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**POLAND: UPDATE ON THE
“REFORM” OF THE JUDICIARY**

AMNESTY
INTERNATIONAL



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Cover photo: Drawing by a judge in Poland saying "Free People, Free Courts".
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1. INTRODUCTION

This briefing provides a summary of developments regarding the judiciary in Poland since September 2018. It draws on previous briefings submitted by Amnesty International ahead of the EU's General Affairs Council meetings.¹ This update addresses the implementation of the interim measures ordered by the Court of Justice of the European Union in October 2018, and the increasing use of disciplinary proceedings against judges in Poland. The number of judges directly affected by disciplinary proceedings is estimated at 20.² However, the effect of proceedings that appear to target judges who are critical of the government's reform of the judiciary is likely to go beyond these individual cases. Judges interviewed for this briefing spoke about how ongoing disciplinary proceedings against some judges had already had a "chilling effect" on them and other judges.

In October, Poland's daily *Rzeczpospolita* published the results of a survey on judicial independence in Poland.³ Over 11 percent of judges (1,122 common court judges) took part in the survey.⁴ Of the judges who participated, 93.2 percent believed that the disciplinary proceedings against judges who have been active in the public debate about government "reforms" of the judiciary can have a chilling effect on judges. A full 95.34 per cent feared that there was risk of the politicization of courts.⁵

Amnesty International has concluded that there is strong and credible evidence that the reform of judiciary has been used as a pretext to undermine the independence of the judiciary in Poland. Judicial independence is an essential requirement of the right to a fair trial, which is of crucial importance to guarantee and ensure the enjoyment of other human rights. To address this serious situation, Amnesty International calls on EU member states to urge the government of Poland to:

- Take immediate and concrete steps to restore and guarantee the independence of the Supreme Court, which has been undermined by the amendment of the Law on the Supreme Court that entered into force in April 2018.
- Ensure full compliance with the interim measures⁶ ordered by the Court of Justice of the European Union issued on 19 October, specifically:
 - Suspend the application of the Law on the Supreme Court, which lowered the retirement age of Supreme Court judges from 70 to 65;
 - Take measures to ensure that Supreme Court judges who were forced to retire under the April 2018 law can return to their posts and continue to perform their duties;
 - Refrain from adopting any measures concerning the appointment of judges to the Supreme Court that would provide for the replacement of the judges who were forced to retire.
- Review the constitutionality – in particular compliance with the principle of separation of powers – of the establishment and operation of the two new Supreme Court chambers: Extraordinary and Disciplinary. These chambers are composed of new judges elected by the National Council of the Judiciary, independence of which has been undermined by the reform of the judiciary.⁷ While both chambers technically are part of the Supreme Court, they have special powers and are effectively above all other chambers, creating a risk that the whole judicial system will be dominated by them.⁸
- Review the new system of disciplinary proceedings that concentrates power over the system in the hands of the Minister of Justice. Ensure that judges can exercise their judicial functions free

¹ <https://www.amnesty.org/en/countries/europe-and-central-asia/poland/>

² Interview with the Disciplinary Prosecutor, 25 October 2018, Warsaw. See also: <https://oko.press/sedziow-wolnosci-jest-juz-226-dodatkowe-70-nazwisk-lista-siedleckiej/#>

³ <http://themis-sedziowie.eu/materials-in-english/survey-on-judicial-independence-october-282018/>

⁴ <https://www.rp.pl/Sedziowie-i-sady/310249952-Sedziowie-i-sady-Jak-powstawala-ankieta-Rzeczpospolitej.html>

⁵ <https://www.rp.pl/Sedziowie-i-sady/310249921-Niezawislosc-sedziow-jest-zagrozona-a-sadom-grozi-upolitycznienie---ankieta-Rzeczpospolitej.html>

⁶ <https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-10/cp180159en.pdf>

⁷ Pursuant to the reform, its members are now elected by the Parliament rather than by other judges.

⁸ Opinion 904/2017 CDL(2017)035 of the Venice Commission on the draft act amending the Act on the National Council of the Judiciary, on the draft act amending the Act on the Supreme Court proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts, para 92

from retaliatory action or other forms of pressure, including politically motivated disciplinary proceedings, harassment and intimidation.

