

Warsaw, July 6, 2021

To: **Sąd Rejonowy dla Warszawy-Mokotowa w Warszawie**

Ul. Ogrodowa 51A

00-873 Warszawa

Private Prosecutor: **Przemysław Wiktor Radzik**

[...]

[...]

Represented by:

Attorney Dr. Bartosz Lewandowski

[...]

[...]

[...]

[...]

The Accused: **Michał Romanowski**

[...]

[...]

Ref. no. XIV K 424/21

RESPONSE TO THE PRIVATE INDICTMENT

1. Pursuant to Article 338 § 2 of the Code of Criminal Procedure I file as the Accused a response to the private indictment dated June 7, 2021 filed against me. I submit a response to the indictment directly because I want this Court and the Private Prosecutor and his attorney to be aware that every word that was written in response to the private indictment is a word for which I take personal responsibility and I am ready to bear the penalty of imprisonment that is demanded for me by the Private Prosecutor Przemysław Radzik and his attorney Dr. Bartosz Lewandowski (who will be remembered in the history of the fight for the rule of law in Poland). Every word contained in this response to this private indictment is drafted with full awareness by me as:
 - i. an attorney, whose role is to fight with all his might to protect the rights and freedoms of a person and a judge - Mr. Judge Paweł Juszczyzyn, who is being repressed by the ruling Law and Justice party, the Minister of Justice Zbigniew Ziobro, the institution of the disciplinary ombudsman of common court judges in



the persons of judges Piotr Schab, Przemysław Radzik and Michał Lasota, and who for over 510 days (sic!) has been removed from his judgeship with a 40% pay cut for referring to the case law of the Court of Justice of the European Union and the Constitution of the Republic of Poland in his efforts to verify whether the president of the District Court in Olsztyn, Mr. Maciej Nawacki, has been legally appointed to the illegally appointed National Council of the Judiciary,

- ii. an attorney who is proud that such judges of the Republic of Poland as Paweł Juszczyzyn and Igor Tuleya entrusted him with the fight for their return to the profession of a judge for the good of all the citizens of the Republic of Poland,
- iii. an attorney who at the same time is a professor of private law at the University of Warsaw, teaching law students about values such as liberty, equity and security, which are supposed to be embodied in law, i.e. the rule of law. The rule of law, which is a fiction without a strong, impartial and independent judiciary, which is usually dominated by the executive and the legislature. The rule of law, which is a fiction without a judiciary that by its very nature requires impartiality and independence, and which is, will be, and must be in natural conflict with the ruling party,
- iv. a citizen, who is a professor of law and an attorney with an above-average awareness of the actual collapse of the rule of law in Poland, terrified by the crawling transformation of Poland from a liberal democracy (in the center of which is human freedom) into an authoritarian system (at the center of which is the implementation of the will and the one truth of how to live the life of the leader of the ruling party while keeping the facades of democracy). The condition of existence of authoritarianism and totalitarianism has always been, is and will be the making judges and prosecutors dependent on privileges handed out by those in power. In Poland, this is taking place in front of our eyes through the process of rapid career of judges such as Private Prosecutor Przemysław Radzik, but also his colleagues from the office of the disciplinary ombudsman for common court judges, that is, Piotr Schab and Michał Lasota, as a result of their obedience to the ruling party,
- v. an attorney and professor, whom history will judge as engaged in a struggle for dignity and independence of the office of a judge of the Republic of Poland in the interest of every citizen of the Republic of Poland as an attorney for judges Paweł Juszczyzyn and Igor Tuleya. This fight is also - as paradoxical as it may sound - in the interest of Private Prosecutor Przemysław Radzik and his attorney Dr. Bartosz Lewandowski, who should remember that revolution always „*eats its own children*”. This fight is also in the interest of the jury in this case, which must decide whether to sentence me to imprisonment or any other punishment for the content of the letter sent by me in defense of Mr. Judge Paweł Juszczyzyn and Mr. Igor



Tuleya to the European Commissioner Vera Jourova, in which, as an attorney fighting for the rights of my clients, Polish and European judges Pawel Juszczyzyn and Igor Tuleya, and, consequently, all judges in Poland and the European Union, and citizens of Poland and the European Union, I informed about the shameful practices of exerting pressure on judges from Bydgoszcz and Warsaw to adjudicate in accordance with the expectations of the ruling party. Currently this pressure is also being exerted on judges from Olsztyn who, like the judges in the court in Bydgoszcz, have shared the arguments that I have raised on behalf of Mr. judge Paweł Juszczyzyn.

2. Pursuant to Article 338 § 1 of the Code of Criminal Procedure I put forward a motion for evidence to hear Łukasz Matyjas as a witness about the course and content of communication with the employees of the District Court in Bydgoszcz concerning the request for files on the case of Mr. judge Paweł Juszczyzyn by the disciplinary ombudsman of the judges of common courts.
3. Although I believe that pursuant to Article 339 § 3, subparagraph 2 of the Code of Criminal Procedure the case should be sent to a hearing in order to discontinue the criminal proceedings due to obvious lack of factual basis for the accusation, I do not file such a motion because in the interest of the fight for the rule of law in Poland, the fight to understand the importance of the independence of a lawyer and a judge for the freedom of each of us, I believe that the court adjudicating this case should decide about my guilt or innocence in a hearing open to the public and the media. After all, the sole nature and effect of the decision on the private indictment filed against me means that it will be of fundamental importance for the protection of the public interest, that is, for the protection of freedom of speech and the freedom to be protected from repression by the ruling party against free and independent judges, as well as the right to criticize the actions of public officials. I am proud to have been granted the status of an accused under Polish law in the fight for the dignity and independence of the judicial profession led by judges Paweł Juszczyzyn and Igor Tuleya in the interest of each and every one of us.
4. Pursuant to Article 339 § 3, subparagraph 1 of the Code of Criminal Procedure and Article 17 § 1, subparagraph 2 of the Code of Criminal Procedure, I could request that the case be sent to a hearing and that the criminal proceedings be discontinued due to the fact that the act that I am accused of does not manifestly include the statutory features of a prohibited act, but I do not request that for the reasons indicated in paragraph 3 above. Let the trial in my case show whether in Poland of the 21st century, being - formally - a democratic state under the rule of law, a member of the European Union and NATO, obliged to respect the rulings of the Court of Justice of the European Union, which are ignored by the President of the Republic of Poland, the Prime Minister of the Republic of Poland, the so-called President of the Constitutional Tribunal and the neo-First President of the Supreme Court, the law is dead or still alive. That is the choice facing the panel

deciding the present case, and that is how the judgment in the present case will be judged by history.

JUSTIFICATION

I. CASE BACKGROUND

1. This response to the private indictment against me will probably not qualify as a typical submission filed in the proceedings, although it will contain all the legally required elements of a submission filed in the proceedings. I do not see the private indictment filed against me by the deputy disciplinary ombudsman of the common court judges, Mr. Przemysław Radzik, represented by attorney Dr. Bartosz Lewandowski, as a private threat only - although their direct intention and aspiration is to put me in prison for fighting for Judge Paweł Juszczyzyn's right of to a fair trial, but as a chance to fight for the judicial independence in the interest of each of us, each citizen of the Republic of Poland and of the European Union. In a confrontation with the executive power, we are defended only by judges who are independent of it.

At the beginning of this response to the private indictment, I would like to stress that the **essence of this case boils down to whether a lawyer has the right to use his freedom of speech to ensure his client (here: Judge Paweł Juszczyzyn) the right to a fair trial threatened by the demand for the files of the so-called "Bydgoszcz case" of Judge Paweł Juszczyzyn just after the District Court in Bydgoszcz issued a decision ordering the immediate reinstatement of Judge Paweł Juszczyzyn. I qualified this as an example of the application in practice of the chilling effect on judges so that they do not issue rulings contrary to the perception and expectation of political authorities and the public officials cooperating with them.**

2. Law means context. Every case before a court has its context, which is often lost behind the veil of legal formulas. This is what I teach my students as a law professor at Warsaw University. As a professor who practices everyone's everyday life's law, practising as an attorney, I also personally believe in this and want to bear witness to my students that what I teach them is not a theory of law (*law in books*) but reality of law, that law in books can and must mean law of everyday life (*law in action*). Decision in the present case requires understanding and taking into account its context, the context of my letter to Commissioner Vera Jourova.

The letter I wrote to Commissioner Vera Jourova of fundamental importance to Judge Paweł Juszczyzyn's case because I found the request for the records of the proceedings made by the deputy disciplinary ombudsman of the judges of common courts, i.e. the disciplinary ombudsman of the judges of common courts, shortly after the District Court in Bydgoszcz had issued its decision, to be a threat to Judge Juszczyzyn's right to a fair

trial by having a chilling effect on the judges who have ruled in his case and who will rule in his case. This is, among other things, a context that cannot be ignored by the panel deciding this case, and which the Private Prosecutor and his attorney scrupulously omit.

3. The attorney for private prosecutor Przemysław Radzik, who as a public official acting as deputy disciplinary ombudsman of the judges of common courts together with the disciplinary ombudsman of the judges of common courts Piotr Schab and the second deputy disciplinary ombudsman of the judges of common courts Michał Lasota, by bringing disciplinary proceedings against judges (more detailed the list based on oko.press in paragraph 43 of this response), accuses me of violating the rules of ethics of the profession of attorney and expressing political views.

This is a charge typical of those who, in supporting the implementation of authoritarian power, want to “silence” those who call a spade a spade, in this case they want to create a chilling effect on me. They want to “silence” me for publicly proclaiming criticism of their conduct by reaching for the threat of criminal law sanctions, jail time. In this way, they want to warn other judges, prosecutors, and above all, attorneys, to use their words wisely not because this is what the code of ethics for attorneys requires, but in order to gain the obedience of lawyers in subordinating the judiciary to the ruling party.

Private Prosecutor Przemysław Radzik files a private indictment against me threatening me with imprisonment for fighting for reinstatement of judges Paweł Juszczyszyn and Igor Tuleya, because the disciplinary ombudsman of the common courts and his deputies are afraid of me. They are afraid that the fact that I persuaded the judges of the District Court in Bydgoszcz and the judges of the Regional Court in Olsztyn, who issued rulings that have the effect of obligating the reinstatement of Judge Paweł Juszczyszyn and undermining the legality of the operation of the so-called Disciplinary Chamber of the Supreme Court and the neo-National Council of the Judiciary, and therefore also the promotions of judges nominated by the neo-National Council of the Judiciary, including the promotion of Private Prosecutor Przemysław Radzik, but also the disciplinary ombudsman of the common courts Piotr Schab and his successive deputy Michał Lasota, will have a snowball effect.

I am very fond of the words of one of the most eminent Polish attorneys who practised the profession of an attorney, that is, a defender of man against authoritarian authorities and their servile judges and prosecutors during the period of the Polish People's Republic, attorney Czesław Jaworski. In summing up his experience, attorney Czesław Jaworski said: "*[...] a good attorney [...] must [...] have courage in expressing his views. It cannot be that an attorney, fearing unfavourable consequences for himself, will not speak on something that is important in the case*".

