

## **Report on the current situation in the judiciary in Poland - 13.11 2019**

### **The Regional Court in Kraków suspends the delegation of prosecutor Mariusz Krasoń from the Regional Prosecutor's Office in Kraków to the District Prosecutor's Office in Wrocław.**

Prosecutor Mariusz Krasoń is one of the signatories to the unanimously adopted resolution of the Assembly of Prosecutors in the Regional Prosecutor's Office in Krakow in which he protested against the superiors 'violation of prosecutors' independence by manipulating investigations. The resolution had no precedent: never did prosecutors of any prosecutor's office oppose the pathological actions of their superiors in this way. He is a member of the Lex Super Omnia Association of prosecutors.

By decision of his superiors he was delegated to the lower level prosecutor's office, nearly 300 km from home.

Prok. Mariusz Krasoń has put the lawsuit to the court demanding the court to establish that the place of performance of official duties in the period from July 8, 2019 to January 7, 2020, i.e. the place of performance of the plaintiff's work, is the seat of the Regional Prosecutor's Office in Kraków and that the legal action July 5, 2019 by the National Prosecutor, who has delegate the plaintiff to perform official duties in the District Prosecutor's Office for Wrocław-Krzyki Zachód in Wrocław, as contrary to the law, including by the provisions of the Labour Code, it is invalid and has no legal effects, constituting only a misuse of the law prohibited by the provisions of labour law, applicable to prosecutors in the service relationship pursuant to art. 130 of the Act on the Prosecutor's Office, unequal treatment of employees.

On November 5, 2019 The Kraków Regional Court hearing this case issued a decision in which it secured the claim in such a way that it ordered the Regional Prosecutor's Office in Kraków to withstand the delegation of the plaintiff Mariusz Krasoń to perform his duties in the District Prosecutor's Office of Wrocław - Krzyki Zachód in Wrocław for the duration of the proceedings in this case .

**Polish Judges association IUSTITIA`s position after the judgment of the Court of Justice of the European Union in case C 192/18 European Commission v. Poland, regarding the principles of retirement of Polish judges:**

The verdict announced today is important for the judiciary in Poland and other EU countries. The European Commission accused Poland that the changes introduced in the amendment to the Act of 12 July 2017 amending the Act - Law on the system of common courts and some other acts, violate EU law. It was about the recipes:

- differentiating retirement ages for women and men who act as judges of common courts, Supreme Court judges and prosecutors;
- lowering the retirement age of common court judges;
- granting the Minister of Justice a discretionary right to decide on extending the period of active service of judges.

The CJEU confirmed the allegations of the European Commission and found that Poland had violated EU law.

The Court agreed with the Advocate General's position that European Union law protects judges against being removed from office and the irremovability of judges is one of the basic guarantees of judicial independence. Reducing the retirement age of judges should be subject to safeguards to ensure that judges are not de facto removed from office, while the contested act of July 2017 does not comply with the guarantees of the irremovability of judges and their independence.

Although the provisions of the Act on the system of common courts regarding the retirement age of judges have changed, the judgment of the CJEU is extremely important for several reasons.

First of all, it guarantees that both in Poland and other EU countries, no legal provisions regarding retirement will be introduced, which are contrary to EU law and the principles of the irremovability of judges and judicial independence. The judgment of the CJEU will not allow the executive in the member states to undertake similar actions in the future, enabling systemic undermining of the independence of national courts.

In addition, the Tribunal's judgment gives rise to claims for damages for judges who, under the contested provisions, were forced to retire.

As the Polish Judges Association "Iustitia", we expect the Polish authorities to withdraw from all actions that violate the principles of judicial independence and the independence of the

courts, and to voluntarily pay compensation to judges who were retired pursuant to the contested provisions.

**Disciplinary spokesman for judges Piotr Schab found no grounds to institute disciplinary proceedings against the “heroes” of the hatter affair.**

According to media reports, Deputy Minister of Justice Łukasz Piebiak and his close associate, delegated to the Ministry of Justice Jakub Iwaniec together with online hatter Emilia developed a strategy of slandering the head of the largest association of judges "Iustitia".

Piotr Schab emphasized that after hearing the former deputy minister of justice, he did not find "factual and legal grounds to institute disciplinary proceedings and present charges."

