

## Serious Concerns about Continued Attacks on the Status of Judges in Poland

**UIA-IROL is gravely alarmed to learn that the independence of the judges in Poland is once more under attack**

- **Continued Erosion of Judicial Independence in Poland**

UIA-IROL has been monitoring the situation in Poland and observing with increasing concern successive legislative changes adopted in Poland in the context of the wide-ranging judicial reform commenced in 2015. These changes have infringed the independence of the judiciary in alarming ways, and UIA and UIA-IROL have consistently called upon the Polish authorities to reconsider their position and to cease all present and future attacks against the independence of Polish judges<sup>1</sup>.

The situation in Poland that followed the aforementioned judicial reform was also the subject of the report prepared by the Special Rapporteur on the independence of judges and lawyers in 2018, after he undertook an official visit to Poland from 23 to 27 October 2017.

The Special Rapporteur emphasized that an independent and impartial judicial system is essential for upholding the rule of law and ensuring the protection of human rights and fundamental freedoms. At the time, the Special Rapporteur concluded that the main effect of the measures adopted by the ruling majority had been to hamper the constitutionally-protected principle of judicial independence and to enable the legislative and executive branches to interfere with the administration of justice. He therefore urged Polish authorities to reconsider the ongoing reform of the judicial system and refrain from attacks on the judiciary, noting that this constituted a flagrant violation of the principle of judicial independence and was unacceptable in a democratic State governed by the rule of law.

**Despite the repeated calls addressed to Polish authorities, the threats to the rule of law and independence of judiciary did not stop; instead they escalated.**

Recently the Court of Justice of the European Union (CJEU - Grand Chamber) - in its judgment delivered on 5 June 2023 in case C-204/21<sup>2</sup> brought by the European Commission - declared that further laws implemented in Poland in the context of the judicial reform, including the amendments of acts published on 19 December 2020, are contradictory to the law of the European Union.

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<sup>1</sup> See for instance, [Joint statement UIA/UIIM-AIJ, 28 December 2017](#); [Resolution on the situation on Poland, November 2019](#); [UIA Stands for the Independence of the Justice in Poland & Support Letters in relation with the March of 1000 Robes](#), January 2020

<sup>2</sup> See [here](#). ECLI:EU:C:2023:442.

The CJEU has, *inter alia*, declared that by introducing laws that allow the examination of compliance with the EU requirements relating to an independent and impartial tribunal previously established by law to be classified as a disciplinary offence, Poland had failed to fulfil its obligations under the second subparagraph of Article 19(1) [Treaty of the European Union](#) (TEU), read in conjunction with Article 47 of the [Charter of Fundamental Rights of the European Union](#), and under Article 267 [Treaty on the Functioning of the European Union](#) (TFEU).

- **Further cases targeting individual judges, undermining the independence of the judiciary**

Regardless of all these reports and rulings of the European courts, UIA-IROL has learnt about many new cases targeting individual judges and the independence of the courts they represent, which we refer to below.

According to reliable sources, despite the final decisions made in the case of **Judge Paweł Juszczyzyn** from Olsztyn, reinstating him to adjudication after a 2-year suspension, further actions are being taken against him. We are disturbed by this information, as there have already been many actions of a disciplinary nature against this judge. We are aware that Judge Paweł Juszczyzyn was the first in Poland to implement the CJEU's judgment issued on 19 November 2019<sup>3</sup>, in which the Court adjudicated on how to assess the legality of the new-KRS (new-National Council of the Judiciary) and the Disciplinary Chamber in the Supreme Court. Judge Juszczyzyn was charged with disciplinary charges shortly thereafter. When he returned to adjudicate in mid-2022, he was transferred from his home civil division to the family division. As we have been informed, there was no staff shortage in the family division at the time, which was the alleged reason for the forced transfer of the judge. We have now been informed about five new disciplinary proceedings against Judge Paweł Juszczyzyn – initiated between the end of July and August of this year.