4. The transformation of a democratic state into an authoritarian one is taking place crawlingly, and having a chilling effect on judges and lawyers is a key tool for achieving the end result in the form of an authoritarian system within a facade (a shell of democratic institutions, including the judiciary). Professor Timothy Snyder is right when he writes in his book "On Tyranny. Twenty Lessons from the Twentieth Century" that *"It is difficult to destroy the rule of law without lawyers or to hold show trials without judges. Authoritarian regimes need obedient officials [...]"*.
5. The transformation of democracy into authoritarianism is the transformation of the rule of law into the rule of the people, is to free the ruling party from the law bothering it. This is accompanied by the facade behavior of the institutions of the rule of law such as the courts and media, universities, and local governments. We hear that the dispute about courts is a substantive dispute about the model of judiciary in Poland, the dispute about free media is a dispute about pluralism in the media aiming to present trends other than just the leftist and liberal ones, the dispute about free universities is a dispute about the freedom of science, which nowadays supposedly excludes the rightist and national views, and the dispute about free local governments is a dispute about... and here the slogan is missing. **The facade is to create the appearance that everything will be as it was before, when in reality it is supposed to be completely different.**
6. The authorities want us to give in to the illusion that in Poland there is a dispute typical of liberal democracy, which affirms human freedom and dignity. Dispute, freedom of speech and public criticism of public officials are inscribed in the DNA of liberal democracy, because liberal democracy assumes that politics is, like science, a method of trial and error, where the value is disobedience in thinking, opening wide the door to diversity of views. However, since the end of 2015, the idea of totalitarian democracy, which assumes the proclamation of the one and only truth in politics, has been implemented in Poland (see J. Talmon "Sources of totalitarian democracy"). The goal is for the one and only truth to dominate all spheres of social life. The tools for imposing the one truth are laws and court rulings, that is, accompanied by the threat of disciplinary and criminal sanctions, that is, legal violence. It is no coincidence that in the disgraceful resolution of neo- National Council of the Judiciary in the case of judges from Bydgoszcz who issued a ruling ordering the immediate reinstatement of judge Paweł Juszczyszyn, we read that *"The duty of judges is to obey the will of the legislature."* This order ignores that the highest law to which a judge is subject is the Constitution, and a European judge, and therefore a Polish judge, must apply European Union law and the case law of the Court of Justice of the European Union (see paragraph 11 of this response).
7. Those who think differently must be punished by example. Legal positivism, which rejects Radbruch's formula and the concept of the rule of law having primacy over the

rule of the majority, and therefore over the Constitution and unlawful laws, is a deadly threat to human freedom and dignity.

For the concept of one and only truth, an independent judiciary is the enemy. The enemy must be destroyed. The enemy is also the free media and any institution whose DNA includes freedom of opinion and acceptance of diversity. When Nelson Mandela received the *Four Freedoms Awards* given to those who put into practice the principles that U.S. President Franklin D. Roosevelt proclaimed in his historic address to the U.S. Congress on January 6, 1941, as central to democracy (including freedom of speech and freedom from fear), he put it beautifully that *"Our differences are our strength as a species and as a world community"*.

The judicial power is the greatest threat because as a power it has the ability to order or forbid the ruling party to behave in a certain way. But in the world of the rule of law, which the judiciary upholds, no one is above the law. The view that there is a dispute in Poland about the model of an effective judiciary is naive. The only goal is to build a judiciary subordinate to the executive power, because an independent court interferes with the implementation of the one and only truth. A symbol of this is a disgraceful verdict of the so-called Constitutional Court on abortion of 22 October 2020, which is already forgotten. The DNA of the current ruling party is illustrated by the advice, horrifying in its honesty, of the head of the Law and Justice parliamentary club, Ryszard Terlecki, which he gave to the leader of the Belarusian opposition, Svitlana Tikhanouska, to *"seek help in Russia"* if she *"wants to advertise the anti-democratic opposition in Poland and appear at Trzaskowski's rally."* At the same time, Terlecki appealed to his part of the political scene to *"support such Belarusian opposition that does not side with their opponents"*.

Those currently in power understand very well the consequences of the tri-partition of power. The real threat to them is the judiciary. The tri-partition of power is a fiction if the executive derives its power from the parliamentary majority it controls. The key to democracy is the bipartition of powers, where the truly independent power is the judiciary. Some judges think that their careers are dependent on the executive. Such thinking means the death of judicial power. When the judiciary is subordinated to the executive it loses its status as an authority and becomes a tool in the hands of the executive. Today in Poland the authorities do not ask lawyers which side they are on but whose side they are on. That is why achieving a chilling effect is so important in nowadays Poland, and that is why the examples given in paragraph 43 of this response to the indictment of the implementation of the strategy of achieving a chilling effect by the institution of the disciplinary ombudsman of common court judges, including by Private Prosecutor Przemysław Radzik, as well as judges Piotr Schab and Michał Lasota, have a close, functional and inseparable relationship, and are relevant to the outcome of this case.



Authoritarianism seeks to ensure that a tripartite division of power formally exists (a tripartite division of power *in books*) but that one-man rule operates in practice (no tripartite division of power *in action*). The means is to infiltrate the courts with "their" people. An obedient and grateful for the promotion judge means that the executive controls the judiciary. The rule of law loses to the rule of the people because the judge is "our" man who "speaks" the language of "our laws" and, if necessary, speaks "our" language even in defiance of "our laws." Boies Pensrose described this mechanism vividly by saying that "*Public office is the last refuge of a scoundrell*". Many say it is not so bad. Is that so? *Let me tell you some facts* Milton Friedman once said when he was accused of exaggerating.

8. If we want to rid ourselves of the illusion that the idea in Poland is to promote the most outstanding lawyers to the Supreme Court (not to mention the composition of the so-called Disciplinary Chamber of the Supreme Court) and the Supreme Administrative Court, let's take a look at whom the neo- National Council of the Judiciary has recently nominated as judges of the Supreme Administrative Court: Łukasz Piebiak, known for the fact that, according to onet.pl, since June 2018 he has coordinated a campaign to discredit at least 20 judges opposing changes in the judiciary, including the president of "Iustitia" prof. Krystian Markiewicz, by publishing anonymous stories containing gossip and rumours about their private lives, and Maciej Nawacki, president of the Olsztyn District Court, known for contemptuously tearing up in front of the media the draft resolution of the General Assembly of Judges of the Olsztyn District Court and destroying Judge Paweł Juszczyzyn, who decided to verify whether Maciej Nawacki had collected the required number of signatures for his candidacy for the neo- National Council of the Judiciary.

We should also mention the refusal of the President of the Republic of Poland to enforce the decision of the Supreme Administrative Court, the refusal of the Prime Minister of the Republic of Poland and the Minister of Justice of the Republic of Poland to enforce the decisions of the European Union Court of Justice. Julia Przyłębska, who heads the so-called Constitutional Tribunal, refuses to enforce the decisions of the European Court of Human Rights, the neo- National Council of the Judiciary calls for the refusal to enforce the decision of the District Court in Bydgoszcz in the case of Judge Juszczyzyn, and the decision of the Regional Court in Olsztyn also in the case of Judge Juszczyzyn was recently refused by the neo I President of the Supreme Court, Małgorzata Manowska, who is an academic teacher. The unthinkable for a member of the European Union is becoming a fact in 21st century Poland.

9. The rule of law is an instrument to protect the freedom and dignity of every person, regardless of whether he is temporarily in the majority or in the minority. Guarding the protection of minority rights is an independent judge. An independent judge who rules



with a neo-judge or passes over the cases of judges Paweł Juszczyszyn and Igor Tuleya like a “hot” potato should remember that the “punishing hand” of the disciplinary ombudsman of common court judges and the interest of the internal affairs division of the National Prosecutor's Office can reach him as well. After all, favourableness of power is dependent on its whims. Slave servitude means living in constant fear, and Mandela was rewarded for fighting for freedom from fear.

10. The Private Prosecutor's Attorney accuses me that my letter to Commissioner Jourova contains political content. He is mistaken. The letter contains a call for support against the unprecedented post-1989 attempt to create a chilling effect on judges who ordered the immediate reinstatement of Judge Paweł Juszczyszyn. As an attorney I have the right and duty to represent the interests of my client Judge Paweł Juszczyszyn not only in the courtroom and in the pleadings, but in any way required by the context of the situation in which Judge Juszczyszyn finds himself. The judicial process is not alienated from its context, but is a result of the context and what happens in the reality around us, in everyday life.

My client Judge Paweł Juszczyszyn's rights have been violated in and out of the courtroom for more than 510 days (sic!) with no “sight” of a conclusion to the disciplinary proceedings. My role as an attorney is to fight with all my might to ensure that Judge Paweł Juszczyszyn is guaranteed the right to receive a fair trial. This right was violated, or at least - as life experience proves - very significantly endangered as a part of the so-called chilling effect, by requesting the files of the Bydgoszcz case just after issuing the decision ordering immediate reinstatement of Judge Paweł Juszczyszyn, and before learning the content of the justification for this decision. Private prosecutor's Attorney Dr. Bartosz Lewandowski, may someday reflect on whether it is part of the mission and dignity of the legal profession to demand, as an attorney, a prison sentence for the lawyer for fighting for the reinstatement of judges Paweł Juszczyszyn and Igor Tuleya, and more broadly for fighting for judges to be independent. Well, but as Aristotle used to say *"Things are what they are"*.

Czesław Jaworski, attorney mentioned above, said that *"The advocacy [...] is one of the most important institutions protecting human rights. It is both a way and a way of life. You can't just be an attorney. One must want to be and to be an attorney"*. The cases of Judge Paweł Juszczyszyn and Igor Tuleya were accepted for consideration by the European Court of Human Rights, and this determines not only the Polish, but also the European dimension of the violation of their human rights.

11. As will be shown in paragraph 31 of this response, in the present case it is undisputed that the disciplinary ombudsman of common court judges, for whom the deputy disciplinary ombudsman of common court judges acted, requested the case file of Judge Paweł

Juszczyszyn, in which the District Court in Bydgoszcz issued a decision on 14 April 2021 ordering the immediate reinstatement of Judge Paweł Juszczyszyn.