Piotr Schab, however, threatened that there would be proceedings against those judges who - in protest against the actions of the disciplinary officer - refused to appear before him for hearings as witnesses.

The IUSTITIA's President judge Krystian Markiewicz, who was the target of the attack, assessed that with this decision the spokesman for the discipline confirmed the pathology associated with his subordination to the Ministry of Justice.

**Statement of the Disciplinary Officer for the Judges of Common Courts, 10 November 2019**

In reference to the statement of October 25, 2019, I would like to inform, that based on the findings of explanatory actions resulting from justified suspicion of disciplinary offenses committed by several judges, including the conscious ignoring the statutory obligation to appear on summons and to testify as witnesses as well as other disciplinary torts, the Deputy Disciplinary Officer for the Judges of Common Courts, judge Przemysław W. Radzik, by decisions of November 8, 2019, initiated disciplinary proceedings and presented disciplinary charges against:

- Krystian M., judge of the Regional Court in Katowice,
- Monika C., a judge of the District Court in Opole,
- Katarzyna K., judge of the District Court in Oleśno,

- Monika F., judge of the District Court Poznań Nowe - Miasto and Wilda in Poznań.

- Bartłomiej S., judge of the District Court in Sulęcín.

In particular, judge Krystian M. has been presented with the following charges that:

1. on 12 September 2019, he violated the dignity of the office by publishing "President of the Association of Polish Judges Iustitia statement (...)" available on Iustitia Association's web site, expressing his opinion on the pending proceedings (explanatory actions) resulting from decision ref. No RDSP 712-69/19 of the Disciplinary Officer of the Judges of the Common Courts (regarding the preparation and publishing the entries in communicators and web portals which violated § 23 of the Code of Rules of the Professional Ethics for Judges and Assessors), where he stated that he would not fulfil the statutory obligation to appear as a witness in these proceedings (explanatory proceedings), and then called all other judges summoned by the Disciplinary Officer of the Judges of Common Courts and his Deputies to disregard the legal order by ignoring the legal obligation to appear on call and to testify, by which he grossly violated Article 82 of the Act on the System of Common Courts: the obligation to act in accordance with the judicial oath, in particular the obligation to guard the law, to faithfully perform judicial duties and to protect the dignity of judicial office during and outside the service and not to create even the appearance of not complying with the legal order, i.e. behaviours that defy the dignity of the judge and undermine confidence in his independence and impartiality and violate the principles of professional ethics, specified in § 5 para. 2, § 10, 13 and 16 of the resolution of the National Council of the Judiciary of February 19, 2003 regarding the adoption of the Code of Professional Ethics for Judges and Assessors - that is disciplinary offense under Art. 107 § 1 of the Act on July 27, 2001 – The law of the system of the common courts;

2. On September 17, 2019 in Warsaw, being properly summoned to appear in person as a witness in the case ref. nr RDSP 712-69/19 of the Disciplinary Officer of the Judges of the Common Courts, regarding the organization and posting of the entries in communicators and web portals, violated § 23 of the Code of Professional Ethics Rules for Judges and Assessors as being instructed about the consequences of not neglecting the call, he violated the dignity of the office by failing to comply with the content of art. 128 of The law on the System of Common Courts in connection with art. 177 § 1 of the Code of Criminal Procedure (the obligation to appear and testify) he did not appear at this summons, thus by evading the statutory obligation to testify grossly violated Article 82 of the Act on the System of Common

Courts: the obligation to act in accordance with the judicial oath, in particular the obligation to guard the law, to faithfully perform judicial duties and to protect the dignity of judicial office during and outside the service and not to create even the appearance of not complying with the legal order, i.e. behaviors that defy the dignity of the judge and undermine confidence in his independence and impartiality and violate the principles of professional ethics, specified in § 5 para. 2, § 10, 13 and 16 of the resolution of the National Council of the Judiciary of February 19, 2003 regarding the adoption of the Code of Professional Ethics for Judges and Assessors - that is disciplinary offense under Art. 107 § 1 of the Act on July 27, 2001 – The law of the system of the common courts;

The allegations against the other judges were worded in a similar manner with modifications regarding the dates of the disciplinary torts and the determination that by issuing statements on defying the statutory obligation to appear as a witness, each of these judges acted accordingly to the public call of the President of the Polish Judges Association "Iustitia" on September 12, 2019 not to respect the legal order by ignoring the obligation under the Act to appear on call and testify in proceedings conducted by the Disciplinary Officer of the Judges of the Common Courts and his Deputies.