- Amend the Law on the National Council of the Judiciary to ensure that members who are judges are elected by their peers and not by the executive and/or the parliament.

2. EUROPEAN COMMISSION REFERS POLAND TO THE CJEU

On 19 October, the Court of Justice of the European Union (CJEU) issued interim measures ordering the Polish authorities to immediately suspend the application of the provisions of national legislation relating to the lowering of the retirement age for Supreme Court judges from 70 to 65 years.⁹ After the provision of the law entered into force in July 2018, 27 Supreme Court judges were forced to retire.

Amnesty International is concerned that the authorities in Poland have continued to take measures to appoint new Supreme Court judges in breach of the CJEU's interim measures. According to media reports, three days after the interim measures were issued, the National Council of Judiciary (NCJ) – a key body responsible for the recruitment of new Supreme Court judges – requested opinions of the courts where they currently adjudicate on at least two candidates running for the position of Supreme Court judges.¹⁰ In addition, the NCJ continues to refer to the Supreme Court judges who were forced to retire in July 2018,¹¹ as “retired judges”. In direct contradiction to point 3 of the CJEU's interim measures, which stated that Poland should refrain from adopting any measures concerning the appointment of judges to the Supreme Court that would provide for the replacement of the judges who were forced to retire, the NCJ declared in November 2018 that the “retired judges” of the Supreme Court may not undertake any administrative decisions within the court, neither are they permitted to adjudicate.¹² Amnesty International is aware of a case of at least one Supreme Court judge who currently faces disciplinary proceedings in relation to his refusal to refrain from undertaking any administrative decisions within the Supreme Court (see the case of Stanisław Zabłocki below).

On 16 November, the CJEU held a hearing regarding the status of the interim measures. During the hearing, the government of Poland argued that the “[European] Commission had failed to show that the application of [the] far-reaching [interim] measures is justified”.¹³ The government of Poland further argued that the Commission failed to reflect “the need to ensure the uninterrupted functioning of the Supreme Court, the independence of its Judges, and the legal certainty of the parties to proceedings before this Court.”¹⁴

In its reply to the European Commission on 19 October, the government of Poland stated then that implementation of the CJEU interim measures would require an amendment of the Law on Supreme Court.¹⁵ In the reply the government also clarified that it could immediately implement the interim measures by maintaining the status quo in the Supreme Court and putting on hold new recruitments of judges to the posts of those judges who were forced to retire.¹⁶

On 21 November, the lower chamber of the Parliament (Sejm) adopted an amendment to the Law on the Supreme Court, which reinstated the judges who were forced to retire in July 2018.¹⁷ However, the amendment does not explicitly guarantee that the Supreme Court judges forced to retire will continue to enjoy “the same status and the same rights and working conditions as they did before the Law on the Supreme Court entered into force” as required by the CJEU's interim measures.¹⁸ The amendment also halted the proceedings brought by retired Supreme Court judges who had requested to continue in their

⁹ <https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-10/cp180159en.pdf>

¹⁰ https://wiadomosci.onet.pl/tylko-w-onecie/czy-szef-krs-mowi-nieprawde-ws-zabezpieczenia-tsue-procedury-ktore-mialy-byc-dnkn5eq?utm_source=wiadomosci_viasg&utm_medium=nitro&utm_campaign=allonet_nitro_new&srcc=ucs&utm_v=2

¹¹ When the provisions on retirement of the amendment of the Law on the Supreme Court entered into force.