The Private Prosecutor Przemysław Radzik and his attorney Dr. Bartosz Lewandowski concealed this fact from the court herein, and this is a crucial circumstance for the decision in this case, as will be shown later in my response to the private indictment. The deputy disciplinary ombudsman of the judges of common courts requested and received these case files before the ruling panel of the District Court in Bydgoszcz had prepared the grounds for its decision. Apparently, the aim of the disciplinary ombudsman of the common courts was not to find out the legal motives of the adjudicating panel of the District Court in Bydgoszcz in ordering the immediate reinstatement of Judge Paweł Juszczyszyn, but to create a chilling effect. The action of the disciplinary ombudsman of common court judges (because the action of his deputies from a legal point of view is the action of the disciplinary ombudsman of common court judges) was at the same time only one in a series of actions taken by state institutions to exert pressure on the ruling judges and those who will rule in Judge Paweł Juszczyszyn's case. This is demonstrated by the following facts:

- 1) A request for the handing over of files of the Bydgoszcz case of Mr. Judge Paweł Juszczyszyn prior to the preparation of the statement of reasons by the District Court in Bydgoszcz was submitted on 13 May 2021 by the Internal Affairs Division of the National Prosecutor's Office. Pursuant to Article 19 § 4 of the Act of 28 January 2016 Law on Public Prosecutions, the competence of the Internal Affairs Division of the National Public Prosecutor's Office includes, inter alia, conducting proceedings in the case of judges with respect to whom there is a reasonable suspicion of having committed an offence,

Evidence: *Request for records from the National Prosecuting Attorney's Office, Internal Affairs Division, dated May 13, 2021. - case file VII Po 16/21 page 155*

- 2) The Ministry of Justice requested that the files of the Bydgoszcz case of Judge Paweł Juszczyszyn be handed over prior to the preparation of the statement of reasons by the District Court in Bydgoszcz,

Evidence: *Letter of the President of District Court in Bydgoszcz dated 6 May 2021 – case file VII Po 16/21 page 162*

- 3) The neo National Council of the Judiciary, which should uphold judicial independence and defend judges from being pressured by the executive and prosecution, passed a disgraceful resolution on 28 May 2021 regarding the order issued by the District Court in Bydgoszcz, which states, among other things, that:



*"[...] the procedure insofar as it relates strictly to the allegations made against Judge Paweł Juszczyzyn is confined within the rules of disciplinary responsibility. **This is an obvious issue for any judge who applies the law fairly.** In this situation, the treatment by the District Court in Bydgoszcz of the case of suspension of a judge in his duties as an employee case constitutes an action ultra vires and **therefore there is a justified suspicion that persons who were members of the court in case No. VII Po 16/21 committed both a disciplinary offence and at the same time an offence typified by Article 231 § 1 of the Penal Code.**"*

Earlier, in the quoted resolution, neo-National Council of the Judiciary admits that it makes such a legal qualification by accusing the ruling panel of the District Court in Bydgoszcz of unfair application of the law and of committing a disciplinary tort and an offence of abuse of power by a public officer under Article 231 § 1 of the Penal Code despite the fact that, as at the date of the resolution, *"Due to the fact that this decision does not contain a statement of reasons, the legal basis on which the District Court in Bydgoszcz has jurisdiction to rule on matters relating to disciplinary proceedings is unknown."*

The justification of a court decision explains the motives for its issuance. If neo-National Council of the Judiciary accuses the judges of the District Court in Bydgoszcz of unfair application of the law and of committing a disciplinary offence and a clerical offence without waiting for the content of the justification, which the judges in Bydgoszcz could not draw up immediately, among other things, due to the fact that they handed the file of the case to the disciplinary ombudsman of the common court judges, who is represented by, among others, the Private Prosecutor, then an unambiguous conclusion arises that the members of neo-National Council of the Judiciary were not interested in a specific kind of hearing of the Bydgoszcz ruling panel.

Moreover, neo-National Council of the Judiciary in the above quoted resolution appeals to the President of the Republic of Poland, the Minister of Justice and the Prosecutor General *"to take all possible actions which will constitute the implementation of the values arising from the existing constitutional division which links the legislative, executive and judicial powers in order to avoid the chaos of interpretation, constituting a high hazard, resulting from arbitrary interpretation of the provisions of established law"*. This appeal sounds very threatening, taking into account the fact that neo-National Council of the Judiciary qualified the issuance of the decision by the District Court in Bydgoszcz as an act of misconduct and a disciplinary and clerical offence, and that the addressees of the appeal include representatives of the executive power, including the Minister of Justice - the Prosecutor General. This evokes the worst associations with the methods used not



only in authoritarian, but even totalitarian states. It is astonishing and disturbing that this resolution has passed without much echo in public opinion. Imposing such serious charges without hearing the accused is also a feature of authoritarian and totalitarian governments.

Yet, this is not the end!!! In the resolution, the neo-National Council of the Judiciary also states that *"The duty of judges is to obey the will of the legislature."* However, to whom a judge is subject is determined by Article 178 paragraph of the Constitution of the Republic of Poland, which states that *"Judges in the exercise of their office are independent and subject only to the **Constitution** and statutes"*. The supreme law is the Constitution, which takes precedence over statute law and is applied directly (Article 8 of the Polish Constitution). Since Poland's accession to the European Union, in accordance with the established case law of the Court of Justice of the European Union, European Union law has taken precedence over Polish law. These issues do not require further analysis given the purpose of these proceedings. It is only a matter of pointing out that such a body as neo- National Council of the Judiciary had no grounds to take any position in the case without being familiar with and then subjecting to an instance control of the decision of the District Court in Bydgoszcz.

Evidence: *Resolution no. 612/2021 of the National Council of the Judiciary dated 28 May 2021 (WP no. 0212.13.2021)*

12. For proper understanding of the context of this case, it is necessary to present the actual characters of the spectacle produced by Private Prosecutor Przemysław Radzik and his attorney Dr. Bartosz Lewandowski, while filing a private indictment against me. At the very beginning I deny that as the Accused I am one of the actors of this spectacle. I play a role in it, but it is a supporting role, although I am proud of it.

On the one hand, the main actors in this play (*"the prosecuted"*) are Judge Paweł Juszczyzyn and Judge Igor Tuleya, whom I have the honor of my life to represent, in this way also representing every independent judge.

Judge Paweł Juszczyzyn is the first Polish judge to cite a judgment of the Court of Justice of the European Union to demand that the Polish Parliament verify the correctness of the appointment of members of the National Council of the Judiciary, the body that decides who can be judges in Poland, including European judges. These were fundamental questions for the Polish rule of law and the system of the tripartite division of power, and will go down in the history of the struggle for Polish and European rule of law. Judge Juszczyzyn was suspended from serving as a Polish and European judge by the so-called Disciplinary Chamber of the Polish Supreme Court, which reduced his salary by 40%.

Judge Igor Tuleya is the first Polish judge whom Polish prosecutors want to forcibly bring in for questioning for decisions made contrary to the expectations of the Polish executive. Judge Tuleya was suspended from serving as a Polish and European judge by the so-called Disciplinary Chamber of the Polish Supreme Court, which reduced his salary by 25%. In December 2017, Judge Igor Tuleya ordered the prosecutor's office to resume its investigation regarding the circumstances under which opposition deputies were not allowed to participate in the Polish parliament sessions. In the summer of 2018, Judge Igor Tuleya asked the Court of Justice of the European Union for a preliminary ruling on whether the Polish laws on the Constitutional Court, the Supreme Court and the National Council of the Judiciary are compatible with European principles of judicial independence. On 24 September 2019, the Attorney General of the Court of Justice of the European Union assessed that the preliminary questions of, among others, Judge Tuleya on the disciplinary system for judges in Poland should be declared inadmissible arguing that the Polish courts have only subjective fears that have not materialized in the form of initiation of disciplinary proceedings.

On the other hand, the main protagonist and initiator of this spectacle is, of course, Private Prosecutor Przemysław Radzik (*"the prosecutor"*), and functionally also the institution of the disciplinary ombudsman of the common court judges in the persons of Judges Piotr Schab, Przemysław Radzik, and Michał Lasota. One could say Three in One, the Trinity, although rather not the Holy Trinity. From a legal point of view, the actions of Piotr Schab, Przemysław Radzik and Michał Lasota are actions of a single institution of the disciplinary ombudsman of common court judges, regardless of who undertakes them. In order to understand the mechanism of the chilling effect, one of many examples of which is exceptionally shocking in a state whose system is based on the rule of law and a tripartite division of powers rather than on the rule of men, it is necessary to present the short but impressive path of promotion of each of these three individuals:

- 1) Przemysław Radzik. *"Przemysław Radzik was among 41 judges appointed today to various courts by Andrzej Duda. Some of them received their appointment letters from the president for the first time. Others, like Radzik, were promoted. The judge was immediately promoted two levels and will now rule at the Court of Appeals in Warsaw.*

Radzik previously served as a judge in the Krosno Odrzańskie District Court for many years. Today's appointment is the biggest of promotions for a judge who has made a dizzying career under the "good change" government.

It all started in mid-2018, when Justice Minister Zbigniew Ziobro appointed him as one of the country's three chief disciplinary ombudsmen. Radzik - nicknamed "the



butcher" by the judges of "good change" - quickly became famous for his proceedings against judges upholding the rule of law and the independence of the judiciary.

In 2018 Ziobro appointed Radzik as president of the Krosno Odrzanskie court and later delegated him to the District Court in Warsaw. A few months ago, Radzik became vice president of this largest court in the country"¹.

- 2) Michał Lasota. *"On January 4, the Chancellery of the President announced that Andrzej Duda had handed out acts of appointment to serve as judges. The newly appointed judges took an oath before the President of Poland. Michał Lasota is among those appointed as a judge of the District Court in Elbląg.*

Lasota became an important figure thanks to the "good change" from an ordinary judge. He became deputy disciplinary ombudsman of the common courts and prosecutes judges for various offenses, including opposing to judicial reforms introduced by the Law and Justice party.

Among others, he became famous for disciplining unruly judges. He also became president of the District Court in Nowe Miasto Lubawskie and received a delegation to Poland's largest District Court in Warsaw."²

- 3) Piotr Schab. *"On June 4, 2018, Justice Minister Zbigniew Ziobro appointed Schab to the newly created position of Disciplinary Ombudsman of Common Court Judges for a four-year term.*

Since September 10, 2018, Schab was a member of the Team for actions of the Minister of Justice taken in disciplinary proceedings of judges and court assessors. This team was abolished by the Minister of Justice on August 29, 2019.

On January 8, 2020, President of the Republic of Poland Andrzej Duda appointed Schab to serve as a judge of the Court of Appeals in Warsaw.

On November 16, 2020, media reported that Schab was appointed by the Minister of Justice to serve as President of the Warsaw District Court in place of Judge Joanna Bitner, who had resigned the previous week."³

¹ <https://wyborcza.pl/7,75398,26896231,kolejny-awans-dla-radzika-tym-razem-o-dwa-szczeble.html>.

² <https://olsztyn.wyborcza.pl/olsztyn/7,48726,26763865,sukcesy-sedziow-dobrej-zmiany-z-warmii-i-mazur.html>.

³ https://pl.wikipedia.org/wiki/Piotr_Schab.



