of disciplinary proceedings against Anna B.-C., Judge of the Regional Court in Warsaw

I declare that, on 6 December 2019, I initiated disciplinary proceedings against Anna B.-C., a judge of the Regional Court in Warsaw, and pressed charges on her regarding the commitment of five disciplinary offences under Article 107 § 1 of the Law on the System of Ordinary Courts of 27 July 2001 (Journal of Laws of 2019, item 52, as amended), involving the breach of the dignity of the office by:

1.) presenting her personal view, as the presiding judge of the bench of the Regional Court in Warsaw, in the case of case reference X Ka, on 30 August 2019, in Warsaw, during the appeal hearing, after the adjournment of the hearing, on the existence of additional grounds for adjourning the hearing and publicly contesting the bench appointed in accordance with applicable regulations for examining this case, without discussing this with the bench, challenging the independence and impartiality of a judge specified in person, a member of the bench, negating his right to participate in this bench, which constituted a breach of the provision of Article 89 § 1 of the Law on the System of Ordinary Courts, and then issuing instructions challenging his independent performance of judicial acts guaranteed by the provisions of Article 178, para. 1 of the Constitution of the Republic of Poland, by ordering all judges adjudicating in the 10th Criminal Appeal Division to submit their opinions on sending a request to the Minister of Justice to dismiss two specified judges from the secondment to the Regional Court in Warsaw and instructions to take further official steps to this end, thereby preventing the judge, who is a member of the bench, from participating in the examination of this case, which constituted unlawful interference in the bench appointed for examining the case, in conflict with the provisions of Article 47a § 1 and 47b § 1,

2.) overstepping her powers on 16 September 2019, as a public official – the presiding judge of the bench of the Regional Court in Warsaw – in the case of case reference X Ka, such that, during a recess in the appeal hearing, she unlawfully issued a decision to refer questions to the Court of Justice of the European Union for a preliminary ruling, bypassing the other two appointed members of that bench, and therefore adjourned the proceedings in the case, thus contravening the provisions of Article 47a § 1 and 47b § 1 of the Law on the System of Ordinary Courts by interfering in the bench, which had been appointed to consider this case at the hearing, simultaneously acting to the detriment of the public interest, expressed in the proper functioning of the judiciary,

3.) overstepping her powers on 10 October 2019, as a public official – the presiding judge of the bench at the Regional Court in Warsaw, in the case of case reference X Ka, such that the day before the date of the appeal hearing scheduled for 11 October 2019, she unlawfully bypassed the other two

appointed members of that bench and issued a decision to refer questions to the Court of Justice of the European Union for a preliminary ruling, after which, for this reason, she adjourned the proceedings in the case, thereby interfering with the bench, which was appointed to consider this case at the hearing, which was in conflict with the provisions of Article 47a § 1 and 47b § 1 of the Law on the System of Ordinary Courts, simultaneously acting to the detriment of the public interest, expressed as the proper functioning of the judiciary,

4.) overstepping her powers on 23 September 2019, as a public official – a member of the bench of the Regional Court in Warsaw in a specified case of case reference X Ka, such that the day before the date of the appeal hearing scheduled for 24 September 2019, she unlawfully bypassed the other two members of that bench and issued a decision to refer questions to the Court of Justice of the European Union for a preliminary ruling, thereby interfering in the bench, which was appointed to be heard at the hearing of this case in conflict with provisions of Article 47a § 1 and 47b § 1 of the Law on the System of Ordinary Courts, simultaneously acting to the detriment of the public interest, expressed as the proper functioning of the judiciary,

5.) giving interviews in the mass media, including television, press and internet portals in the period from 3 to 25 September 2019 in Warsaw, in which she undermined the status of two defined judges and their right to act as a judge, as well as their independence and impartiality, and questioned the manner in which the vice president of the Regional Court in Warsaw exercised his powers, in which she addressed the Minister of Justice, whereby she breached Article 89 § 1 of the Law on the System of Ordinary Courts and, additionally, she publicly expressed her views on pending cases in which she was one of the members of the bench, in breach of the obligation arising from Article 82 of the Law on the System of Ordinary Courts to act in accordance with the judicial oath, in particular to safeguard the gravity of the judicial office and to be guided by the principles of dignity and integrity in and outside office, namely behaviour that breaches the principles of professional ethics set out in §§ 2, 4, 13 and 16 of the Code of Professional Ethics of judges, which is an attachment to resolution No. 25/2017 of the National Council of the Judiciary of 13 January 2017.

Given that the allegations described in points 2–4 constitute the simultaneous exhaustion by the accused of the features of an offence of an abuse of power prosecuted *ex officio* by a public official (Article 231 § 1 of the Penal Code), the court with jurisdiction to hear the case in the first instance is the Disciplinary Chamber of the Supreme Court.