¹² http://www.krs.pl/pl/aktualnosci/d.2018.11/5576_stanowisko-krajowej-rady-sadownictwa-z-dnia-9-listopada-2018-r

¹³ https://www.msz.gov.pl/en/p/msz_en/news/mfa_statement_on_hearing_of_parties_in_case_c_619_18_r_commission_v_poland

¹⁴ https://www.msz.gov.pl/en/p/msz_en/news/mfa_statement_on_hearing_of_parties_in_case_c_619_18_r_commission_v_poland

¹⁵ <https://www.pap.pl/aktualnosci/news%2C360167%2Cpolska-przekazala-do-ke-informacje-ws-realizacji-decyzji-tsue.html>

¹⁶ <https://www.tvn24.pl/polska-przekazala-do-ke-informacje-ws-realizacji-decyzji-tsue,885160.s.html>

¹⁷ Art. 2.1 of the amendment of the Law on the Supreme Court adopted on 21 November 2018

¹⁸ <https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-10/cp180159en.pdf>

positions, but whose requests had been rejected by the President of Poland.¹⁹ Some of those proceedings involved preliminary questions on the compatibility of the Polish legislation with EU law, which the affected judges had submitted to the CJEU. The amendment thus effectively interferes with their effort to seek clarity and justice with regard to their forced retirement.

3. THE SUPREME COURT

On 22 October, pursuant to the CJEU decision to suspend the application of the provisions of law relating to the lowering of the retirement age for Supreme Court judges, the President of the Supreme Court, Małgorzata Gersdorf, called on those Supreme Court judges who had been forced to retire in July, to resume their positions.²⁰ The call applied to 22 judges.²¹ On 31 October, Judge Gersdorf informed the European Commission that those 22 judges continued to work and have been assigned cases in the Civil, Criminal and Labour Chamber of the Supreme Court.²² She also brought to the attention of the European Commission public statements of the government officials in Poland who questioned the feasibility of implementing the CJEU interim measures in full, in particular with regard to the reinstatement of the forcibly retired judges to the *same* posts they occupied on 3 April 2018 when the amended Law on Supreme Court entered into force.

Meanwhile, the spokesperson of the Supreme Court, Michał Laskowski, confirmed that about 40 new Supreme Court judges – elected by the new National Council of the Judiciary – continued to work within the court. Most of the new judges were appointed to the newly-established Disciplinary Chamber and Extraordinary Chamber.²³

4. DISCIPLINARY PROCEEDINGS AGAINST JUDGES

“Those who buy an axe and sharpen it usually don’t do that just to hang it on the wall.”

Dariusz Mazur, spokesperson of the Association of Judges Themis, commenting on the new disciplinary proceedings²⁴

A critical component of the reform of the judiciary in Poland is the new provision for disciplinary proceedings. Amnesty International has already raised concerns that the new model of disciplinary proceedings does not include adequate due process guarantees and presents a risk that such proceedings will be used against judges who rule in politically sensitive cases, including cases that involve anti-government protesters.²⁵ Pursuant to the amendment of the Law on Common Courts, the Minister of Justice appoints for a four-year term the Disciplinary Prosecutor for common courts and his or her two deputies.²⁶ The Disciplinary Prosecutor for common courts then chooses deputy disciplinary prosecutors at district and appeal courts.²⁷ The Minister of Justice also selects the judges for the disciplinary panels in first instance disciplinary courts.²⁸ The second instance is a panel consisting of two judges of the new Disciplinary Chamber and one lay judge of the Supreme Court.²⁹ An analysis of the new legislative framework – pursuant

¹⁹ Art. 4 of the amendment of the Law on the Supreme Court. For more information about the President’s decision not to grant their request to continue their position of Supreme Court judges, see in Polish: <https://www.polskieradio.pl/5/3/Artykul/2188620.Prezydent-podjal-decyzje-Wiemy-kto-bedzie-kierowal-Sadem-Najwyzszym>

²⁰ <http://www.sn.pl/aktualnosci/SiteAssets/Lists/Wydarzenia/NewForm/2018.10.22%20-%20PPSN%20-%20Wezwanie%20do%20s%C4%99dzi%C3%B3w.pdf>

²¹ <http://wyborcza.pl/7,75398,24076772,pierwsi-sedziowie-wrocili-do-sn-gersdorf-zycie-jest-piekne.html>

²² <http://www.sn.pl/aktualnosci/SiteAssets/Lists/Wydarzenia/NewForm/2018.10.31%20-%20First%20President%20-%20European%20Commission%20-%20EN.pdf>

²³ <https://www.rp.pl/Sedziowie-i-sady/310319896-Dublerzy-w-Sadzie-Najwyzszym-dopuszczani-do-orzekania.html>