II. ESSENCE OF THE LEGAL PROBLEM

13. The essence of the legal problem in the matter at hand is ... **the lack of legal problem.** For that reason, there are obvious legal grounds to refer the matter to a hearing and discontinue it, which I do not request for the reasons stated at the outset of this response.
14. The Private Prosecutor is essentially accusing me of two principal acts:
 - 1) untruthfully stating that he, as a deputy disciplinary ombudsman of the judges of common courts, demanded that the District Court in Bydgoszcz immediately hand over judge Paweł Juszczyzyn's case file in which a decision had been made ordering that Paweł Juszczyzyn be reinstated to judgeship. However, as it was already mentioned and it will be shown further on, it is not important whether the case files were requested by Piotr Schab, Przemysław Radzik or Michał Lasota, but whether the case files were requested by the disciplinary ombudsman of common court judges (also acting through any of his deputies). The fact is that the institution of disciplinary ombudsman of common courts judges, for which Przemysław Radzik acts, among others, demanded those files,
 - 2) defaming him deputy disciplinary ombudsman of the judges of common courts for requesting from the District Court in Bydgoszcz to hand over immediately the files of the case of Judge Paweł Juszczyzyn, in which the decision ordering his reinstatement was passed, which could defame him in public opinion or threaten him with the loss of trust necessary for performing the profession of a judge and the function of deputy disciplinary ombudsman of the judges of common courts by including in it allegations concerning an alleged pressure exerted by Mr Przemysław Radzik, acting as deputy disciplinary ombudsman of the judges of common courts, on judges adjudicating. However, such practices are used by the disciplinary ombudsman of the judges of common courts and his deputies not only in the case of Mr Paweł Juszczyzyn (see paragraphs 41-43 of this response). Therefore it is not objectively possible to humiliate in public opinion or undermine trust in the person of the Private Prosecutor, who not only as deputy disciplinary ombudsman carries out such practices, but in general opinion also approves of them while acting as deputy disciplinary ombudsman of the judges of common courts. However, the assessment that the aim of these practices is to create a chilling effect on judges is, firstly, an assessment which cannot be qualified according to the criteria of true or false, and secondly it is an assessment which has not been authored by me, but by the most eminent professors of law in Poland and is widely shared by the public, which is critical of changes and methods introduced in the administration of justice in Poland, e.g. using the institution of the Disciplinary Ombudsman of common court judges and neo-National Council of the Judiciary.



One could say that this is a notorious opinion, i.e. one that is commonly present in the public debate on the issue of the way and purpose of functioning of the institution of the disciplinary ombudsman of the judges of common courts performed by judges Piotr Schab, Przemysław Radzik and Michał Lasota. Each of them, including Private Prosecutor Przemysław Radzik, is indisputably a public official who is subject to public opinion. Therefore, I do not give myself credit for formulating such an opinion about the person holding the office of disciplinary ombudsman of the judges of common courts and his deputies, that is judges Piotr Schab, Przemysław Radzik and Michał Lasota, nor for its spread. I only shared the position strongly rooted in Polish public opinion and proclaimed by many professors of law and judges, including judges' self-government organisations such as Iustitia and Themis.

III. SUBJECT OF THE PRIVATE PROSECUTION'S ALLEGATION

15. The Private Prosecutor accuses me (defining the so-called causative action in this way) as the Accused of allegedly defaming Mr Przemysław Radzik in a letter sent to the Vice-President of the European Commission, Vera Jourova, for conduct that might have defamed him in the public opinion or threatened him with the loss of trust necessary for the performance of the judicial profession and the function of deputy disciplinary ombudsman of the judges of common courts, by making assertions concerning alleged pressure exerted by Mr Przemysław Radzik on the judges presiding in the cases of Judge Paweł Juszczyzyn and Judge Igor Tuleya, as well as by making untrue (according to Mr Radzik) statements that:
- 1) Przemysław Radzik demanded that the District Court in Bydgoszcz immediately hand over the case file of Judge Paweł Juszczyzyn, in which a decision was made ordering that this judge be reinstated to his post;
 - 2) Przemysław Radzik demanded (successfully) before the Disciplinary Chamber of the Supreme Court that Judge Juszczyzyn be suspended for *declaring war on his Country*, the effect of which is to result in a criminal charge being brought against Judge Paweł Juszczyzyn.
16. The abovementioned implies that in order to impute to me as the Accused responsibility for the alleged act of defaming Przemysław Radzik, the Court should be able to establish on the basis of the evidence gathered in the case that my actions led to defamation of Przemysław Radzik, which means proving:
- 1) that I was aware that by sending the letter to VicePresident of the European Commission Ms Vera Jourova, I defamed Mr Przemysław Radzik as the deputy disciplinary ombudsman of the judges of common courts for certain conduct or



features, which could defame him in public opinion or put him at risk of loss of professional trust, and therefore that I acted with a direct intention or at least I was aware of a substantial likelihood that sending the letter would have such an effect, and therefore I acted with an eventual intention (elements of the subjective side - see point IV);

- 2) that the reference to the manner of conduct of the disciplinary ombudsman, about which I wrote in a letter to the Vice-President of the European Commission, Vera Jourova, could have defamed Mr Przemysław Radzik as the Deputy Disciplinary Ombudsman of the judges of common courts in public opinion or could have jeopardised trust necessary to carry out the profession of judge by him (objective features - see point V of this reply).
17. According to the case law of the Supreme Court, *"defamation is subject to criminal liability only when it involves the possibility of moral damage to the victim in the form of humiliation or exposure to loss of trust. Exposure to humiliation of the defamed subject in public opinion, on the other hand, means a situation in which there is a real danger of worsening the opinion about him in the 'public perception'"*.⁴
 18. The Supreme Court also specifies that article 212 § 1 of the Criminal Code refers to *"humiliation in public opinion"*, which means that it is not so much about the grudge against personal feelings of the victim, but about how the defamed person will be perceived by a wide, undefined circle of people⁵. The assessment is made taking into account social and environmental evaluations in the prism of individual characteristics of the victim and the specific factual situation⁶.
 19. For the purposes of determining whether defamation has occurred, the concept of public opinion is defined as the body of views, assessments and judgments expressed by members of the public. Public opinion is primarily the state of consciousness of larger public communities on issues of importance to society (such as views on ongoing changes in the judiciary).
 20. In the case of a defamatory statement, the starting point for determining whether defamation has occurred is to determine what competencies are necessary to hold the position (e.g., in the case of a university professor, it will be to possess a certain level of knowledge). The next step is to assess whether in light of the defamatory information the impression may have objectively arisen that the wronged person does not possess such competencies or possesses them to a lesser degree than required (e.g. whether accusing a

⁴ Decision of the Supreme Court dated 14.10.2010 r., case file II KK 105/10, LEX no. 621198.

⁵ *Ibid.*

⁶ *I. Zgoliński* [in:] Penal Code. Commentary, ed. III, red. V. Konarska-Wrzošek, Warsaw 2020, art. 212.



law professor of not possessing knowledge in nuclear physics may result in the public opinion that he is not competent to lecture on constitutional law). The ethical or moral requirements for holding a particular position or office are also subject to analogous evaluation.

21. Exposure to public humiliation, on the other hand, means any diminution of the value that the victim has in the eyes of the public, i.e., causing the public to view the victim negatively.

IV. SUBJECTIVE SIDE OF THE ALLEGED ACT – LACK OF FULFILMENT OF THE FEATURES OF THE CRIME OF DEFAMATION

22. First and foremost, my intention was not to defame, humiliate or expose Private Prosecutor Przemysław Radzik to loss of trust needed for performing public function, but to inform about the fact that the deputy disciplinary ombudsman of the judges of common courts has requested files of the proceedings in the case of Judge Paweł Juszczyzyn in Bydgoszcz and to make a critical assessment of such mechanism of action of the institution of the disciplinary ombudsman of the judges of common courts and his deputies, including Private Prosecutor Przemysław Radzik. In other words, my intention was, to paraphrase Aristotle, to present things as they are in the public interest and within the framework of the desired public interest criticism of the actions of persons holding public office. For the reasons broadly described in paragraph V of this response, I could not assume that my letter to EU Commissioner Vera Jourova would change the already well-established public opinion and legal circles' assessments of the mechanisms of the institution of the disciplinary ombudsman of common court judges and persons, including the Private Prosecutor Przemysław Radzik, acting in the course of performing the function of the disciplinary ombudsman of common court judges and his deputies. The Private Prosecutor did not prove that my (direct or at least possible) intention was to defame Private Prosecutor Przemysław Radzik as a natural person, or that I objectively had the capacity to defame Private Prosecutor Przemysław Radzik in the public opinion in view of well-established assessments of the methods of exerting a chilling effect on judges by the institution of the disciplinary ombudsman of common court judges, including by Private Prosecutor Przemysław Radzik.
23. The information about the demand for case files from the District Court in Bydgoszcz by Przemysław Radzik was a verified one. When addressing the letter to the Vice-President of the European Commission, Vera Jourova, I relied on the information provided on 30 April 2020 by an employee of the file room of the District Court in Bydgoszcz, according to which the case files were handed over to the deputy disciplinary ombudsman of the judges of common courts. Łukasz Matyjas, a partner in Romanowski & Partners, sent me an e-mail in which he stated, "*We have official confirmation that Mr Justice Radzik has taken the files down to himself, and I see no obstacles in making this information public*



as fully reliable because it was obtained directly from the court". After Przemysław Radzik, acting as a deputy disciplinary ombudsman of the judges of common courts, made a statement published on the website of the office of the disciplinary ombudsman of the judges of common courts, in which Przemysław Radzik, acting as a deputy disciplinary ombudsman of the judges of common courts, informed that he had not requested files of the proceedings from the District Court in Bydgoszcz, I undertook further verification activities aimed at clarifying the information obtained from the file room. I asked for information whether the deputy disciplinary ombudsman of the judges of common courts requested the file on judge Paweł Juszczyński's case to be handed over to him and whether the file was handed over to him. The answers received from the court, also in writing, clearly indicated that, contrary to the perception of reality which could be created by the statement of Przemysław Radzik made in his capacity as deputy disciplinary ombudsman of the judges of common courts and published on the website of the office of the disciplinary ombudsman of the judges of common courts, the case files were handed over at the request of the deputy disciplinary ombudsman of the judges of common courts. Responses received from the court, despite clearly indicating the name of Mr Przemysław Radzik, did not indicate that there was an error in the original statement that the file had been requested by Mr Przemysław Radzik, deputy disciplinary ombudsman of the common courts.

Evidence: *Testimony of a witness Łukasz Matyjas*

Łukasz Matyjas's email to Michał Romanowski dated 30/04/2021

Email to the Bydgoszcz District Court dated 7/05/2021 with a response

Letter from Michał Romanowski to the President of the District Court in Bydgoszcz dated 7.05.2021

Letter from the President of the District Court in Bydgoszcz dated 10.05.2021

24. In view of the foregoing, it is indisputable that I exercised not only due care, but the utmost care in making the statements contained in the letter to Vice President of the European Commission Vera Jourova and I was driven by a well-founded belief that the case file was requested by the deputy disciplinary ombudsman of the judges of common courts, Mr. Przemysław Radzik, in the performance of his duties as the disciplinary ombudsman of the judges of common courts.
25. Exercising due diligence in acquiring information that would later turn out to be false does not justify to find me guilty for the crime under Article 212 of the Criminal Code, as discussed in more detail later in this response.



26. It needs to be emphasised again that the statement of the Private Prosecutor denying that he had requested the file on the case of judge Paweł Juszczyzyn was constructed in such a manner and form as to create a belief in the public opinion that it is untrue that the deputy disciplinary ombudsman of the judges of common courts had requested the file and that it had been issued to him. This was the purpose of the publication of this statement by the Private Prosecutor on the official letter of the deputy disciplinary ombudsman of the judges of common courts and presented on the website as "Message of the Deputy Disciplinary Ombudsman Judge Przemysław W. Radzik regarding false information spread by attorney Michał Romanowski".