(-) Regional Court Judge Piotr Schab
DISCIPLINARY COMMISSIONER
OF THE ORDINARY COURT JUDGES

Link to the original publication in Polish:

<http://rzecznik.gov.pl/wp-content/uploads/2019/12/Komunikat-Anna-BC.pdf>

9) Annex 8 - Communication of the Disciplinary Commissioner of the Ordinary Court Judges on the opening disciplinary proceedings with respect to judges of the Court of Appeal in Katowice of 12 December 2019

**DISCIPLINARY COMMISSIONER
OF THE ORDINARY COURT JUDGES**

Warsaw, 15 December 2019

**COMMUNICATION
of the Disciplinary Commissioner of the Ordinary Court Judges
on the initiation of disciplinary proceedings
against judges of the Court of Appeal in Katowice**

I declare that, on 15 December 2019, the Deputy Disciplinary Commissioner of the Judges of the Ordinary Courts, Judge Przemysław W. Radzik initiated disciplinary proceedings against Aleksandra J. and Irena P., judges of the Court of Appeal in Katowice, and pressed charges on them of having committed a disciplinary offence under Article 107 § 1 of the Law on the Structure of Ordinary Courts of 27 July 2001 (Journal of Laws No. 52 of 2019), involving the breach of the dignity of the office by the fact that, on 11 December 2019, as public officials, respectively presiding judge and member of the adjudicating panel of the Court of Appeal in Katowice, in the case of case reference V ACo (...), overstepped their powers in such a way that, by granting themselves the right to determine and assess the manner in which constitutional state bodies operate with regard to the method of selecting some of the members of the National Council of the Judiciary and the method of appointing a judge rapporteur in that case of a judge of the Court of Appeal in Katowice (...), as a result of which, in undermining the provision of Article 55 § 1 of the Law on the Structure of Ordinary Courts, they participated in issuing a decision to present a legal issue to the Supreme Court, the content of which constituted unlawful interference in the statutory method of appointing judges to adjudicating panels, which could have led to a breach of Article 178, para. 1 of the Constitution and breached the provision of Article 82 § 1 of the Law on the Structure of Ordinary Courts, specifying the obligation to behave in accordance with the judicial oath, including the obligation to uphold the law, and thereby satisfying the features of a crime under Article 231 § 1 of the Penal Code, constituted action to the detriment of the public interest in the form of the correct functioning of the justice administration.

I also declare that it arises from the content of the decision that was issued that, guided by the content of Article 129 § 1 of the Law on the Structure of Ordinary Courts of 27 July 2001, the person handling disciplinary proceedings will ask the Disciplinary Chamber of the Supreme Court, as the court with jurisdiction for hearing the case in the first instance, to suspend the accused judges in their official duties.

(-) Regional Court Judge Piotr Schab
DISCIPLINARY COMMISSIONER
OF THE ORDINARY COURT JUDGES

Link to the original publication in Polish:

<http://rzecznik.gov.pl/wp-content/uploads/2019/12/Komunikat-Katowice-2.pdf>

10)Annex 9 – Communication of the Disciplinary Commissioner of the Ordinary Court Judges on the initiation of disciplinary proceedings against Ewa M., Judge of the Regional Court in Warsaw

**DISCIPLINARY COMMISSIONER
OF THE ORDINARY COURT JUDGES**

Warsaw, 17 December 2019

COMMUNICATION

of the Disciplinary Commissioner of the Ordinary Court Judges on the initiation of disciplinary proceedings against Ewa M., Judge of the Regional Court in Warsaw

On 16 December 2019, Deputy Disciplinary Commissioner of the Ordinary Court Judges, Judge Michał Lasota initiated disciplinary proceedings against Ewa M., Judge of the Regional Court in Warsaw, charging her with a disciplinary violation defined in Article 107 § 1 of the Act of 27 July 2001, Law on the System of Common Courts (Journal of Laws No. 52 of 2019 as amended) whereby on 21 January 2019, in Warsaw, she violated the dignity of her office, when, acting as a judge appointed to assess the qualifications of a judge of the District Court for the Capital City of Warsaw, candidate for a vacant judicial post in the Regional Court in Warsaw, she drew up an assessment containing inadmissible remarks relating to the stance of judges running for vacant judicial posts, thereby undermining the status and the functioning of a constitutional state body, the National Council of the Judiciary, which constituted a gross violation of the principle of non-partisanship of judges set out in Article 178(3) of the Constitution as well as the obligation to act in accordance with the judicial oath, including in particular the obligation to uphold the law, as prescribed in Article 82 § 1 of the Law on the Structure of Ordinary Courts.

This decision is accompanied by a request addressed to the President of the Supreme Court – head of the Disciplinary Chamber, to refer this case to be investigated by a disciplinary court of first instance.