²⁴ Interview with Amnesty International, 26 October 2018

²⁵ Amnesty International. 2018. *The Power of the Street: Protecting the Right to Peaceful Protest in Poland*. p. 31

²⁶ Art. 112.3 Law on Common Courts. <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20010981070/U/D20011070Lj.pdf>

²⁷ Art. 112.6-13 Law on Common Courts

²⁸ Art. 110a.1 Law on Common Courts

²⁹ Art. 110.1.1-2., Law on Common Courts.

to the reform of the judiciary – has led some observers to conclude that the Minister of Justice has effective control over the disciplinary proceedings.³⁰

The activities of the Disciplinary Prosecutor for common courts so far raise concerns over targeting predominantly those judges who have voiced criticism of the government's reform of the judiciary. These concerns were also expressed by Iustitia, the biggest association of judges in Poland, whose members adopted a resolution on 20 October in which they protested against disciplinary proceedings that target judges who have participated in the public debate.³¹ They clarified that under the law, the purpose of the disciplinary proceedings should be to address offences committed by judges and should not be used to create a chilling effect on judges and to mute public debate.

At least two judges have been summoned by the Disciplinary Prosecutor for Common Courts in relation to the judges' requests to the CJEU to clarify questions regarding the compatibility of the new disciplinary proceedings with EU law. One of those two judges told Amnesty International that during the hearing, the disciplinary prosecutors suggested that he/she was encouraged by a third party to refer the questions to the CJEU. This claim by the disciplinary prosecutors was confirmed by legal counsel of another judge questioned by the prosecutors. The Disciplinary Prosecutor for Common Courts, Piotr Schab, told Amnesty International that the proceedings in these cases were not related to the judges' request to the CJEU. In fact, he stated that there are no disciplinary proceedings against the two judges summoned in relation to their requests to the CJEU. According to the Disciplinary Prosecutor, those hearings were related to cases of other judges.³² Legal counsel for one of the judges told Amnesty International that the judge's questions to the CJEU regarding the compatibility of the new disciplinary proceedings with EU law were the core of the questioning by the Disciplinary Prosecutor. He/she added that the atmosphere during the questioning was extremely hostile and that the Disciplinary Prosecutors asked questions such as: "Are you fully aware that you could be prosecuted if you refuse to answer [our] questions?"³³ Amnesty International has also learned that one of the judges questioned by the disciplinary prosecutors demanded that it be included in the minutes from the hearing that the questioning was conducted in a manner that aimed to intimidate the witness (i.e. the judge).

At least two judges (different than the judges above) received a letter from the deputy Disciplinary Prosecutor for common courts, Przemysław Radzik, on 11 October 2018. The deputy Disciplinary Prosecutor alleged that Judge Arkadiusz Krupa of the district court in Łobez and Judge Monika Frąckowiak from the district court Poznań Nowe Miasto Wilda, had both committed an offence against the dignity of the office of judge in August 2018 during Pol'and' Rock Festival. At the festival, the judges had participated in a moot court wearing a judge's robe. The deputy Disciplinary Prosecutor requested that the judges submit written explanations within 14 days.³⁴ During the proceedings, the Disciplinary Prosecutor requested a review of the cases that Judge Frąckowiak had presided over for the period between January 2015 to the present. The President of the District Court Poznań Nowe Miasto refused to provide this case information, arguing that there was no clear link between the allegations against Judge Frąckowiak and her performance as a judge. The deputy Disciplinary Prosecutor was putting pressure on the District Court Poznań Nowe Miasto to provide such data.³⁵ On 9 November 2018, the deputy Disciplinary Prosecutor Przemysław Radzik started disciplinary proceedings against Judge Frąckowiak who allegedly committed an offence against the dignity of the office of judge.³⁶ Earlier, in October 2018, the deputy disciplinary prosecutor at the Regional Court in Poznań, Judge Antoni Łuczak, decided to drop a complaint against Judge Frąckowiak for her participation in the protests against the reform of the judiciary in Poland in July 2017.³⁷ Judge Łuczak concluded that Judge Frąckowiak did not commit a disciplinary offence. These earlier proceedings were criticised by Poland's Commissioner for Human Rights, who raised concerns over negative signal to judges who take part in the public debate and a "chilling effect".³⁸ The deputy Disciplinary Prosecutor Przemysław Radzik has effectively re-opened these proceedings.