Evidence: *Statement by the Deputy Disciplinary Ombudsman Judge Przemysław W. Radzik*

27. As to the allegation that Przemysław Radzik demanded (successfully) before the so-called Disciplinary Chamber of the Supreme Court to suspend Judge Juszczyzyn for "*declaring war on his own Country*", the purpose of which was to lead to the filing of a charge of committing a crime against judge Paweł Juszczyzyn, it should be noted that it follows directly from the speech of Private Prosecutor Przemysław Radzik before the so-called Disciplinary Chamber of the Supreme Court on February 4, 2020 in the case of judge Paweł Juszczyzyn. As reported by OKO.press in the article titled. "*The Disciplinary Chamber tries to silence Juszczyzyn*" Przemysław Radzik during the speech said that:

„We, on behalf of the State, fight against judicial pathologies. Every day life brings new and new judicial behaviors [which he prosecutes together with ombudsman Piotr Schab and second deputy Michał Lasota - ed.]”

- Przemysław Radzik began his speech.

Przemysław Radzik comments on the decisions in the Juszczyzyn case

He asserted that he does not know whether Juszczyzyn is guilty of disciplinary acts. But he stressed that the judge faces charges of committing the crime of abuse of power under Article 231 of the Criminal Code. It is about the alleged exceeding of powers. Because this is how the disciplinary ombudsman qualified the request from the Sejm Chancellery for letters of support to the new KRS, the attempt to investigate its status and Juszczyzyn's attempt to investigate the status of the judge promoted by it. "He [Juszczyzyn - ed.] is acting against the constitutional order. He questions the legitimacy of the [district - ed.] judge, publicizes it in the media, becomes a celebrity. He is not allowed to do that." - Radzik alleged at the Chamber session.

He said the judge received a warning from another Chamber panel in December.



*„And what did he do next? Did he care? Absolutely not, he did the same thing. He committed further disciplinary torts. **He declared war on his Country.**”*

- Radzik alleged.

Radzik further accused Juszczyzsyn:

"I don't know if the judge committed a disciplinary tort for political reasons, but he entered into this element of political struggle," he said. He lamented that only one court president in Poland, Maciej Nawacki, had removed a judge from adjudication, although there are "dozens" of such behaviors as Juszczyzsyn's. "I have to give him [Nawacki - ed.] respect for the fact that he applies the rules," Radzik said with seriousness.

Finally, he demanded that the Disciplinary Chamber issue a preventive resolution.

"Against Judge Juszczyzsyn and other potential abusers [judges who question the legality of the new KRS] - ed. This is because the Chamber's resolution of December [favorable to the judge - ed.] was an incentive for similar actions, which we are already investigating" - Przemysław Radzik concluded. By these last words he meant judges who investigated the status of the new KRS and judges appointed by it by asking legal questions to the Supreme Court. They have already been disciplined for this, too, and the Disciplinary Chamber will soon recognize it."

Evidence: *Article titled "Disciplinary Chamber tries to silence Juszczyzsyn. It suspended him as a judge and cut his salary" Błąd! Nie można odnaleźć źródła odwołania.*

28. Considering the actions taken by the so-called Disciplinary Chamber of the Supreme Court in relation to judge Paweł Juszczyzsyn, actions of Przemysław Radzik aimed at suspending judge Juszczyzsyn for, among others, allegedly declaring war on his own country were effective, because they resulted in suspension of judge Paweł Juszczyzsyn from ruling and reduction of his remuneration by 40%. These actions were effective, although disgraceful.
29. Therefore, my statement could not have been made in order to intentionally defame Przemysław Radzik with a direct intent or even with an eventual intent, as it is a quotation of statements made by Przemysław Radzik, acting in his position as deputy disciplinary ombudsman for judges of common courts, illustrating his actions aimed at causing chilling effect on judges.
30. The purpose of my statement in the letter to Commissioner Jourova about exerting pressure on the judges ruling in the cases of Paweł Juszczyzsyn and Igor Tuleya by the institution of the disciplinary ombudsman of the judges of common courts, including

Private Prosecutor Przemysław Radzik, demanding files of proceedings from District Court in Bydgoszcz and effective demand of suspension of judge Juszczyzyn for „*declaring war on his own Country*” was not defamation and insulting of Przemysław Radzik, but acting in defense of socially justified interest and critical evaluation and portrayal of actions of a public official such as the deputy disciplinary ombudsman of the judges of common courts, i.e. a person who performs a public function. This action corresponds with public evaluation of the mechanism of operation of the institution of disciplinary ombudsman of common courts.

V. OBJECTIVE FEATURES OF THE ALLEGED ACT – LACK OF FULFILMENT OF THE FEATURES OF THE CRIME OF DEFAMATION

A. The subject of my criticism is the action of the body of the disciplinary ombudsman of common court judges

31. In the indictment, the attorney of the Private Prosecutor Przemysław Radzik stated that "*the aggrieved party Przemysław W. Radzik has never asked the District Court in Bydgoszcz to send, transfer or make available any files concerning the defendant judge Paweł Juszczyzyn*". He overlooked (**or rather concealed from this court**) a significant fact that such a request was made by the deputy disciplinary ombudsman of the judges of common court.

Evidence: *Lukasz Matyjas's email to Michał Romanowski dated 30/04/2021.*

Email to the Bydgoszcz District Court dated 7/05/2021 with a response

Letter from Michał Romanowski to the President of the District Court in Bydgoszcz dated 7.05.2021.

Letter from the President of the District Court in Bydgoszcz dated 10.05.2021.

32. Przemysław Radzik acts as a public official - deputy disciplinary ombudsman of the judges of common courts. He acted as a public official also when he issued a statement in which he informed that he did not demand files from District Court in Bydgoszcz because he signed himself as deputy disciplinary ombudsman of the judges of common courts. From the point of view of this case, it is important that the file was demanded by the deputy disciplinary ombudsman of the judges of common courts, and not by Przemysław Radzik. Attributing to Mr Przemysław Radzik the actions of the authority which he occupies **cannot be defamatory to Mr Przemysław Radzik, nor can it expose him to the loss of trust needed to the election of this body, the more so because the Private Prosecutor Mr Przemysław Radzik identifies himself with the methods of**

operation of this authority while acting as deputy disciplinary ombudsman of the judges of common courts.

33. If, in fact, the file was requested by another person acting as deputy disciplinary ombudsman of the judges of common courts (although this was not confirmed in any way despite my efforts), this has no bearing on the statement I made in my letter to Commissioner Jourova. The essence of the statement is the fact that the file was requested by a specific institution that has specific powers with respect to judges, that is, in this case, by the institution of the disciplinary ombudsman of the judges of common courts, which acts through the disciplinary ombudsman of the judges of common courts and his deputies.
34. In the disciplinary case of judge Paweł Juszczyzyn, Przemysław Radzik acted interchangeably with Michał Lasota. For example, the order to register Judge Juszczyzyn's case was issued by Michał Lasota, but Przemysław Radzik called to appear as a witness and requested to borrow the case file by signing in place of Michał Lasota. Subsequently, on November 28, 2019 Michał Lasota initiated proceedings against Paweł Juszczyzyn, while Przemysław Radzik appeared at the hearing concerning such proceedings, which took place on 4 February 2020. This proves that not only Przemysław Radzik's actions are identified with the institution of deputy disciplinary ombudsman of the judges of common courts, but Przemysław Radzik himself identifies with actions of disciplinary ombudsman of the judges of common courts and his deputy. The possibility that the disciplinary ombudsman of the judges of common courts and the deputy disciplinary ombudsman of common court judges may act interchangeably arises directly from article 112 § 2a of the Act on the Common Court System, according to which „*The Disciplinary Ombudsman of Common Court Judges and the Deputy Disciplinary Ombudsman of Common Court Judges may undertake and carry out actions in any matter concerning a judge*”. Their actions are equivalent to those of the disciplinary ombudsman institution.

Evidence: *Order of M. Lasota dated March 1, 2019. - RDSP case file 712-20/19 page 1*

Subpoena of P. Radzik to appear as a witness - case file RDSP 712/20/19 page 3

Request from P. Radzik dated March 11, 2019 for borrowing of files - RDSP case file 712-20/19 page 2

Order dated November 28, 2019 to initiate disciplinary proceedings

Minutes of the hearing on P. Juszczyzyn - case file I DSS 1/1 page 152



35. The fact that the actions of Przemysław Radzik or Michał Lasota are actions of the office of the disciplinary ombudsman, and not of specific persons, is evidenced by the fact that the name of the deputy disciplinary ombudsman of the judges of common courts is often omitted. Only the fact that the action was taken by the deputy disciplinary ombudsman of the judges of common courts is relevant. For example:
- 1) the so-called Disciplinary Chamber of the Supreme Court forwards the complaint to the deputy disciplinary ombudsman of the judges of common courts, without indicating which deputy filed the complaint;
 - 2) as a participant in the proceedings it is designated the deputy disciplinary ombudsman of the judges of common courts;
 - 3) a notice from the so-called Disciplinary Chamber of the Supreme Court is forwarded to mr. deputy disciplinary ombudsman of the judges of common courts;
 - 4) the addressee of the letters sent by the so-called Disciplinary Chamber of the Supreme Court is the deputy disciplinary ombudsman of the judges of common courts.

Evidence: *Letter from the Disciplinary Chamber of the Superior Court dated 2 January 2020.- case file I DSS 1/19 page 104*

Repertory I DSS 2019 - Case file I DSS 1/19 page 114

Supreme Court notice of January 8, 2020. - case file I DSS 1/19 page 124

Receipts of letters sent to the Deputy Disciplinary Ombudsman of the Common Law Courts - file I DSS 1/19 page 128, 133 app

36. There is no doubt that my statement that Private Prosecutor Przemysław Radzik acting as a deputy disciplinary ombudsman of the judges of common courts demanded files of the proceedings is in essence consistent with objective truth, because the files were in fact demanded by the deputy disciplinary ombudsman of the judges of common courts. This is also reinforced by the fact that this information was verified with due diligence.

My position is confirmed by the position of the Supreme Court that in **the resolution of 7 judges having the force of law** dated 17 December 1965, ref. no. VI KO 14/59⁷ stated that the notion of "truthfulness of the accusation" referred to in article 213 of the Criminal Code excluding unlawfulness of defamation means that the accusation in its essence is consistent with objective truth. Circumstances related to the allegation, but which do not

⁷ Supreme Court resolution of 17 December 1965, VI KO 14/59, OSNKW 1966, no. 2, item 14.

affect the essential content of the allegation in public opinion, are not relevant in assessing whether the allegation was true.