As far as judge Bartłomiej S. is concerned, the issued decision concerns charges of committing three disciplinary torts, because, apart from those indicated, he was charged with disciplinary offense consisting in violating the dignity of the office consciously defying the obligation to appear for summons and testify

in a case other than that mentioned in other case of Disciplinary Officer for Judges of Common Courts, than aforementioned.

Taking into account aforementioned, I inform, that according to art. 82 of the Law on the System of Common Courts, a judge is obliged to act in accordance with the judicial oath, in particular the duty of faithful service to the Republic of Poland, guarding the law, faithful performance of the duties of a judge, as well as the duty to protect the dignity of the judicial office in service and outside the service.

In accordance to the set of Rules of Professional Ethics for Judges and Assessors indicated in aforementioned charges:

- the judge should restrain from behavior that could abuse the dignity of the judge or affect confidence in his independence and impartiality,

- the judge should not express public opinions on pending proceedings.

- the judge may not even appear to disregard the legal order by his behavior.

(-) Regional Court Judge Piotr Schab

Disciplinary Officer

For Judges of the Common Courts

**The position of the National Board of Polish Judges Association "Iustitia" on the statement of the Disciplinary Spokesman of the Judges of Common Courts:**

On November 8, 2019, Przemysław Radzik - Deputy Disciplinary Spokesman of the Judges of the Common Courts brought disciplinary charges against the judges: Krystian Markiewicz, Monika Ciemięga, Monika Frąckowiak, Katarzyna Kałwak and Bartłomiej Starosta in connection with the alleged misconduct of the dignity of the judicial office according to the Spokesman in a way of ignoring the statutory obligation of these judges to attend the summons and testify as witnesses and other disciplinary torts. "

We emphasize, that those judges were summoned in a case concerning concern, among others "Hatter affair" and threads related to it. In this case, Judges Markiewicz, Ciemięga, Kałwak, Frąckowiak and Starosta are victims, because so-called hate activities aimed at defamation, insults, harassment against them. Filing disciplinary charges against the above-mentioned Judges is evidence of further harassment.

It should be reminded, that all disciplinary spokesmen were appointed by the politician - Minister of Justice - Zbigniew Ziobro, whose role in the so-called the hatter scandal has not been explained at all. In addition, according to media information, the deputy disciplinary spokesmen belonged to the group named "Kasta" - "The Cast" on WhatsApp, which under the leadership of the deputy minister of justice dealt with the slandering actions against the judges being active in the defence of the rule of law in Poland. Disciplinary spokesmen's connections with the hateful Twitter account "KastaWatch" are also clear. It was just on this account that disciplinary actions against judges were announced, which were later carried out, and the

details of hearings conducted by disciplinary spokesmen were disclosed there. The formal activity of the above-mentioned people is part of the activity of this Twitter account.

We emphasize that the national Board of the Polish Judges Association "Iustitia" submitted to the Prosecutor's Office a notification of the possibility of committing a criminal offenses by individuals indicated in the media as involved in the so-called "Hatter affair" and cooperating with such people. The notification also includes the names of the Disciplinary Spokesman of the Judges of the Common Courts Piotr Schab and his deputies: Michał Lasota and Przemysław Radzik. Until now, members of the board have not been even heard by the Prosecutor.

In this situation, we believe that the Disciplinary Spokesman of the Judges of Common Courts Piotr Schab and his deputies Michał Lasota and Przemysław Radzik should exclude themselves from taking any action in the matter of the so-called "Hatter affair".

At the same time, we would like to point, that the Disciplinary Spokesman of the Judges of Common Courts is not a right and competent institution to conduct any other activities against judges Monika Ciemięga, Monika Frąckowiak, Katarzyna Kałwak, Bartłomiej Starosta - Judges of district courts and Krystian Markiewicz - Judge of a regional court, because they are not neither presidents nor vice presidents of these courts. The spokespersons competent to run the abovementioned the acts are the deputies of the disciplinary spokesman acting at the regional courts and the deputy disciplinary spokespersons acting at the appeal courts. Those judges are also not involved in this case and for which no circumstances of such nature have emerged that could raise reasonable doubt as to their impartiality.