Another judge, Igor Tuleya from the Regional Court in Warsaw, was summoned as a witness in relation to the case of judges Frąckowiak and Krupa. During an interview with Amnesty International on 25 October, the Disciplinary Prosecutor for Common Courts Piotr Schab and his deputy, Michał Lasota, stated that the

³⁰ Mazur, D. 2018 "Sad nad sadownictwem, czyli polski wymiar sprawiedliwosci przed trybunalemi europejskimi". In: Prawo Europejskie w praktyce 9/10, p. 14

³¹ <https://www.iustitia.pl/83-komunikaty-i-oswiadczenia/2618-uchwala-zebrania-czlonkow-stowarzyszenia-sedziow-polskich-iustitia-oddzial-w-radomiu-z-dnia-20-pazdziernika-2018-roku>

³² Interview with Amnesty International, 25 October 2018, Warsaw.

³³ Interview with Amnesty International, 13 November 2018, Warsaw.

³⁴ Letter of the deputy Disciplinary Prosecutor on file with Amnesty International.

³⁵ Online communication with Judge Frąckowiak, 16 November 2018

³⁶ Art. 7.1 Law on Common Courts.

³⁷ <http://poznan.naszemiasto.pl/artukul/poznanska-sedzia-uniknie-postepowania-za-wypowiedzi-podczas,4827247,art,t,id,tm.html>

³⁸ <https://archiwumosiadynskiego.pl/images/2018/09/Pismo-do-rzeczniaka-dyscyplinarnego-w-Poznaniu-w-sprawie-s%C4%99dzi-Fr%C4%85ckowiak-.pdf>

allegations against Judge Krupa go beyond his participation at the festival and are related to “his other activities outside his work as a judge”. When asked which of these activities would amount to disciplinary offences, the Disciplinary Prosecutor stated that if a judge “presents a political manifest on a public forum”, he/she breaches the Code of Ethics of Judges. The Disciplinary Prosecutor further clarified that his office does not base the disciplinary proceedings only on evidence available from the media and that they also use statements of other judges who serve as witnesses and other evidence.

The case of Judge Igor Tuleya from the Regional Court in Warsaw also raises concerns that the Polish authorities are weaponizing the disciplinary proceedings to target judges critical of the government’s reform of the judiciary. Judge Tuleya had participated in protests against the reform of the judiciary in the summer of 2017. On 4 September 2018, he submitted a request for a preliminary ruling from the CJEU regarding an interpretation of Article 19 of the Treaty of the European Union; that is, if the legislation that has removed the guarantees of impartiality in disciplinary proceedings against judges and the concomitant risk of using disciplinary proceedings to exert political control over court judgements contradict member states’ obligation to ensure remedies sufficient to ensure effective legal protection. Since September 2018, he has received six summonses from the Disciplinary Prosecutor: either to provide written explanations in relation to media statements or other action or to give testimony as a witness in the cases of other judges.³⁹ Although the Disciplinary Prosecutor for common courts told Amnesty International that all hearings with Judge Tuleya were related to other judges, some judges in turn were summoned in relation to their interaction with Judge Tuleya. For example, Włodzimierz Brazewicz, judge of the Appeal Court in Gdańsk, was questioned by the Disciplinary Prosecutor after he had organized a meeting with Judge Tuleya in Gdańsk. After the questioning, Judge Brazewicz told the media that the summons and the questioning amounts to wagging a finger to judges and saying “look, you can be summoned, you never know for what and when.”⁴⁰ On 10 October, Judge Tuleya appeared for questioning – as a witness – at the Disciplinary Prosecutor for common courts. His lawyer, Jacek Dubois was not allowed to be present during the hearing.⁴¹ When Amnesty International inquired about the reasons for the denial of the presence of the legal counsel during the hearing, the Disciplinary Prosecutor Piotr Schab replied that it was in line with the law and that there was no need for a defence lawyer as the judge had been summoned only as a witness.⁴² During the hearing, Judge Tuleya was questioned about his and other judges’ requests to the CJEU to clarify the compatibility of the new disciplinary proceedings with EU law.⁴³