37. Similar conclusion applies to my finding that Private Prosecutor Przemysław Radzik made a (successful) demand before the so-called Disciplinary Chamber of the Supreme Court to suspend Judge Juszczyzyn for "*declaring war on his Country*", the purpose of which is to bring a criminal charge against Judge Paweł Juszczyzyn. This allegation is in accordance with the objective truth, because in justifying his demand to present a criminal charge against Paweł Juszczyzyn before the so-called Disciplinary Chamber of the Supreme Court, Mr Przemysław Radzik said that Paweł Juszczyzyn had declared war on his Country (see paragraph 27 of this response). Moreover, **this allegation cannot be defamatory to Mr Przemysław Radzik and jeopardise trust necessary to carry out the profession of a judge or perform the function of deputy disciplinary ombudsman of the judges of common courts, as it constitutes a description of Mr Radzik's conduct as a public official performing this function. Similarly, as the allegation of exerting pressure on judges presiding over the cases of Paweł Juszczyzyn and Igor Tuleya.**

B. Information about requesting case files and requesting Judge Juszczyzyn's suspension for "*declaring war on his Country*" is not defamatory information

38. A prerequisite for assigning liability for the crime of defamation is that the defamation of the victim of specific conduct or characteristics must be capable of causing him or her to be humiliated in public opinion or expose him or her to a loss of trust necessary for a given position. In other words, the content of the offender's statement against another person must have the capacity to lead to that person being humiliated in public opinion or to his or her being exposed to the loss of trust necessary for a given position. The Private Prosecutor did not prove this. Private Prosecutor Przemysław Radzik completely failed to describe what are the social and communities assessments (public opinion) of the mechanisms of action of the disciplinary ombudsman of common court judges and his deputies, as well as **Private Prosecutor Przemysław Radzik personally**. As it has already been mentioned, essential for the examination whether defamation took place, the concept of "public opinion" means all opinions, assessments and judgments expressed by members of the society. Public opinion is primarily the state of consciousness of larger public communities on issues important to society (such as, for example, the view of the ongoing changes in the judiciary and the way it operates with the assigned function of the institution of the disciplinary ombudsman of common court judges). As it has been shown in this response to the private indictment, the modus operandi of persons holding the function of disciplinary ombudsman of the judges of common courts and his deputies is assessed very critically by the public opinion. They are seen as a major instrument for exerting a chilling effect on the judiciary.



39. A mere statement that the Private Prosecutor has requested case files cannot constitute defamation or demeaning of the Private Prosecutor in public opinion. This is because both the Private Prosecutor and other disciplinary ombudsmen, in the performance of their official duties (another issue is that the public is very critical of how these duties are carried out), request files of court proceedings. As an example, the Private Prosecutor Przemysław Radzik has **repeatedly** made analogous requests for files in other proceedings, analogous to the case of Bydgoszcz. According to media reports:

- 1) *„As OKO.press established, **Przemysław Radzik** demanded from the Poznań court a copy of the files concerning the case of the complaint filed by Roman Giertych's lawyer against the prosecutor's decision to impose preventive measures on him. Such measures were applied against him by the Poznań Regional Prosecutor's Office in mid-October 2020. Giertych was to pay a property surety of PLN 5 million, he was banned from leaving the country and given police supervision”.*

Evidence: *Article titled "OKO.press news. Ziobro's disciplinary ombudsman puts pressure on court in Giertych case"*

- 2) *„The deputy disciplinary ombudsman, **Przemysław Radzik**, demanded presentation of case files related to Judge Baranska-Maluszek. He wants to check the results of her work up to 3.5 years back, with particular emphasis on cases with protracted proceedings. The reason for the Ombudsman's interest in the judge is the Resolution of the General Assembly of Gorzow District Judges on the independence of the judiciary, which was published on September 10, 2018. Judge Olimpia Barańska-Maluszek was the initiator of the resolution”.*

Evidence: *Article "Disciplinary Ombudsman wants to check last three and a half years of Judge Baranska-Maluszek's work".*

- 3) *„The case of a favorable ruling for Morawiec is also of interest to **the deputy disciplinary ombudsman, Przemysław Radzik**. He requested from the appellate court a copy of the motion for resumption of the case and a copy of the ruling”.*

Evidence: *Article titled "Ziobro's men attack courts for precedent-setting rulings on Tuleya, Morawiec and Juszczyzyn"*

40. Private Prosecutor Przemysław Radzik believes that the information about his request for case files is defamatory information and exposes him to the loss of trust needed to exercise the profession of a judge. This would mean, if read literally and in total disregard for the context and conduct of Private Prosecutor Przemysław Radzik as described by the media, as well as Piotr Schab and Michał Lasota, acting as an disciplinary ombudsman and deputy disciplinary ombudsman of the judges of common courts, that Przemysław Radzik



takes a negative view of the very fact of requesting files of the proceedings by the Deputy Disciplinary Ombudsman, including his own actions taken in other cases, considering them as defamatory to his person and exposing him to the loss of trust necessary to perform the profession of judge. This would lead to a surprising, although not impossible, conclusion, that by taking such actions as in the case of Judge Paweł Juszczyzyn in Bydgoszcz, the case of Attorney Roman Giertych in Poznań, the case of Judge Olimpia Barańska-Małoszek in Gorzów, or the case of Judge Beata Morawiec in Kraków, **Private Prosecutor Przemysław Radzik defames himself and exposes himself to the loss of trust necessary to practice judicial profession by his actions.** Such cases are known in life and are illustrated by the saying "*You bear witness for yourself*". Roman jurists used to say "*Volenti non fit iniuria*", meaning "*No harm done to the one who wants it*". If anyone defames, humiliates or exposes himself to the loss of trust necessary to perform the profession of a judge, then if one considers that requesting files during proceedings in cases such as that of Judge Juszczyzyn and cases of other judges mentioned in this reply to the indictment is an act of defamation, humiliation, exposing oneself to the risk of loss of conduct, then such an act is committed by persons holding the positions of disciplinary ombudsman and deputy disciplinary ombudsman of the judges of common court.

If, for example, Private Prosecutor Przemysław Radzik demanded case files concerning the complaint filed by attorney Roman Giertych against the decision of the Prosecutor's Office to impose preventive measures on him, then, as a consequence, it should be acknowledged that this is not, in his opinion, an action which exposes him to the loss of trust necessary to practice the profession of a judge. This also applies to the allegation that I reported that Przemysław Radzik (successfully) demanded before the Disciplinary Chamber of the Supreme Court that Judge Juszczyzyn be suspended for „*declaring war on his Country*”, since, as will be shown in paragraph C below, these are actions regularly taken by the disciplinary ombudsman of common court judges and his deputies, including Przemysław Radzik.

C. Modus operandi of the disciplinary ombudsman of judges of common courts

41. By choosing to perform the function of disciplinary ombudsman of the judges of common courts, the Private Prosecutor should not feel defamed or humiliated, if the public becomes aware that he has taken an action that he believes is within the scope of his responsibilities. Private Prosecutor Przemysław Radzik, as a public official acting as a deputy disciplinary ombudsman of the judges of common courts, must take into account the fact that modus operandi of the institution wherein he performs his function is subject to public assessment, including a very critical one, such as the assessment that his actions produce a chilling effect, i.e. these actions may be interpreted as exerting negative pressure on judges. A different conclusion would be incomprehensible and leads to the assumption that the very function and modus operandi of the disciplinary ombudsmen of



common court judges are defamatory and demeaning to the Private Prosecutor. However, if the Private Prosecutor feels defamed and humiliated by the reporting of their actions, then they should be expected to cease those actions.

42. As it has been mentioned, public opinion, the media and many of the most eminent professors of law and judges, qualify the initiation of disciplinary proceedings against judges and the undertaking of actions preceding the initiation of disciplinary proceedings as the so-called „chilling effect”, i.e. exerting pressure on judges who are parties to disciplinary proceedings and on all members of the judicial profession. It is sufficient to cite again the quoted excerpt from the Private Prosecutor's speech before the so-called Disciplinary Chamber of the Supreme Court, in which we read that Przemysław Radzik as the deputy of disciplinary ombudsman of the judges of common courts:

„Radzik further accused Juszczyzyn:

*"I don't know if the judge committed a disciplinary tort for political reasons, but he entered into this element of political struggle," he said. He lamented that only one court president in Poland, Maciej Nawacki, had removed a judge from adjudication, **although there are "dozens" of such behaviors as Juszczyzyn's.** "I have to give him [Nawacki - ed.] respect for the fact that he applies the rules," Radzik said with seriousness.*

Finally, he demanded that the Disciplinary Chamber issue a preventive resolution.

"Against Judge Juszczyzyn and other potential abusers [judges who question the legality of the new KRS] - ed. This is because the Chamber's resolution of December [favorable to the judge - ed.] was an incentive for similar actions, which we are already investigating" - Przemysław Radzik concluded. By these last words he meant judges who investigated the status of the new KRS and judges appointed by it by asking legal questions to the Supreme Court. They have already been disciplined for this, too, and the Disciplinary Chamber will soon recognize it."

Evidence: *Article titled "Disciplinary Chamber tries to silence Juszczyzyn. It suspended him as a judge and cut his salary"*

43. **The direct intent aimed at inducing pressure on judges by Private Prosecutor Przemysław Radzik is therefore not „alleged” but actual, and is clear from his speech before the so-called Disciplinary Chamber of the Supreme Court.**
44. As discussed, there is a widespread perception that the disciplinary ombudsman of the judges of common courts (and his deputies) is an office that has been established to generate a chilling effect on judges. Repressed judges point out explicitly that the actions of the disciplinary ombudsman of the judges of common courts undermine constitutional



guarantees of judicial independence and the independence of judges' decisions, rightly pointing out that „**Judicial service is not servility**”⁸.

Evidence: *Article titled "Judicial service is not servility" - Judge Piekarska-Drażek to Michał Lasota, Ziobro's man"*

45. The purpose of having a chilling effect on judges is also evidenced by reports of the following actions taken by the disciplinary ombudsman for judges of common courts and his deputies, which took place in the cases of judges Paweł Juszczyzyn and Igor Tuleya that I conducted, as well as in other cases reported in the media:

1) *"Igor Tuleya. Judge of the District Court in Warsaw, prosecuted for his judicial activity, for criticism of "reforms" in the courts and for defending the independence of the courts.*

Tuleya fell into disrepute with the authorities in 2013 with his sentence in the case of a cardiac surgeon, Dr. G., accused of corruption by Ziobro and the Central Anti-Corruption Bureau under the leadership of Mariusz Kaminski in 2007. In the justification of the verdict acquitting Dr. G. of most charges, Tuleya compared the Central Anti-Corruption Bureau's working methods - when it was headed by Mariusz Kaminski - to those of Stalinist times.

*Tuleya also impugned the authority with a second ruling in 2017, concerning the ruling party's vote on the budget in the Columned Hall in December 2016. He suggested that politicians from Jaroslaw Kaczynski's formation may have made false statements and ordered a new investigation. **Now the disciplinary ombudsman is already conducting several investigations that could end in disciplinary action for the judge.** These include the following:*

Did Tuleya disclose materials from the investigation into the Columned Hall vote - cited in oral reasons for the ruling ordering the reinvestigation.

Did he overstep his bounds in speaking about other judges in an interview with TVN24 in which he criticized the new National Judicial Council, among other things.

That he took part in Jerzy Owsiak's festival and public debates about justice in Gdansk and Lublin.

⁸ <https://oko.press/sluzba-sedziowska-to-nie-sluzalczosc-sedzia-piekarska-drazek-do-michala-lasoty-czlowieka-ziobry/>.



That he made preliminary questions to the Court of Justice of the European Union.

A special internal department of the National Prosecutor's Office is also investigating in connection with the ruling on the budget vote in the Columned Hall. The National Prosecutor's Office has requested that the judge's immunity be lifted in order to bring charges against him for letting the media in on this ruling."

