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THEMIS

ASSOCIATION OF JUDGES

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Warsaw, January 22nd, 2021

To:
Věra Jourová
European Commission Vice-President
for Values and Transparency

Didier Reynders
European Commissioner for Justice

Dear Honourable Members of the European Commission,

We, the undersigned, call on the Commission to take further immediate steps to contain and censure the continuing lawlessness in Poland under the Law and Justice (PiS) government. The disbursement of EU funds is now linked to compliance with the rule of law, and President Von der Leyen has pledged to use the rule of law tool from Jan 1st onwards. PiS's persecution of independent judges has occurred as recently as in Dec.-Jan. 2020/2021. This affront to the rule of law demands the Commission's attention and action.

Judges who have examined cases related to the reinstatement of Prosecutor Mariusz Krasoń have been and are being persecuted for their purely judicial actions. Krasoń called attention to the politicization of the prosecutor's office in a May 2019 resolution adopted by the Assembly of Prosecutors of the Regional Prosecutor's Office in Cracow. As a result he was demoted, harassed, and his workplace was moved around 300 km from his residence. Over the last two months, the Internal Affairs Department of the National Public Prosecutor's Office has summoned as witnesses 14 judges from five different benches of Cracow's district, regional and appellate courts. The judges now face potential criminal charges of failure to fulfil obligations as public officials, punishable by up to three years of imprisonment (Art. 231(1) of the Penal Code). Their purported crime? Failing to persecute Prosecutor Krasoń.

This is an unparalleled attempt to put pressure on independent judges by the politicized prosecution service. Note the following alarming facts:

- Judge of the Regional Court for Cracow and judge-rapporteur in the main case, Jarosław Łukasik, has also been summoned even though the case was still ongoing and was ripe for judgment;
- On Nov. 20th, 2020, judge Łukasik set the date for the next hearing in Prosecutor Krasoń's case for Dec. 22nd. With preliminary issues settled, in all probability, on the Dec. 22nd hearing, judge Łukasik was to issue the final verdict, which was likely to be unfavorable to the politicized prosecutor's department (as indicated by, i.a., the interim measure of reinstating Prosecutor Krasoń to his workplace in Cracow with immediate effect ordered earlier by this judge);

- On Nov. 27th, the prosecutor's office was notified via postal service of the date of the next hearing which was set for Dec. 22nd. On Dec. 11th the judge-rapporteur in the main case and almost all judges who adjudicated in the related proceedings were sent summons for questioning (scheduled for Dec. 29th, Jan. 12th, and Jan. 13th). The summons were purposely sent so the judges would receive them before the final hearing in the main case (Dec. 22nd), as was the case with the majority of judges;
- Although the investigation has been ongoing for over a year, no one was summoned until Judge Łukasik set the date for the final hearing, a hearing where a decision unfavorable to the prosecutor's office could be passed. The purpose of the summons was to intimidate Judge-Rapporteur Łukasik before he could deliver the judgement;
- Under Article 232(1) of the Polish Penal Code (influencing official activities of the court with unlawful threats), the summoning of the judges for questioning can constitute a crime (as described in more detail in the attached 'Themis' resolution);
- Moreover, throughout Prosecutor Krasoń's case, earlier judges examining the case received "subtle" warnings from the prosecutor's office. The prosecutor's office sent requests for borrowing files, which indicated that an investigation under Art. 231 of the Penal Code was underway. Nevertheless, the judges consistently issued judgments in favor of Prosecutor Krasoń. The prosecutor's office feared they would lose the case at the Dec. 22nd final trial and thus further tightened the screws on judicial discretion.

These actions violate the principle of the independence of judges and non-interference in the exercise of judicial power. As stated by the Commissioner for Human Rights, Adam Bodnar, the actions of the National Public Prosecutor's Office may interfere with the exercise of independent judicial power by causing judges to fear negative consequences for resolving cases in accordance with their own convictions and knowledge¹. Judicial independence is an indispensable element of the full implementation of the right to a court referred to in Art. 45(1) of the Polish Constitution, Art. 6 of the European Convention on Human Rights, Art. 47 of the Charter of Fundamental Rights of the European Union and Art. 19 paragraph 1 (2) TEU.

To put it bluntly, these judges are being coerced to make decisions in accordance with politicians' wishes by threats of imprisonment and other criminal punishment. Politicized coercion in the administration of justice is unthinkable in a Member State of the European Union, but Polish authorities have shrugged off repeated EU warnings. Thus, in the light of the Dec. 16th, 2020 speech by President von der Leyen--where she announced that the new conditionality mechanism should be applied from Jan. 1st, 2021 and cover all breaches from that day onwards--we urge the Commission to commence the necessary monitoring of the unlawful pressure exerted upon independent Cracow judges without undue delay.

Your Faithfully,
The Open Dialogue Foundation & Themis Association of Judges (Poland)

With:
Alberto Alemanno, The Good Lobby
Dr. Petra Bárd, Central European University

¹ "Rzecznik interweniuje ws. 13 sędziów wzywanych przez prokuraturę", Jan 13, 2021, official website of the Polish Commissioner for Human Rights: <https://www.rpo.gov.pl/pl/content/rpo-ws-13-sedziow-wzywanych-przez-prokurature-sprawa-prok-Krasonia-PK>

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List of attachments:

- Resolution of the Board of the Themis Judges Association of 29 December 2020 on unlawful pressure on Kraków judges in connection with the proceedings in the case of prosecutor Mariusz Krason;
- A current list of persecuted Cracow judges;
- Copies of examples of witness summons received by judges from the District/Regional/Appeal Courts in Cracow (in Polish), and an English translation of the template sent to all 14 judges.