Pursuant to a 9 November 2018 decision of the National Council of the Judiciary, a Supreme Court Judge Stanisław Zabłocki, the head of the Criminal Chamber of the Supreme Court, may face disciplinary proceedings.⁴⁴ On 5 November, Judge Zabłocki issued an order to remove Judge Wojciech Sych from adjudicating cases in the Criminal Chamber of the Supreme Court. Judge Sych is the only judge in the chamber who was elected by the *new* NCJ, which is considered to be politicised as its members are elected by the Parliament rather than by other judges.⁴⁵ The NCJ called the decision to remove Sych “a breach of constitutional order” and in contempt of an act of the President of Poland, who had appointed Sych to serve as a Supreme Court judge. The NCJ concluded that Judge Zabłocki “seems to be not worthy” of the post of Supreme Court judge and referred his case to NCJ’s disciplinary and ethical commission.⁴⁶

In another case of concern, Judge Waldemar Żurek has been subjected to a number of proceedings and investigations by various security agencies in Poland after he consistently voiced his opposition to the government’s “reform” of the judiciary from 2016 until present.⁴⁷ There was a negative campaign in the public media against Żurek, which resulted in his receiving hate mail and text messages.⁴⁸ In 2016, Poland’s Anti-corruption Agency (Centralne Biuro Antykorupcyjne: CBA) opened an investigation against Judge Żurek. The investigation looked into his financial statements and eventually concluded in January 2018 that there were no major breaches of the law. In its resolution adopted in February 2018, the Assembly of Judges of the Regional Court in Krakow raised concerns over procedural irregularities in the CBA investigation as it “has been pursued without a formal decision and without a proper announcement for a period of [the first] 6 months.”⁴⁹

³⁹ Interview on 25 October 2018.

⁴⁰ <https://wiadomosci.dziennik.pl/polityka/artykuly/584630,sedzia-brazewicz-spotkanie-igor-tuleya-przesluchanie.html>

⁴¹ <https://dorzeczy.pl/kraj/79983/Tuleya-po-raz-czwarty-przed-rzecznikiem-dyscyplinarnym-Jego-pelnomocnik-zostal-wyproszony.html>

⁴² Interview with Amnesty International, 25 October 2018, Warsaw.

⁴³ <http://wyborcza.pl/7,75398,24028493,sedzia-tuleya-zeznawal-przed-rzecznikiem-dyscyplinarnym-jego.html>

⁴⁴ <https://oko.press/nowa-krs-grozi-sedziemu-zablockiemu-dyscyplinarka-za-przestrzeganie-prawa/>

⁴⁵ <https://www.amnesty.org/download/Documents/EUR3790512018ENGLISH.PDF>, p. 6

⁴⁶ <http://www.krs.pl/pl/aktualnosci/d,2018,11/5576,stanowisko-krajowej-rady-sadownictwa-z-dnia-9-listopada-2018-r>

⁴⁷ Resolution of the Assembly of Representatives of Judges of the Regional Court in Kraków of 26 February 2018. On files of Amnesty International.

⁴⁸ Resolution of the Assembly of Representatives of Judges of the Regional Court in Kraków of 26 February 2018. (On files with Amnesty International). Interview with Amnesty International on 8 June 2017 and 29 January 2018.

⁴⁹ Resolution of the Assembly of Representatives of Judges of the Regional Court in Kraków of 26 February 2018.