Evidence: *Article titled "Mariusz Jałoszewski (Archiwum Osiatyńskiego): 80 prosecuted and repressed judges. Ombudsmen Schab, Radzik, Lasota in action".*

- 2) *"Nearly 40 Olsztyn judges may face absurd disciplinary action for demanding that the judges' council pass resolutions defending the rule of law and Judge Pawel Juszczyzyn. However, court president Nawacki, who ripped their resolutions, will not be prosecuted. (...) OKO.press reports that one of the two deputies of the chief disciplinary ombudsman for judges founded the proceedings in this case."*

Evidence: *Article titled "Madness! Olsztyn judges prosecuted for resolutions ripped by Maciej Nawacki in front of entire Poland"*

- 3) *"Disciplinary ombudsman Przemyslaw Radzik strikes authorities of an informal group of judges that helps defend judicial independence and gives support to repressed judges. The ombudsman has brought disciplinary charges against them, including the group's chairman Bartłomiej Starosta and Judge Waldemar Żurek."*

Evidence: *Article titled "Ziobro's disciplinary ombudsman hits out at group of 14 judges who organize help for harassed judges"*

- 4) *"Przemyslaw Radzik has just sent a letter to the deputy disciplinary ombudsmen operating at all regional and appellate courts in Poland, asking if they have already started prosecuting the judges who signed the letter to the OSCE in April 2020. And this letter was signed by 1278 judges!"*

Evidence: *Article titled "It's getting insane. Ziobro's disciplinary ombudsman wants 1278 judges from across Poland prosecuted at once!"*

- 5) *"Minister Ziobro's disciplinary ombudsman will prosecute two well-known judges from Krakow for hanging posters in court with slogans defending the rule of law. The judges will be prosecuted under a provision that was introduced after martial law by the communist authorities to prosecute Solidarity activists. **The "famous" deputy disciplinary ombudsman for judges, Przemyslaw Radzik (pictured), is taking over for the Krakow judges.** He just took over for his own prosecution a case concerning two judges known for their defense of the judiciary, that is Dariusz Mazur and Maciej Czajka from the Regional Court in Krakow. **Ombudsman***



Radzik is taking over their prosecution to ensure that they are charged before a disciplinary court and that they are punished."

Evidence: Article titled *"Ziobro's man won't give Krakow judges a poster action in defense of free courts"*

- 6) *"The accused is Agnieszka Rękas, a retired judge from Częstochowa. She is facing disciplinary action because the **disciplinary ombudsman Radzik** did not like the fact that the Senate elected her to the pedophilia commission. The case seems absurd because, as OKO.press has established, the judge completed the formalities."*

Evidence: Article titled *"Ziobro's men pursue judge because she sits on pedophilia committee on behalf of Senate and opposition"*

- 7) *„The prosecuted judge is Alicja Karpus-Rutkowska of the District Court in Myślibórz in the Zachodniopomorskie Province. The judge is also vice-president of this court and chairman of the criminal division. **She is being prosecuted by the deputy disciplinary ombudsman for judges, Przemysław Radzik, who is a symbol of repression against judges. Radzik is known for bringing disciplinary actions against independent judges who engage in the defense of free courts. He has made a rapid "career" out of it.**”*

Evidence: Article titled: *"disciplinary ombudsman Radzik pursues judge who stood up to prosecution"*

- 8) *"The 'famous' disciplinary ombudsman Przemysław Radzik is disciplining judges for complaining to the Supreme Court about promotions of the new NCJ. One case may be **Radzik's privy**, as he pursues judges who challenged a promotion for the other disciplinary ombudsman, Michał Lasota."*

Evidence: Article titled *"Ziobro's disciplinary spokesman pursues judges for appeals to the Supreme Court. Because they undermined his colleague's promotion"*

- 9) *"Włodzimierz Brazewicz. Judge of the Court of Appeal in Gdansk, prosecuted for civic activities and for issuing judgments. The Ombudsman investigated his participation in a meeting with Judge Igor Tuleya at the European Solidarity Centre in 2018. Brazewicz chaired that meeting. The Ombudsman suggested that the meeting, organized by the association of judges Iustitia and Pomeranian legal*



counsels and attorneys, may have had a political character, because it was attended, among others, by candidates in local elections"⁹.

Evidence: *Article titled "List of prosecuted and repressed judges. Ziobro's disciplinary ombudsmen in action (Schab, Radzik, Lasota)"*

- 10) *"Marek Celej. Regional Court judge in Warsaw, prosecuted for critical statements. Celej was a member of the old, legally appointed National Judicial Council from 1998 to 2006. The disciplinary ombudsman in June 2019 demanded an explanation from him for his critical statements in the TVN24 program about the vice-president of the court Dariusz Drajewicz"* ¹⁰.

Evidence: *Article titled "List of prosecuted and repressed judges. Ziobro's disciplinary ombudsmen in action (Schab, Radzik, Lasota)"*

- 11) *"Monika Frąckowiak. Judge of the District Court in Poznań-Nowe Miasto and Wilda, prosecuted for her activity in Iustitia, defence of the independence of the courts and criticism of the 'good change'. She is on the board of the Association of European Judges and Prosecutors for Democracy and Freedom - MEDEL. The disciplinary ombudsman already in 2018 became interested in her critical statements about "reforms" in the judiciary at demonstrations in defence of the independence of the courts. This case was investigated by the disciplinary ombudsman of the Wielkopolska courts, but he did not find any misconduct on the part of the judge. However, it was taken over by the chief disciplinary ombudsman, who added another case. The case concerns the judge's participation in a simulated trial for young people at a festival organized by Jerzy Owskiak. The case of Owskiak's festival was dismissed, but at the same time the ombudsman assessed Judge Frackowiak's work as a judge and in 2019 charged her with disciplinary action for writing late justifications for judgments."* ¹¹

Evidence: *Article titled "List of prosecuted and repressed judges. Ziobro's disciplinary ombudsmen in action (Schab, Radzik, Lasota)"*

- 12) *"Jaroslaw Gwizdak. A former judge of the District Court Katowice-Zachód, in 2013-2017 the president of this court, prosecuted for civic activities. He often criticized what was not working 'in the courts. In local elections, he ran for mayor of Katowice from his apolitical movement. Katowice citizens cast 11 percent of the vote for him, which was a big success for Gwizdak. He came in third place. After*

⁹ <https://oko.press/lista-sciganych-i-represjonowanych-sedziow-rzeczniczy-dyscyplinarni-ziobry-w-akcji-schab-radzik-lasota/>

¹⁰ *Ibid.*

¹¹ *Ibid.*



the 2018 election, the judge returned to work at the court. And he immediately attracted the interest of the disciplinary ombudsman, who checked whether the judge, by running for mayor of Katowice, did not break the principle of apoliticality of judges. Except that the law does not prohibit judges from running in local elections"¹².

Evidence: *Article titled "List of prosecuted and repressed judges. Ziobro's disciplinary ombudsmen in action (Schab, Radzik, Lasota)"*

- 13) *"Aleksandra Janas. Judge of the Court of Appeal in Katowice, prosecuted for her jurisprudential activity and for the implementation of the CJEU judgment. Judge Janas in mid-December 2019 heard an appeal against a divorce verdict with Judge Irena Piotrowska and another judge who was promoted to the Court of Appeal by the new National Judicial Council. And as a result, the two judges asked a legal question to the Supreme Court about the status of the judge promoted by the new National Judicial Council and whether the judgments issued by him are legal. In this way, they implemented the CJEU judgment concerning the new National Judicial Council and the Disciplinary Chamber. The ombudsman promptly, on the very second day after the questions were asked, instituted proceedings against them, and a few days later brought disciplinary charges against them. He deemed the investigation into the legality of the new National Judicial Council an abuse of power."¹³.*

Evidence: *Article titled "List of prosecuted and repressed judges. Ziobro's disciplinary ombudsmen in action (Schab, Radzik, Lasota)"*

- 14) *"Arkadiusz Krupa. A judge from the District Court in Łobza, prosecuted for his educational activity for young people. He is known for his satirical cartoons about the justice system published in Rzeczpospolita and on the blog Blind Eye of Temida. The disciplinary ombudsman prosecuted him in 2018 for participating in a trial simulation for young people at Owsiak's festival. The ombudsman did not like the fact that the judge in the trial simulation appeared in a judge's robe and with an eagle chain. Ultimately, after criticism in the press, the disciplinary ombudsman withdrew from prosecuting Judge Krupa"¹⁴.*

Evidence: *Article titled "List of prosecuted and repressed judges. Ziobro's disciplinary ombudsmen in action (Schab, Radzik, Lasota)"*

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*



- 15) *"Rafał Lisak. Judge of the Regional Court in Krakow, prosecuted for his adjudicative activities. A disciplinary ombudsman has charged him for trying to investigate the legality of the new National Judicial Council "* ¹⁵.

Evidence: *Article titled "List of prosecuted and repressed judges. Ziobro's disciplinary ombudsmen in action (Schab, Radzik, Lasota)"*

- 16) *"Rafał Maciejewski. Judge of the Regional Court in Łódź, prosecuted for criticizing the "good change" in the courts. The disciplinary ombudsman did not like his online article on the website sędziowlodzcy.pl, in which he described the staff collapse in the Łódź court. And for that he charged him with disciplinary action in 2019"* ¹⁶.

Evidence: *Article titled "List of prosecuted and repressed judges. Ziobro's disciplinary ombudsmen in action (Schab, Radzik, Lasota)"*

- 17) *"Ewa Malinowska. (...) Judge Malinowska is committed to defending free courts. The disciplinary ombudsman charged her in December 2019 for the fact that, while giving her opinion on a judge's candidacy for promotion by the new National Judicial Council, she criticized judges who were applying for such promotions. Moreover, by citing legal authorities, she undermined the legality of the new National Judicial Council"* ¹⁷.

Evidence: *Article titled "List of prosecuted and repressed judges. Ziobro's disciplinary ombudsmen in action (Schab, Radzik, Lasota)"*

- 18) *"Krystian Markiewicz. (...) Markiewicz has his second disciplinary action for undermining the legality of the new National Judicial Council and for calling on judges to ignore the Disciplinary Chamber at the Supreme Court appointed by the Law and Justice party. He received 55 disciplinary charges for that in December. The strike against Markiewicz is intended to deter other judges from criticizing the "good change" in the courts."* ¹⁸.

Evidence: *Article titled "List of prosecuted and repressed judges. Ziobro's disciplinary ombudsmen in action (Schab, Radzik, Lasota)"*

- 19) *"Ewa Mroczek. Judge of the District Court in Działdów, prosecuted for adjudicative activity. The judge in 2019 was summoned to explain one of the rulings she made. The disciplinary ombudsman did not like the fact that she discontinued a*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*



locally high-profile prosecution case. The judge dropped it because the prosecution made mistakes. This case could only be an excuse to prosecute the judge. Mroczek coolly accepted the new president of the court nominated by Minister Ziobro. At one of the meetings she also did not shake hands with the deputy disciplinary ombudsman, Michał Lasota, who comes from Działdów. Moreover, the judge was involved in defending the independence of the judiciary"¹⁹.