(-) Regional Court Judge Piotr Schab
DISCIPLINARY COMMISSIONER
OF THE ORDINARY COURT JUDGES

Link to the original publication in Polish:

<http://rzecznik.gov.pl/wp-content/uploads/2019/12/Komunikat-Ewa-M.pdf>

11) Annex 10 - Letter from the National Prosecutor to the subordinate Prosecutors of 16 December 2019

REPUBLIC OF POLAND
FIRST DEPUTY PROSECUTOR GENERAL
NATIONAL PROSECUTOR

Warsaw, 16 December 2019

Regional Prosecutors
Heads of the Remote Departments
Department of Organized Crime and Corruption
National Prosecution Office

Dear Sirs,

Further to the statement made by Małgorzata Gersdorf, the First President of the Supreme Court of 10 December 2019 regarding the judgment of the Chamber of Labour and Social Security of the Supreme Court, case reference III PO 7/18, in which she appealed to the judges of the Disciplinary Chamber of the Supreme Court to “refrain from all judicial actions in the cases they are handling”, please respond immediately to all cases in which adjudicating panels challenge the status of the Disciplinary Chamber of the Supreme Court as a court under Polish law or the status of judges adjudicating in the Supreme Court or the ordinary court judges appointed by the President of the Republic of Poland at the request of the National Council of the Judiciary.

The conclusions and interpretations contained in M. Gersdorf’s statement are in conflict with the Polish Constitution and the applicable statutes. The Prosecution Office, as a body obliged by statute to uphold the rule of law, must respond to attempts to disorganize the Polish democratic justice system.

Therefore, if such a position is found in any proceedings, I order you to immediately submit a motion to remove the judge or judges from adjudicating in such a case and to notify the Regional Prosecutor of this matter.

I simultaneously obligate the regional prosecutors to immediately send a notice of such an incident to the Disciplinary Commissioner of the Ordinary Court Judges and the Disciplinary Commissioner of the Supreme Court in such cases.

Every case where members of adjudicating panels take such a position and the actions performed as a result constituting the performance of the obligations arising from this letter must be reported to the Department of Court Proceedings of the National Prosecution Office.

Please, provide this order to your subordinate prosecutors forthwith for information and application.

Yours faithfully,
Bogdan Świączkowski
National Prosecutor

Link to the original publication in Polish:

<http://rzecznik.gov.pl/wp-content/uploads/2019/12/Komunikat-Katowice.pdf>

12) Annex 11 - Communication of the Disciplinary Commissioner of the Ordinary Court Judges on the opening of disciplinary proceedings with respect to a judge of the Regional Court in Jelenia Góra of 7 January 2020



DISCIPLINARY COMMISSIONER
OF THE ORDINARY COURT JUDGES

Warsaw, 7 January 2020

**COMMUNICATION
of the Disciplinary Commissioner of the Ordinary Court Judges**

I declare that the Deputy Disciplinary Commissioner of the Judges of the Ordinary Courts, Judge Przemysław W. Radzik, initiated an investigation on 7 January 2020 in the case of the justified suspicion of the commitment of a disciplinary offence under Article 107 § 1 of the Law on the System of Ordinary Courts of 27 July 2001 (Journal of Laws No. 52 of 2019), involving a breach of the dignity of the office by a specified judge of the Regional Court in Jelenia Góra, who, on 17 December 2019, as a public official, the presiding judge of the bench in a specified case of the Regional Court in Jelenia Góra, overstepped his powers in such a way that, by awarding himself the right to determine and assess the manner in which constitutional state bodies operate with regard to the method of selecting some members of the National Council of the Judiciary and the method of appointing an adjudicating judge rapporteur in the specified case of the District Court, as a result of which, in undermining the provision of Article 55 § 1 of the Law on the System of Ordinary Courts and ignoring the judgment of the Constitutional Tribunal of 25 March 2018, case ref. K 12/18, on the compliance of the Act on the National Council of the Judiciary of 12 May 2011 (Journal of Laws of 2018, item 389, as amended) with Article 91 of the Constitution, the wording of which constituted unlawful interference in the statutory method of appointing judges to benches, which could have led to a breach of Article 178, para. 1 of the Constitution and breached the provision of Article 82 § 1 of the Law on the System of Ordinary Courts, specifying the obligation to behave in accordance with the judicial oath, including the obligation to uphold the law, and thereby satisfying the features of a crime under Article 231 § 1 of the Penal Code, constituted action to the detriment of the public interest in the form of the correct functioning of the justice administration.

(-) Regional Court Judge Piotr Schab
DISCIPLINARY COMMISSIONER
OF THE ORDINARY COURT JUDGES

Link to the original publication in Polish:

<http://rzecznik.gov.pl/wp-content/uploads/2020/01/Komunikat-Jelenia-Góra.pdf>