It is our understanding that one of these disciplinary actions, initiated by the chief disciplinary ombudsman Piotr Schab, is the result of Judge Juszczyzyn seeking enforcement of a January 2023 ruling by the District Court in Bydgoszcz to revoke his transfer to the family division. In that ruling, the District Court in Bydgoszcz held that the president of the Olsztyn District Court, Maciej Nawacki, had violated the provisions of the Act on the System of Common Courts and ordered him to reinstate Paweł Juszczyzyn to work in the civil department. As that ruling had not been respected, Judge Juszczyzyn sought enforcement of the judgment.

Further, four disciplinary cases were initiated by the deputy disciplinary ombudsman at the Olsztyn Regional Court, Tomasz Koszewski, who also serves as deputy President of the Olsztyn District Court. These proceedings were initiated as a result of Judge Juszczyzyn's implementation of the judgments of the ECHR and CJEU, which challenged the status of the new-KRS and its judicial appointments.

We have also learnt about an investigative proceeding initiated against Judge Paweł Juszczyzyn in connection with his August 2022 interview with the Onet portal about the state of the rule of law in Poland.

It has been brought to our attention that **Judge Rafał Jerka**, another judge from Olsztyn, has also been subject to a transfer against his will in July of this year. Despite having been adjudicating labour and social security law cases for about 18 years, he has been transferred to the family division. We are aware that Judge Jerka has been involved in defending the independence of the judiciary in Poland and supported Judge Paweł Juszczyzyn.

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<sup>3</sup> C 585/18, C 624/18 and C 625/18, [ECLI:EU:C:2019:982](#).

**We are gravely alarmed by this information as both judges have already been targeted for upholding the rule of law and complying with the judgments of the CJEU.**

UIA-IROL is also deeply concerned about continued actions against **Judge Waldemar Żurek** who was the first judge forcibly transferred in 2018 from the civil appellate division to the civil division first instance court. According to reliable sources, Judge Żurek currently faces 30 disciplinary and investigative proceedings. The proceedings relate, among other things, to Judge Żurek's statements in the media, where he criticised the reforms of the judiciary and allegedly undermined the status of the new-judges (including those appointed to office in the Supreme Court).

Another case that has been brought to our attention is the case of **Judge Piotr Raczkowski**, a judge of the Military Regional Court in Warsaw, who until 2018, was vice-president of the National Council of Judiciary in its last term. As a military judge, Judge Raczkowski was also an officer on active duty. He defended Judge Waldemar Żurek, who represented the position of the former KRS, against attacks from politicians and some media. Judge Raczkowski has been waiting six years to return to the courtroom following the request of the National Council of the Judiciary to appoint him as a judge of the Regional Court in Warsaw, after he was unable to continue his active military service due to his health condition in 2017 but was still fit to serve as a judge.

As Judge Raczkowski was waiting to come back to his service, on the occasion of the amendment of the Civil Code's succession provisions, the ruling majority introduced an amendment to the Homeland Defense Act. This amendment prevents Judge Raczkowski from continuing to serve as a judge by retiring him despite his failure to meet the conditions set out in Article 180 of the Polish Constitution (stipulating the principle of irremovability of a judge). These provisions seem to be aimed solely at Judge Piotr Raczkowski.

It also has been reported that the new-KRS notified the public prosecutor's office of the possibility that Supreme Court **Judge Włodzimierz Wróbel** had committed a crime. This alleged crime was the request for the personnel file of a judge from Olsztyn made by Judge Wróbel in the so-called test procedure, pursuant to the motion submitted by a defence attorney in a case Judge Wróbel was adjudicating. The test procedure for verifying a judge's independence has been legal since 15 July 2022 under an amendment to the Supreme Court Act made by the President of Poland. The procedure allows verification of the manner in which a particular judge has been appointed. Under these regulations the courts have been asking for a judge's personnel file for more than a year and, as we have been informed, the rule was that these files were produced following such a request. It is therefore concerning that enforcing these regulations by Judge Wróbel was treated as an overreach of his power and, as a result, he was reported to the public prosecutor's office.