Evidence: *Article titled "List of prosecuted and repressed judges. Ziobro's disciplinary ombudsmen in action (Schab, Radzik, Lasota)"*

20) *"Marek Nawrocki. Elbląg District Court judge prosecuted for adjudicative activity. A judge may face disciplinary action for being on the panel that in 2019 issued a ruling finding that proceedings in one of Judge Michał Lasota's cases were protracted. It is not insignificant that Lasota is also the deputy disciplinary ombudsman"²⁰.*

Evidence: *Article titled "List of prosecuted and repressed judges. Ziobro's disciplinary ombudsmen in action (Schab, Radzik, Lasota)"*

21) *"Olsztyn judges. Judges from the Appeals Division of the Olsztyn Regional Court are being prosecuted as a group for their ruling activities. It concerns seven judges: Krystyna Skiepmo, Bożena Charukiewicz, Agnieszka Żegarska, Ewa Dobrzyńska-Murawka, Dorota Ciejek, Jacek Barczewski and Mirosław Wieczorkiewicz. The disciplinary ombudsman did not like the fact that they submitted legal questions to the Supreme Court concerning the legality of the new National Judicial Council. He even wanted to remove them from the bench, but was unsuccessful"²¹.*

Evidence: *Article titled "List of prosecuted and repressed judges. Ziobro's disciplinary ombudsmen in action (Schab, Radzik, Lasota)"*

22) *"Judges from the Piotrków Trybunalski district. A collective disciplinary action is threatened here against 15 judges from district courts subordinate to the Regional Court in Piotrków Trybunalski. For what? For signing a letter to the OSCE regarding correspondence presidential elections scheduled for May 2020. The judges appealed to the OSCE, among others, to monitor these elections. The case is being investigated by the deputy disciplinary ombudsman at Piotrków court Anna Gąsior-Majchrowska, who was promoted under the current government. She has*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*



*requested explanations to the judges from, among others, Judge Tomasz Marczyński of the court in Belchatów, who is vice president of Iustitia."*²².

Evidence: *Article titled "List of prosecuted and repressed judges. Ziobro's disciplinary ombudsmen in action (Schab, Radzik, Lasota)"*

23) *"Dorota Zabłudowska. Judge of the District Court of Gdańsk-Południe, prosecuted for activity in and for activity in defense of independent courts. She is a member of the Iustitia board. The disciplinary ombudsman is prosecuting her for accepting the Gdańsk Equality Award from the Mayor of Gdańsk Paweł Adamowicz. In 2019 the ombudsman demanded an explanation from her."*²³.

Evidence: *Article titled "List of prosecuted and repressed judges. Ziobro's disciplinary ombudsmen in action (Schab, Radzik, Lasota)"*

24) *"Judge Marzanna Piekarska-Drązek, who is threatened with disciplinary or even criminal charges for issuing the precedent-setting judgment in the case of Igor Tulei, was not frightened by Ziobro's men. She wrote back that she will not be intimidated and will continue to be an independent judge. (...) As we revealed in OKO.press, in June 2021 Michał Lasota summoned Marzanna Piekarska-Drązek to make a statement "concerning the action questioning the existence of official relations of judges, the effectiveness of their appointment and the legitimacy of the constitutional body of the Republic of Poland. Attorney Lasota did not like the fact that this panel of the Court of Appeal, in ruling that Judge Tuleya is still an active judge, questioned the status of the illegal Disciplinary Chamber."*²⁴.

Evidence: *Article titled "'Judicial service is not servility' - Judge Piekarska-Drązek to Michał Lasota, Ziobro's man".*

VI. EXCLUSION OF GUILT IN THE PRESENT CASE

46. If the court erroneously assumes that my action meets the features of the crime referred to in article 212 of the Criminal Code, I cannot be convicted of it due to the content of article 28 § 1 of the Criminal Code, which introduces the institution of mistake as to the features of a forbidden act.
47. According to article 28 § 1 of Criminal Code „An act committed by anyone who is mistaken about the circumstances constituting a feature of a prohibited act is not deemed an

²² *Ibid.*

²³ *Ibid.*

²⁴ <https://oko.press/sluzba-sedziowska-to-nie-sluzalczosc-sedzia-piekarska-drazek-do-michala-lasoty-czlowieka-ziobry/>

intentional offence". From the point of view of the application of this provision, it is irrelevant which of the circumstances constituting the feature of the prohibited act was the subject of the mistake. The mistake may therefore relate to the good constituting the object of protection, the occurrence of the effect or the specific manner in which the good was attacked.

48. As indicated above, both at the time of writing my letter to European Commissioner Vera Jourova and of writing this reply, I am of the opinion that the attribution of an action falling within disciplinary ombudsman of the judges of common courts's *modus operandi* to one of the persons holding that office cannot have the effect of *"humiliating that person in public opinion or exposing him to the loss of confidence necessary for the holding of that office"* and therefore that my action could not lead to an abstract exposure to the risk of occurrence of such an effect. I emphasise again, in line with the Supreme Court's order of 9 October 2001, that in order to commit a crime under article 212 of the Criminal Code, it is necessary for the information contained in the defamation to be objectively capable of producing the indicated effect²⁵.
49. The actions of the disciplinary ombudsman of the judges of common courts, which are indicated in paragraph 43 of this response, clearly indicate that my position is justified and is reflected in the factual background of the repressive actions taken against the judges of common courts.

VII. EXCLUSION OF UNLAWFULNESS OF DEFAMATION IN THE PRESENT CASE

50. Finally, in the event that it is erroneously assumed that attributing the actions of the disciplinary ombudsman of the judges of common courts to one of the persons holding this position is objectively untrue, it is impossible, by virtue of article 29 of the Criminal Code in connection with article 213 § 2 of the Criminal Code, to prove that my actions were unlawful.
51. According to article 29 of the Criminal Code *„No offence is committed by anyone who performs a prohibited act in the justified but mistaken conviction that there are circumstances excluding unlawfulness or guilt; if the offender's mistake is unjustified, the court may apply an extraordinary mitigation of the penalty."*. One of the provisions excluding unlawfulness is the provision of article 213 § 2 of the Criminal Code, which includes the exception of permissible criticism of public persons, as well as criticism in defense of a socially justified interest. In the case of a crime committed in public, all that is needed is that the accusation made is true.

²⁵ Supreme Court decision of 9 October 2001, IV KKN 78/97, Legalis.



52. As I indicated in paragraphs 22-23 of this response, I took all necessary steps to verify who requested that the file in Judge Paweł Juszczyżyn's case be handed over. From the information I obtained, indeed, it appeared that the file had been forwarded to the deputy disciplinary ombudsman of the judges of common courts, Przemysław Radzik.
53. The Constitutional Tribunal in the judgment of 12 May 2008, ref. SK 43/05 stated that *"in every country with a democratic system, a public person must take into account the fact that his actions are closely watched by public opinion, which is a natural consequence of critical statements"*. Private Prosecutor Przemysław Radzik is a person holding a public function, therefore critical statements about his conduct as a deputy disciplinary ombudsman of the judges of common courts in this case does not constitute grounds for punishment under article 212 § 1 or § 2 of the Criminal Code. This is, inter alia, the difference between a liberal democracy and an authoritarian or totalitarian system.
54. In addition, the information I sent to European Union Commissioner Vera Jourova about the actions of the deputy disciplinary ombudsman for judges of common courts served to protect a legitimate public interest in the rule of law and the independence and autonomy of judges in Poland. This is evident from the very introduction of my letter to Vera Jourova, in which I communicated that *„I would like to take the liberty of troubling you in my capacity as the lawyer representing two Polish and European judges, namely Paweł Juszczyżyn and Igor Tuleya, who are being repressed in Poland for expressing legal views while invoking European Union law that are not in line with the expectations of the Polish executive branch. I would like to present you with some facts in the cases in which Counselor Katarzyna Zarzycka and I are representing Judges Juszczyżyn and Mr Tuleya. These facts prove that the **independence of the Polish and European judiciary is being ferociously assailed by the executive branch in Poland**"*.
55. The actions of the deputy disciplinary ombudsman for the judges of the common courts that I highlighted in my letter to Commissioner Vera Jourova lead directly to a violation of citizens' rights to a court, and thus of the public interest, and may also affect the behavior of other judges. There is no doubt that the awareness of other judges that they, too, may find themselves in a situation similar to that of Mr. Paweł Juszczyżyn and the judges of the District Court in Bydgoszcz who ruled in favor of Mr. Paweł Juszczyżyn if they do not act in a manner consistent with the expectations of the executive power, clearly impedes judicial independence, particularly in respect of cases in which the state is a party. From the perspective of public interest, and in particular the protection of the right of citizens to a court (Article 45 paragraph 1 of the Constitution of the Republic of Poland) and the protection of the principle of judicial independence (Article 178 paragraph 1 of the Constitution of the Republic of Poland), which are the foundations of the legal order of the Republic of Poland, it is therefore very important to publicise the

actions of the disciplinary ombudsman of common court judges and his deputies. This aims to defend a socially justified interest and, pursuant to Article 213 § 2 point 2 of the Criminal Code, excludes the possibility of punishment for committing an offence of defamation.

56. Finally, there is no doubt that a person holding the position of disciplinary ombudsman for the judges of the common courts is a person performing a public function, which follows directly from the wording of Article 115 § 19 of the Criminal Code and Article 115 § 13 point 3) of the Criminal Code.
57. In the present case, reference is made not only to the possibility of a mistake as to the circumstance excluding unlawfulness with respect to the truthfulness of the allegation, which is required for the application of the justification under Article 213 of the Criminal Code, but also to the possibility of a non-statutory justification of the right to permitted criticism. As indicated in the judgment of the Supreme Court of 17 May 2017, this possibility refers to such situations in which the criticism is necessary²⁶. There is no doubt that such a situation is the need to defend a legitimate interest, which is the defense of the legal order in Poland.

VIII. ABSENCE OF THE FEATURES OF THE PROHIBITED ACT

58. Pursuant to article 17 § 1 point 2 of the Code of Criminal Procedure proceedings shall not be instituted and instituted proceedings shall be discontinued if the act does not contain the features of a prohibited act. This term refers to a situation when an act has admittedly taken place, but it lacks the features that would allow ascertaining that it is a prohibited act, i.e. it displays all the characteristics of a specific type of a prohibited act. Thus, such an act is deprived of the characteristic of social harmfulness at all²⁷.
59. As emphasized by the Court of Appeals in Katowice in 31 October 2012, ref. no. II AKz 626/12, *"the court may discontinue the proceedings at a sitting in accordance with article 339 § 3 point 1 of the Code of Criminal Procedure during preliminary examination of the indictment, and thus declare the presence of a situation covered by article 17 § 1 point 2 of the Code of Criminal Procedure, when the evidence itself, the description of the act and the factual circumstances clearly show that the statutory features of the prohibited act are missing"*²⁸.

²⁶ Judgment of the Supreme Court of 17 May 2017, III KK 477/16, KZS 2017, No. 9, item 11.

²⁷ See *K.T. Boratyńska, A. Górski, A. Sakowicz*, Kodeks postępowania karnego. Komentarz. Ed. 6, Warszawa 2015.

²⁸ See the decision of the SA in Katowice of 31 October 2012, II AKz 626/12, LEX No. 1285294.

60. The evidence in the case, the description of the act and the facts clearly and unequivocally show that my action did not fulfill the statutory elements of any type of criminal act, both in terms of object and of subject matter.

With reference to the above, I make a request as in introduction.

Prof. Dr. Michał Romanowski
Lawyer accused of fighting to create an chilling effect on judges