



DISCIPLINARY REPRESENTATIVE
FOR MATTERS CONCERNING JUDGES
OF COMMON COURTS

Warszawa, 4 January 2019

Ref. No. RDSP 713-27/18

Mr. Massimo MORATTI
Deputy Director - Research
Europe Regional Office
Amnesty International

Dear Sir,

Responding to your letter of 20 December 2018, I would like to kindly note that the set of assumptions included in it, regarding the premises and objectives of actions undertaken by the Deputy Disciplinary Representative for Matters Concerning Judges of Common Courts as well as by his Deputies, strongly contradicts the facts and may only result from lack of knowledge of regulations which form the legal basis of the above activities. I avail myself of pointing out that while formulating questions aiming to clarify doubts – at the same time, in the same letter, you seem to provide legal interpretation of the laws which were the basis of the actions taken by the Representatives, in a way that undermines the purposefulness of the questions asked. This inconsistency raises the doubt as to the reliability of the criticism of the measures taken, which were assessed in the letter of 20 December 2018, carried out in a manner far removed from the real meaning thereof.

In the first place, a correction is required to your conviction that disciplinary proceedings have been instituted against anyone with regard to the issue of referring the questions to the CJEU - no such proceedings are pending.

On the one hand, the issue that raises a significant doubt is the wording of your question about the commencement of this procedure, and on the other, the *a priori* assumption, completely contrary to the reality, that disciplinary proceedings have been initiated against the judges “only for exercising the powers entrusted to national courts on the basis of art. 267 of the Treaty on European Union” (page 1 *in fine*). The divergence presented above may unfortunately lead to the objectivity of your speech.

A completely erroneous statement, presented on page 1 of your letter of December 20, was reflected in a false conclusion that complements it - that the interrogation of witnesses in judges was aimed “supposedly at gathering information”, and that in fact it had the purpose “of accusing them”. Given the utter contradiction of this statement with the facts, the question arises as to the purpose of pushing for such a radical thesis, denying the impartiality of the Polish state organ. In order to make the issue, which is the subject of your letter, free from such far-reaching misunderstandings, I assure you that both judge Igor Tulea and judge Ewa Maciejewska were not charged with disciplinary offenses.

However, it needs to be emphasised that judge Michał Lasota, Deputy Disciplinary Representative for Matters Concerning Judges of Common Courts, considered it his duty to examine whether referral of the questions for a preliminary ruling, in violation of the conditions clearly set out in the provision of Article 267 of the Treaty on the Functioning of the European Union, specifying the procedure for adjudication of the Court of Justice of the European Union regarding the interpretation of treaties and the validity and interpretation of acts adopted by European Parliament institutions, bodies or organizational units - has caused a violation of the proper course of proceedings in which the above referral was made. As it concerns, among other things, the extremely complex case of committing a number of serious crimes, the proceedings that aim at satisfying long-term social expectations for a final judgment and of significant public interest, it is necessary to determine whether it was the indefinite suspension of the course of this proceeding, being the result of court action taken with violation of the wording of the above-mentioned provision, that might constitute a disciplinary offense.

Answering the questions regarding the course of actions in the case marked with the reference number RDSP 712-8/18, I kindly inform that this matter has not been “divided” into separate cases, and its subject is different from the procedure with reference numbers: RDSP 712-8/1-18 and RDSP 712-8/2-18. In view of the fact that the case is still pending - detailed information about the purpose of individual evidence is not yet possible. This would be tantamount to a pre-early assessment of the whole body of evidence. It is now to be stated that the interrogation of witnesses was necessary to verify statements appearing in public space that unlawful acts could have been taken against the judge, undermining his independence. In view of the above, it was also considered reasonable to examine the reasons why two different judicial decisions remain substantially identical in their content.

Your statement on page 1 of the letter, indicating that during the meeting of 25 October 2018 at the premises of the National Council of the Judiciary in Warsaw, Amnesty International representatives received incorrect information about the subject of interviewing witnesses: Ewa Maciejewska and Igor Tuleya, is not correct. This information concerned the evidentiary status of the current case as per the day of this meeting. As regards the content of the evidence collected so far in the course of the activities of the Deputy Disciplinary Representative for Matters Concerning Judges of Common Courts - the evidence includes, apart from the protocols of witnesses' statements, documents in the form of transcripts of judgments, as well as other data obtained from courts in which the judges: Igor Tuleya and Ewa Maciejewska adjudicate.

After June 4, 2018:

- ✓ in 15 cases, judges were asked to submit explanations under art. 114 § 2 of the Act of 27 July 2001 - Law on the common courts system;
- ✓ 11 cases are being carried out at the preparatory stage in connection with signals indicating the possibility of committing disciplinary offences;
- ✓ disciplinary proceedings were initiated in 7 cases.

Yours sincerely,

Piotr Schab

Disciplinary Representative for Matters
Concerning Judges of Common Courts