

# THEMIS

ASSOCIATION OF JUDGES

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## **Humiliate in order to subordinate - judge Beata Morawiec case study.**

**Beata Morawiec** – President of Association of Judges “Themis” (the second largest Polish association of judges), the former member of the “old” National Council of the Judiciary and the former President of Kraków Regional Court<sup>1</sup>.

Her story began when, at the end of November 2017, the current Minister of Justice Mr Zbigniew Ziobro removed her from the position of the President of Regional Court in Kraków. This took place within the national purge of court presidents which was conducted on the basis of introductory provisions of the Act on the Organization of Ordinary Courts. Over the 6 months since the amendment of the mentioned Act entered into force, the Minister of Justice arbitrarily and often by using untrue or fabricated statistical data on the effectiveness of the courts, dismissed around 160 presidents and vice presidents of Ordinary Courts before their terms of office expired. In an announcement posted on the ministry’s website, her name was linked to an investigation concerning an alleged corruption in the Kraków Court of Appeal, which she had no role or involvement in. Judge Morawiec was also accused of allegedly low quality of work, however the statistics which were basis for the allegation were fabricated.

Beata Morawiec was the only former court president in Poland who sued the Minister of Justice regarding the protection of her reputation – for the content of the announcement on the ministry’s website. Taking into account the above circumstances, it should come as no surprise that she won the case against the Minister in the court of first instance. Ziobro appealed so the case is pending, the files of the case have just been transferred to the Warsaw Court of Appeal.

On 15 September 2020, an information appeared on one of the pro-government news portals according to which the Department of Internal Affairs of the State Prosecution Office is conducting an investigation against Judge Beata Morawiec and, in the course of this investigation, a request to waive her immunity was submitted to the Disciplinary Chamber of the Supreme Court. The information was soon after confirmed by the spokesperson of the Public Prosecution Office. The prosecutor’s office wants to charge Beata Morawiec firstly for an alleged, fictitious 2013 agreement with the Court of Appeal in Kraków. The prosecutor’s

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<sup>1</sup> The case of Judge Morawiec was described in many publications available in English:

- <http://themis-sedziowie.eu/materials-in-english/public-prosecutor-enters-the-home-of-a-judge-fighting-for-free-courts-in-poland-by-mariusz-jaloszewski/> ,
- <http://themis-sedziowie.eu/materials-in-english/the-cba-and-the-prosecutor-in-judge-beata-morawiecs-home-they-secured-a-laptop-by-magdalena-galczynska/> ,
- <https://wyborcza.pl/7,173236,26339985,solidarity-with-morawiec-a-nationwide-campaign-against-judicial.html> ,
- <https://ruleoflaw.pl/this-time-will-verify-which-judge-has-a-moral-backbone/> ,
- <https://ruleoflaw.pl/the-disciplinary-chamber-goes-to-task-on-judges-morawiec-and-tuleya/> ,
- <https://www.polishnews.co.uk/cba-in-the-house-of-judge-beata-morawiec-judge-dariusz-mazur-comments-illegal-actions-of-the-prosecutors-office/>

office claims the judge took PLN 5,000, but did not prepare an opinion. Secondly, the judge is also under threat of being charged with allegedly receiving a mobile phone from a defendant in 2012 for passing sentence in his favor. There are indications that the second charge is based on the slander of a person temporarily arrested in a case of a financial scandal in the Kraków Court of Appeal. It is very important that prior to the filing of the motion to waive the immunity of Judge Morawiec, the prosecutor did not give her any official opportunity to comment on the allegations presented to her.

In response to the charges brought against her, on 17 September 2020, Judge Morawiec published a report made by her in 2013 for the Court of Appeal on social media, which completely undermines the first of the charges against her. The judge also staunchly denied that she ever accepted any financial advantage in return for the sentence.

On 18 September 2020, a little after 6 a.m., a public prosecutor, assisted by the Central Anticorruption Bureau (CBA), entered Judge Beata Morawiec's house. Threatening to search the house, he took her official laptop containing sensitive data. The stated reason was to secure the requested report from 2013 as well as the electronic media on which it was prepared. According to the opinion of recognized legal authorities, issuing a search warrant for a judge's house without the permission of the disciplinary court, in a situation where the judge voluntarily disclosed the content of the report on social media, was an unlawful act, violating the principle of proportionality. There are currently speculations among the judicial community as to whether the current criminal charges against Judge Morawiec could be a consequence of the fact that she came into conflict with the minister and humiliated him by winning the case and of the fact that she is the President of the Judges' Association 'Themis' which is fiercely critical in respect of the pseudo-reform of the judiciary.

Although the case against Judge Morawiec does not constitute disciplinary proceedings, but criminal proceedings, it should be perceived as a manifestation of legal harassment of judges who defend the rule of law in Poland. It is characteristic that the proceedings in the case are conducted by the Internal Affairs Department of the State Prosecution Office<sup>2</sup>, which was created in 2016, whose statutory purpose is to "conduct criminal proceedings against judges and prosecutors"<sup>3</sup> and that is subordinated directly to the Minister of Justice-Prosecutor General, who lost a case for the protection of personal rights to Judge Morawiec. Equally disturbing is the fact that the waiving of judge Morawiec's immunity will be decided by the Disciplinary Chamber of the Supreme Court, which according to the rulings of the Polish Supreme Court of 5 December 2019 and 23 January 2020 is not a court within the meaning of the Polish Constitution and the law European Union, with its operation having been likewise suspended by the CJEU under the interim measure of 8 April 2020<sup>4</sup>.

The hearing on the revocation of the judge's immunity is scheduled for **12 October 2020, at 11 a.m. in room B of the Polish Supreme Court building in Warsaw.**

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<sup>2</sup> See subchapter V.2.b) of the report "Judges under special supervision, namely 'The great reform' of the Polish justice system", accessible under the link: [http://themis-sedziowie.eu/wp-content/uploads/2019/04/Judges\\_under\\_special\\_supervision\\_second-publication.pdf](http://themis-sedziowie.eu/wp-content/uploads/2019/04/Judges_under_special_supervision_second-publication.pdf)

<sup>3</sup> In the light of the opinion of Advocate General Bobek of 23 September 2020 establishment of such a special prosecutorial unit with exclusive jurisdiction for offences committed by the members of the judiciary may be contrary to the EU law, especially if it is not justified by genuine and weighty reasons and if it does not meet the requirement of independence from politicians, see: [https://curia.europa.eu/jcms/jcms/p1\\_3230409/en/](https://curia.europa.eu/jcms/jcms/p1_3230409/en/)

<sup>4</sup> <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-04/cp200047en.pdf>