Until March 2018, Judge Żurek was the spokesperson of the National Council of the Judiciary. After the amendment of the Law on NCJ came into force in January 2018,⁵⁰ the Parliament appointed the 15 judges that comprise the NCJ in March 2018.⁵¹ In February 2018, the Assembly of Judges of the Regional Court in Krakow adopted a resolution in which they labelled the various actions by law enforcement agencies against Żurek “repressive”.⁵²

Although none of the previous investigations against Żurek concluded that he had breached the law and thus none resulted in an indictment against him, he and his family endured significant pressure and stress. The pressure on him continued after his tenure at the NCJ ended when the amendment of the Law on NCJ entered into force. On 27 August, against his will and without adequate consultation with the College of the Regional Court in Krakow, Judge Żurek was removed from the civil division for appeals and appointed to the first instance civil division of the Regional Court.⁵³ Judge Żurek’s appeal against his transfer to another division within the court was dismissed by the National Council of the Judiciary on 30 October 2018. As he entered his office on 7 September, he noticed a pile of about 50 case files on the floor. He also noticed that the case files were already overdue.⁵⁴ This was at the time, when Judge Żurek had no assistant. In October, the President of the Regional Court in Krakow, Dagmara Pawełczyk-Woicka notified the disciplinary prosecutor at the Appeal Court in Krakow that Judge Żurek allegedly failed in his duties as a judge.⁵⁵ According to Judge Żurek, this happened at a time, when he was adjudicating in cases, including in a case that belonged to Judge Pawełczyk-Woicka.⁵⁶

The disciplinary prosecutor, Tomasz Szymański started looking into the complaint on 11 October. A few days later, the Warsaw-based Disciplinary Prosecutor for common courts decided to take over the case.⁵⁷ On 15 October, Judge Żurek received a summons from the deputy Disciplinary Prosecutor for common courts Michał Lasota, to provide written explanations regarding the allegations against him regarding failure to perform his duties as a judge.⁵⁸ On 24 October, pursuant to the summons of the deputy Disciplinary Prosecutor, the deputy President of the Regional Court in Krakow Mieczysław Potejko, sent a request to the heads of the divisions within the Regional Court in Krakow where Judge Żurek has worked, to submit information about Judge Żurek’s performance since January 2014. It is not clear from the request why the performance review involves such long period (i.e. from 2014). Specifically, the deputy President of the court requested information on the consistency and timeliness of Żurek’s decisions. The case was pending at the time of writing.

5. CONCLUSION

Amnesty International remains concerned that there is a “clear risk of a serious breach” by the Polish government of the values protected by Article 2 TEU, and has concluded that as the implementation of the reform of the judiciary in Poland continues, so does the breach of Poland’s international obligations to uphold the rule of law and to protect, respect, promote and fulfil its human rights commitments.

⁵⁰ The Polish Constitution expressly limits the number of the members of the NCJ appointed by Parliament to six.

⁵¹ <http://wyborcza.pl/7,75398,23108831,krakowa-rada-zlobrownictwa-zobacz-kim-sa-nowi-sedziowie.html>

⁵² Resolution of the Assembly of Representatives of Judges of the Regional Court in Kraków of 26 February 2018. On file with Amnesty International.

⁵³ <http://stowarzyszenieholda.pl/komunikat-kos-ws-sedziego-waldemara-zurka/>

⁵⁴ Under the Law on Common Courts, case files are allocated to a judge on the basis of an electronic system. This form of handover is thus unlawful. Phone interview with Amnesty International, 7 September 2018.

⁵⁵ <https://www.tvn24.pl/wiadomosci-z-kraju,3/sprawa-sedziego-waldemara-zurka-akta-trafia-z-krakowa-do-warszawy,878498.html>

⁵⁶ Email communication, 23 November 2018.

⁵⁷ As he explained in a meeting with Amnesty International on 25 October in Warsaw, he had concerns that the disciplinary prosecutor at the Appeal Court in Krakow would be “under a lot of pressure”.

⁵⁸ Summons on file with Amnesty International.

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POLAND: UPDATE ON THE “REFORM” OF THE JUDICIARY

This briefing provides a summary of developments regarding the judiciary in Poland since September 2018. It draws on previous briefings submitted by Amnesty International ahead of the EU’s General Affairs Council meetings. This update addresses the implementation of the interim measures ordered by the Court of Justice of the European Union in October 2018, and the increasing use of disciplinary proceedings against judges in Poland.

Amnesty International has concluded that there is strong and credible evidence that the reform of judiciary has been used as a pretext to undermine the independence of the judiciary in Poland. Judicial independence is an essential requirement of the right to a fair trial, which is of crucial importance to guarantee and ensure the enjoyment of other human rights.