

Statement  
of judges adjudicating at the Court of Appeal in Warsaw

With reference to the letters of the Vice President of the Court of Appeal in Warsaw dated 5 August 2022 regarding the reassignment and transfer of SSA Ewa Leszczyńska-Furtak and SSA Ewa Gregajtys from the 2nd Criminal Division to the 3rd Labour and Social Insurance Division, we express our deep objection to this unprecedented decision, including the circumstances and motives for its adoption. This action blatantly violates the constitutional principles of the immovability and independence of judges and the independence of the courts.

It is a well-known fact that adjudication in the criminal division of an appellate court requires, due to the importance and gravity of the cases heard there, the highest level of competence, the acquisition of which is preceded by many years of hard work. The good practice implemented so far in the Court of Appeal in Warsaw consisted in the fact that the status of a judge of this Court was obtained by persons enjoying a good reputation in the environment, distinguished by their results in terms of the stability of their jurisprudence, as well as having extensive adjudicatory experience, gained first at the level of district courts and then at the level of regional courts. This made it possible to ensure the appropriate level of merit of the judiciary and did not raise doubts about the qualifications of the persons forming it. Resignation of such experienced adjudicators as SSA Ewa Leszczyńska-Furtak and SSA Ewa Gregajtys, by transferring them to another department, not only harms the interests of the court, but above all the interests of the participants of criminal proceedings, who are served by the right to an efficient and fair trial. The guarantors of this right are SSA Ewa Leszczyńska-Furtak and SSA Ewa Gregajtys. It is also obvious that a judge who has specialised in criminal cases for many years does not have the necessary experience to adjudicate in another division with the same highest adjudicatory standards. Parties participating in court proceedings before labour and social security courts expect judges to be highly qualified in this area of law, especially at the appellate level.

We would like to draw attention to the content of Article 22a § 1(1) of the Law on the Common Court System, according to which the first criterion for the assignment of judges to particular divisions is their specialisation, which directly confirms the intention of the legislator to use the unique knowledge of each judge, including that resulting from many years of judicial work in a particular division.

In our opinion, the procedure aimed at transferring experienced judges from the criminal division is completely incomprehensible, when this division, due to its significant workload, requires staff support. The needs in this respect are estimated at 8-10 full-time judges. This seems to have been recognised by the vice-president of the Court of Appeal in Warsaw, who addressed a letter to various units in the country dated 27 July 2022 (Kd-128-5/22) informing about the possibility of delegating judges to adjudicate, inter alia, in the Second Criminal Division of our Court. Significantly, the letter stressed the importance of the matter, i.e. the need for an urgent increase in the number of adjudicators, and it was therefore recommended that it also be presented to judges taking annual leave or sick leave. It is impossible not to notice the coincidence between the number of judges who, according to the contents of the letter of the Vice-President of the Court of Appeal in Warsaw of 19 July 2022 (Kd-123-102/22), would be transferred from the Second Criminal Division to the Third Labour and Social Insurance Division and the number of judges who should join the Second Criminal Division by transferring from other courts. In both cases, three judges are involved. Thus, if, as

a result of the described changes, the overall staffing level of Division II was to remain at the current level, and the actual increase in staffing would only concern Division III, a rather obvious question arises, to which it is difficult to find a logical answer, as to why new judges specialising in labour and social security cases were not sought.

It is difficult to resist the impression that the transfer of SSA Ewa Leszczyńska-Furtak and SSA Ewa Gregajtys is not an element of a rational human resources policy, but a manifestation of repression for judicial activity based on the Constitution, rulings of the European Courts and the Supreme Court. This, in turn, should be met with an appropriate reaction from the judicial community.

The way our colleagues were treated arouses deep objection and is perceived by us also as disrespect for their many years of hard work and as an attempt to create a "chilling effect". It is difficult in the scope of the actions taken by the vice-president of the Court of Appeal in Warsaw not to find analogies to the methods used against Warsaw judges in the years 1981-1988, when violations of the rule of law intensified, particularly during martial law (vide: "Sędziowie warszawscy w czasie próby 1981-1988", monograph of the Institute of National Remembrance Commission for the Prosecution of Crimes against the Polish Nation, by Maria Stanowska and Adam Strzembosz, Warsaw 2005). Against judges indicating the unlawfulness of the decisions of court presidents, or issuing rulings contrary to political expectations, repressions were applied in the form of their punitive transfer within the framework of a "personnel review" on the basis of the then binding Article 58 § 1 of the Act - Law on the System of Common Courts, to other departments. Specifically, in the Warsaw Provincial Court, among others, Judge Grażyna Ruiz was transferred from the Criminal Revision Division to the Social Security Division, Judge Wojciech Welman - from the Penitentiary Division to the Social Security Division, while Judge Barbara Sierpińska - from the Criminal Division VII of the District Court for the City of Warsaw - was transferred to the Family and Minors Division. Disciplinary proceedings were also repeatedly initiated against unruly judges.

We therefore call for a change in the decision, devoid of any substantive basis, motivated by dislike for judges who do not succumb to pressure and have the courage to defend their independence of judgment and act in accordance with the oath of the judiciary.

Full list of signatures you can find here:

<https://forumfws.eu/glos-w-sprawie/oswiadczenie-sedziow-sa/>

(signatures of Judges from other courts)

SSP Iustitia ( primary signatures of Warsaw Court of Appeal Judges and Supreme Court Judges)