



Ref. No. RDSP 713-54/19

POSITION

**of the Disciplinary Representative for Judges of Common Courts
regarding the publication published by AMNESTY INTERNATIONAL entitled "Poland:
Free Courts, Free People, Judges standing for their independence"**

I consider it necessary to submit the following position due to the fact that the above-mentioned study, in the scope concerning the activities of the Disciplinary Representative for Judges of Common Courts and his Deputies, formulates glaringly erroneous conclusions and is based on extremely biased assumptions, which in my opinion result from the adoption of criteria for the evaluation of the Polish judicial system, completely contrary to the essential requirements of independent, reliable adjudicating, depreciating the dignity of this work by postulating conditions for its implementation which are obviously inconsistent with the foundations of the judges' service.

1. The following assumption is obviously untruthful: "Judge (Waldemar) Żurek has been subject to several disciplinary proceedings, including - the investigation in connection with his participation in protests in defence of the independence of the judiciary in July 2017". Although I don't find justified a polemic with information that I consider to be intentionally false, I would like to emphasize that no such behaviour has ever taken place. There is therefore a reason to ask the question about the purpose of misleading the public in this matter. There is no doubt that using false information, motivated in the analysed document by the need to strive to guarantee judicial independence, contradicts this assumption in its entirety, which renders the action of the authors of the above study deeply harmful.
2. Nor does it correspond with the truth that - quoting: "a mechanism of disciplinary proceedings has been initiated (...) against selected judges" in connection with the referral of the preliminary questions referred to in Article 267 of the Treaty on the functioning of the European Union. There was actually no disciplinary proceeding initiated in any of the cases with the above referral. This implies considering the document in question unreliable,

completely regardless of whether the authors of the cited study have acquainted themselves with the regulations of the Act of 27 July 2001 - Law on the System of Common Courts, specifying the fundamental difference between disciplinary proceedings and the preliminary actions of the Disciplinary Representative, which are of a different nature. Amnesty International activists had learnt about the case of a journalist convicted in Poland in a criminal trial only for omitting this difference in one of the publications. If, then, the authors of the described study erroneously identify giving the testimony by the witness with the disciplinary proceedings, which is clear from the provisions contained in point 3.1 of this document - this fundamental lack of knowledge of Polish legislation deprives them, in my opinion, of the title to verify the actions of the Disciplinary Representative for the Judges of Common Courts and his Deputies.

3. Although no reasoning was identified for approving the attitude of the judge who decided to accept a monetary prize from the President of Gdańsk - the accused in the trial taking place in the place of her service - the provisions of point 3.2 of the Amnesty International study should be considered a critique of the Disciplinary Representative of Judges of Common Courts. The subject of this criticism - though it has not been specified in detail - may stem from the title of this part of the study: "Investigated for exercising freedom of expression". One should note the absolute lack of connection between "expressing opinions" by the judge and acceptance of a cash reward in the circumstances described. The commented document does not contain any evidence that would rationalise the authors' position. Although, contrary to the quoted assumptions, it is impossible to find the reasoning for linking the action of the judge with formulating an "opinion"; I consider the negation of the actions of the Deputy Disciplinary Representative aimed to explain whether this behaviour has not exceeded the requirements of judicial ethics, as a manifestation of rejection, when assessing the position of the Polish justice system, of the principles that are the foundations of the judicial service. That can be considered as an attempt to undermine the criteria of particular public trust as the basis of this service. Depriving the disciplinary organs of the title to investigate on correctness of the actions of the judge accepting cash in the conditions indicated, even as a reward granted publicly, from a person having the status of the accused in the court in which the judge adjudicates, is therefore a violation of the guarantee that the judges will meet the highest requirements associated with their position. Therefore, I represent the view that questioning the activities of the Deputy Disciplinary Representative in the case in question, depreciates the dignity of judges' work by undermining their special position in the society. The purpose of this undertaking remains unclear.