UIA-IROL is therefore alarmed by these cases, as most of the disciplinary proceedings are initiated on the basis of the regulations of the Polish *Act of 20 December 2019 amending the Act - Law on the system of common courts, the Act on the Supreme Court, and certain other acts* that have been declared by the CJEU to contradict the fundamental principles of European Law. CJEU emphasized that provisions allowing judges to be prosecuted and punished for applying European law and enforcing judgments of the European Court of Human Rights (ECtHR) and CJEU are incompatible with EU law.

We are deeply concerned that the above-referenced actions are being initiated against judges despite the clear ruling of the CJEU issued on 5 June 2023 in case C-204/21<sup>4</sup> and further, that in the case of Judge Rafał Jerka, the Disciplinary Ombudsman for Judges has clearly rejected this judgment of the CJEU as contrary to the Polish constitutional order.

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<sup>4</sup> [ECLI:EU:C:2023:442](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:2023:442).

UIA-IROL is also concerned to learn of disciplinary proceedings initiated against judges for issuing judgments unfavourable to some media. As we have been informed, there are now disciplinary actions against Judge **Tomasz Jaskłowski**, pending in the Warsaw court, that relate to a judgment he rendered in a case in which *Gazeta Polska* (Eng: Polish Gazette) was held liable for the breach of personal rights of Mr. Bartosz Kramek of the Open Dialog Foundation (the ruling was validly upheld first by the Warsaw Court of Appeal and then by the Supreme Court).

As we have been informed, the following Polish judges also have been targeted in disciplinary proceedings for applying European law this year: Sławomir Bagiński from Białystok; Piotr Gąciarek from Warsaw; and the judges from Krakow: Wojciech Maczuga, Edyta Barańska, Anna Głowacka, Edyta Barańska, Maciej Czajka, Grzegorz Dyrka, Maciej Ferek, Jarosław Gaberle, Janusz Kawalek, Joanna Makarska, Dariusz Mazur, Beata Morawiec (president of the Themis judges' association), Ewa Szymańska, and Katarzyna Wierzbicka.

### **Independent Judges are Fundamental to the Rule of Law**

**UIA-IROL deplores those actions against independent judges and calls for respect of the rulings of the Court of Justice of the European Union.** UIA-IROL would also like to remind that in a democratic state of law, judges must enjoy independence, and any attempt to exert pressure against them is a breach of the rule of law. In a democratic state under the rule of law, judges also exercise their constitutional right to freedom of expression by speaking publicly on matters of the judiciary and the rule of law. In its judgments, the ECtHR has emphasized that a judge has not only the right but the duty to speak out on matters concerning the rule of law and judicial independence when those fundamental values are threatened <sup>5</sup>.

**UIA-IROL calls on the Polish authorities to respect the rulings of the European courts -- including the ruling of the Court of Justice of the European Union (Grand Chamber) delivered on 5 June 2023 in case C-204/21<sup>6</sup> -- and put an end to all unjustified attacks on the independence of the judiciary.**

**UIA-IROL will continue to monitor closely this issue, and takes this opportunity to express support for and solidarity with all Polish judges who tirelessly continue to seek to maintain their independence and to promote the Rule of Law in Poland in such extremely challenging circumstances.**

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#### **More about UIA-IROL**

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*The Institute for the Rule of Law of the International Association of Lawyers (UIA-IROL) promotes the Rule of Law and supports and defends, in particular, (1) lawyers, judges and human rights defenders who are harassed, threatened and/or persecuted in the exercise of their professions, (2) the independence of the legal and judicial professions, and (3) the UN Basic Principles on the Role of Lawyers, especially in defense of human rights.*

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<sup>5</sup> See, e.g. the judgment of the European Court of Human Rights of 16 June 2022, in [Żurek v. Poland](#), (application no. 39650/18), § 222. See also, Consultative Council of European Judges (CCJE), [Opinion n°25 \(2022\) on freedom of expression of judges](#).

<sup>6</sup> ECLI:EU:C:2023:442.