



The 13th of September, 2021

Sir Ombudsman

The Permanent Presidium of the Forum of Judges' Cooperation, in view of the decision of the Minister of Justice to remove Judge Adam Synakiewicz from his duties, requests immediate intervention and:

- address to the Minister of Justice for the annulment of the decision ordering the suspension of Judge Adam Synakiewicz's professional activities;
- take action to remove the unconstitutional provisions empowering the Minister of Justice to order such a break in respect of a judge.

The institution of ordering an immediate break in the work of a judge, regulated in Article 130 of the Act on Ordinary Courts (AoOC), is in fact parallel to the suspension of a judge from his duties. Pursuant to Article 180 section 2 of the Polish Constitution, a judge may only be suspended from office by virtue of a court ruling. In the light of the Polish Constitution, no executive authority, let alone a politician, may be authorised to deprive a judge of the right to practise his profession. We understand that in drastic situations (quite apart from the completely different case of Judge Adam Synakiewicz) it must be possible to immediately remove a judge from work, even before a decision is made by a disciplinary court. Therefore, in principle, we are not opposed to the institution of ordering a recess. However, such a decision may only be made by a judge's direct superior, i.e. the court president, and the decision must be reviewed immediately by a disciplinary tribunal. A situation in which a body of executive power and an active politician, expressing dissatisfaction with the content of a ruling of an independent court, makes a decision to temporarily deprive a judge of the right to practice his profession is a situation completely unacceptable in a democratic legal state (art. 2 of the Constitution), violates the tri-partite division and balance of powers provided for in the Constitution and the related independence of the judiciary from the executive (Article 10 section 1 of the Constitution), leads to usurpation of the supremacy of the judiciary by the executive, and intimidates and forces judges to rule in accordance with the expectations of the ruling party.

Therefore, the very power of the Minister of Justice to order an immediate break in a judge's official duties under Article 130 section 1 of the AoOC should be deemed unconstitutional.

The deadline for the disciplinary court to review the decision on the break, as set forth in Article 130 section 3 of the AoOC, is also unconstitutional. In fact, it provides only an apparent review of the decision of the court president (minister) since it provides for the same time limit as the period of the interruption itself, i.e. one month. The urgency of the disciplinary court's action in this matter should be obvious and it seems possible to apply analogy to this deadline to the deadlines for consideration of temporary detention applications (Article 254 section 1 of the Code of Criminal Procedure), i.e. 3 days (with the imposition of the obligation to immediately inform the disciplinary court). Only in such a situation can it be concluded that the review of the court president's decision to remove a judge from work is ensured in a real way. At the same time, it should be borne in mind that a decision to deprive a judge of his or her right to

adjudicate, as it touches upon fundamental social interests (the right of the parties to have cases assigned to a given judge heard) should be exceptional and subject to immediate review by an independent court.

It should also be added that both the general basic rules of law and the judgment of the Court of Justice of the EU of 15 July 2021 - point 1, second indent (in case C - 791/19) provide that, as a rule, the content of a judicial decision cannot be qualified as a disciplinary offence. This obviously results in the fact that the provision of Article 107 section 1 point 3 of the AoOC, as it relates to a judge's actions related to the performance of adjudicatory activities and which constitutes the basis of the disciplinary charge against Judge Adam Synakiewicz and, consequently, the basis for ordering a break under Article 130 section 1 of the AoOC must also be regarded as contrary to the constitutional and European legal order.

In view of the above, the decision of the Minister of Justice against Judge Adam Synakiewicz is unconstitutional, both from the systemic (statutory entitlement) and substantive (grounds for the decision) perspective. This is because it is based solely on the fact that Judge Adam Synakiewicz issued a judicial decision that is inconsistent with the expectations of the executive authorities and politicians of the ruling party. This constitutes a violation of the aforementioned rules of law and a judgment of the Court of Justice of the EU. Hence the necessity to take action to repeal its effects immediately and, in the long run, to deprive politicians of the instrument to influence judges' decisions.

signed by the undersigned members of the Permanent Presidium of the Forum for Judges' Cooperation:

*Bartłomiej Starosta, Judge of the District Court in Sulęcín,
Agnieszka Niklas-Bibik, Judge of the Circuit Court in Słupsk,
Waldemar Żurek, Judge of the Circuit Court of Kraków,
Michał Bober, Judge of the Court of Appeal in Gdańsk,
Jerzy Geisler, Judge of the Court of Appeal in Poznań,
Aleksandra Janas, Judge of the Court of Appeal in Katowice,
Rafał Jerka, Judge of the the District Court in Olsztyn,
Grzegorz Kasicki, Judge of the Circuit Court in Szczecin,
Robert Kirejew, Judge of the Court of Appeal in Katowice,
Krzysztof Kozłowski, Judge of the District Court in Wysokie Mazowieckie,
Justyna Malłek-Napierała, Judge of the District Court in Leszno,
Tomasz Marczyński, Judge of the District Court in Bełchatów
Jerzy Nawrocki, Judge of the court of Appeal in Lublin,
Jacek Niedzielski, Judge of the Regional Administrative Court in Gorzów Wlkp.
Katarzyna Wesołowska-Zbudniewek, Judge of the Circuit Court in Łódź.*