4. The public appeal of the authors of Amnesty International's study to abandon – for the reasons manifestly stated as political – the application of the provisions of the Collection of Principles of Judges' Professional Ethics attached to the resolution of the National Council of the Judiciary of 19 February 2003 No. 16/2003, unified by resolution No. 25/2017 of The National Council of the Judiciary of 13 January 2017, raises profound opposition. The question arises as to the understanding of the social role of the judiciary in Poland, since the core of the position under analysis is to admit expression of the political views by the judge as one of possible grounds for adjudication. It is impossible to avoid reflecting that the attempt of the analysed publication to subvert the guarantees of exercising the judicial duties is dictated by ignoring the profound position given to the judiciary in Poland; no other explanation can be found of the reasons for negating the observance of the provision of paragraph 10 of the Collection of Principles of Judges' Professional Ethics, according to which the judge should avoid behaviours that could undermine confidence in his independence and impartiality, as well as the provision of paragraph 9.1 of this Collection, stating that the judge cannot succumb to any influences that violate his independence, regardless of their source or cause. Unambiguous approval of manifesting political views by the judge as a decisive factor in the direction of his decision in the case, expressed in item 3.3 of the examined document, contradicts the provision of art. 178 para. 3 of the Constitution of the Republic of Poland. I consider unacceptable the pressure, imposed on the Disciplinary Representative of the Judges of Common Courts, with aim to make him accept a position that is totally contrary to the foundations of the jurisprudential service.

5. The text contained in item 3.5 of the analysed study contains false information that the initial explanatory actions taken by the Deputy Disciplinary Representative for the Judges of Common Courts in connection with the participation of judges at the Pol'and'Rock festival in 2018 resulted from the fact that - quoting - "judges they put on a toga". The actions of the Disciplinary Representative, concluded at the initial stage, were caused by the behaviour of the judge who appeared in the gym outfit in front of people in beachwear and considered it appropriate to use the state emblem in a manner that might deny its character and rank. It should be stated once again that no disciplinary charges were formulated in this case. In connection with the commented report, the question arises whether the open acceptance of Amnesty International for the behaviour that denies the respect due to state symbols applies only to the Republic of Poland, or is an expression of a wider tendency – and if so – how was it expressed.

6. I also recognise as a precedent, defying the social role of the exercise of justice, the attempt to pressure the Disciplinary Representative for the Judges of Common Courts in connection with disciplinary charges against the judge who committed gross negligence in the preparation of justifications in 172 cases assigned to her. Seeking by the authors of the discussed document to question the Representative's actions aimed at restoring the due measure of the judge's activity (confirmed by the provision of § 8 of the Judicial Ethics Standards, according to which in all assigned cases the judge is obliged to act without delay, without exposing the parties and State Treasury to unnecessary costs), can only result from the acceptance of an attitude that totally negates the legitimate public expectations towards the judges. There are no clear reasons given for formulating approval regarding the gross negligence in the judge's fundamental duties, since the Amnesty International document does not mention them. I therefore consider the commented position as the result of the total negation of the pattern of a judge, corresponding to the requirements of professional ethics and the rank and importance of his service in society. It was ignored, however, that in such a large number of cases, as a result of omissions in the performance of duties by the judge, there was no legal protection for persons using their constitutional guarantees of access to court. The necessity to initiate disciplinary proceedings in the situation in question is clearly confirmed in numerous examples of Supreme Court jurisprudence as the Disciplinary Court, from the period preceding the introduction of a disciplinary procedure criticised by Amnesty International. It is enough, just by way of example, to refer to the judgment of 27 October 2010, file ref. no. SNO 49/10 or the judgment of 21 June 2012, file ref. no. SNO 31/12, in which a long-term negligence in the preparation of justifications of judgments in cases not exceeding one tenth of the cases covered by the allegations in this case, was considered to be disciplinary delinquency. I consider the actions aimed at depriving the bodies of disciplinary proceedings of the title to take action in the event of the most far-reaching violations of official duties by the judges, to be a denial of the social significance of the judicial service.

For all these reasons, it was necessary to issue the above position.

Disciplinary Representative
for Judges of Common Courts

(-) Piotr Schab