



## NEWSLETTER AEQUITAS (Nr 2)

May 24, 2025

### THE EUROPEAN COURT OF HUMAN RIGHTS CONFIRMED THE STATUS OF JUDGES OF THE SUPREME COURT

The European Court of Human Rights published its decision of 1 April 2025 on the inadmissibility of the complaints in **the case of Manowska and Others v. Poland (application no. 51455/21)**. The complaint concerned the violation of the applicants' rights by the Supreme Administrative Court, which failed to notify the applicants of the ongoing proceedings concerning an appeal against the decision of the National Council of the Judiciary to present candidates to the Supreme Court to the President of the Republic of Poland.

In tiret 106, the Court noted that since the Supreme Administrative Court could not challenge the decision of the President of the Republic of Poland to appoint the applicants to the office of judge, the proceedings had no impact on their status or rights and dismissed the complaints. Once again, the European court recalled that the appointment of a judge is made by the President of the Republic of Poland, and this decision is not subject to appeal.

### THE CZARNE MUNICIPALITY COUNCIL SUPPORTED THE PETITION OF OZS AEQUITAS

In March 2025, OZS AEQUITAS sent a petition to all municipalities, describing the flagrant violation of the constitutional principle of judicial independence by the currently proposed bills "restoring the rule of law", the consequences of questioning the legality of judicial appointments after 2017, and indicating specific court decisions, from which - contrary to the narrative pushed by the Ministry of Justice and the association of judges IUSTITIA - it follows that **judicial appointments granted by the President of the Republic of Poland at the request of the National Council of the Judiciary, shaped by the provisions of the Act of 8 December 2017, are valid.** Some municipal councils forwarded the petition to the Prime Minister, the Speaker of the Sejm, the Speaker of the Senate, the Minister of Justice and the Commissioner for Citizens' Rights.

In general, the petition was met with a positive response, as evidenced by the position of, among others, the Czarne Commune Council in Czulchów County. Both the petition and the position of the Czarne commune councilors can be read in the article posted on DzieńDobryPomorze.pl at the link below::

[https://dziendobrypomorze.pl/pl/707\\_samorzad/71508\\_terechow-nad-petycja-ogolnopolskiego-zrzeszenia-sedziow-aequitas-nalezy-sie.html?fbclid=IwY2xjawKdM\\_ZleHRuA2FlbQlXMQBicmlkETBXejVrTEp3dGZBWkNMWHRnAR6gpxm9SCG4KqhUhq4GP5TApfU9fyFiKyDfSod2e-S-ugy- tafxMxl6oUgGZw\\_aem\\_kw4ek4p1tzgSJ94tjfAfBQ#goog\\_rewarded](https://dziendobrypomorze.pl/pl/707_samorzad/71508_terechow-nad-petycja-ogolnopolskiego-zrzeszenia-sedziow-aequitas-nalezy-sie.html?fbclid=IwY2xjawKdM_ZleHRuA2FlbQlXMQBicmlkETBXejVrTEp3dGZBWkNMWHRnAR6gpxm9SCG4KqhUhq4GP5TApfU9fyFiKyDfSod2e-S-ugy- tafxMxl6oUgGZw_aem_kw4ek4p1tzgSJ94tjfAfBQ#goog_rewarded)

## POSITION OF THE OMBUDSMAN FOR CIVIL RIGHTS ON THE DRAFT ACT ON RESTORING THE RULE OF LAW IN THE JUDICIARY AUTHORIZED BY THE MINISTRY OF JUSTICE

In the opinion of the Ombudsman, prof. dr hab. Marcin Wiącek:

- the project is based on the erroneous assumption that all judges appointed after 2018 are incorrectly nominated,
- automatic deprivation of the status of a judge, excluding an individualized assessment, will violate the Constitution of the Republic of Poland and European standards.

The Ombudsman also drew attention to the changes in the justification for the project, from which false theses about the case law of the ECtHR and the CJEU were removed, while the content of the provisions remained unchanged. They are still based on the assumption that resolutions of the National Council of the Judiciary established after 2017 on the submission of applications for the appointment of a judge are devoid of legal force. Meanwhile, "it is not true to claim that a judge of any level, solely because of appointment by the new National Council of the Judiciary, is incapable of creating a court established by law or, even more so, that he or she is not a judge at all".

The Ombudsman emphasized that the implementation of the project may lead to a deepening crisis in the justice system.

<https://businessinsider.com.pl/prawo/opinie/te-propozycje-sa-ryzykowne-rpo-punktuje-bledy-ministerstwa-sprawiedliwosci-wywiad/skml3wp>

## JUDGES' PARTICIPATION IN PUBLIC DEBATE AND THE FREEDOM OF EXPRESSION

Deputy Disciplinary Prosecutor at the Court of Appeal in Wrocław, Judge Piotr Krawczuk, as a result of a letter from the President of the District Court in Świdnica, has undertaken explanatory proceedings against Kamila Borszowska-Moszkowska, Judge of the District Court in Świdnica, concerning the circumstances in which the judge undertook activities consisting in cyclical presentations of polemical statements via websites and social media, combined with critical discussions on current problems of the judiciary, as well as controversial comments and views that may be provocative in the perception of a representative part of the judicial community.

The case law of the European Court of Human Rights has developed standards concerning the freedom of speech of judges in public debate, which take into account three elements. Firstly, the admissibility of judges invoking freedom of speech. Secondly, the possibility of also speaking out on systemic issues regardless of their political implications. Thirdly, the need for judges to exercise restraint in exercising freedom of speech. Among the values that may constitute a justification for interference in the sphere of freedom of expression is the need to guarantee the authority and impartiality of the judiciary (Judgment of the Grand Chamber of the ECtHR of 28 October 1999, 28396/95, Wille v. Liechtenstein, ECtHR decision of 8 February 2001, 4793/99, Galina Pitkevich v. Russia, ECtHR decision of 29 June 2004, 6284/00, Hrabín v. Slovakia, ECtHR judgment of 23 June 2016, 20261/12, Baka v. Hungary).

The indicated standards should also be applied to public statements by judges belonging to the Association of Polish Judges IUSTITIA, who have repeatedly used the terms "neo-judge", "disguised", "moral scoundrels" in the media and on social media towards some members of the judicial community, and have compared the judicial service performed by these individuals to "producing counterfeit money". Such statements undoubtedly do not serve the authority and impartiality of the judiciary, as emphasized by the European Court of Human Rights, and undermine public trust in the courts.

## THE JUDGE REMAINED IN HIS POSITION DESPITE HIS RETIREMENT

On May 21, 2025, the National Council of the Judiciary adopted a resolution requiring the Chairwoman to submit a notification of the possibility of a crime being committed by persons from the Ministry of Justice and the District Court in Konin in the case of a judge of that court - Andrzej Szaszkowski. **Before reaching the age of 65, the judge submitted a declaration of his intention to continue to hold the position, to which the National Council of the Judiciary did not consent, and the Supreme Court dismissed the judge's appeal, delivering a copy of this ruling to the National Council of the Judiciary on September 4, 2024, in connection with which the National Council of the Judiciary considered that the judge retired on that date.**

**In March this year, the judge was to receive a letter from the Ministry of Justice with the information that "he remains in the position of judge of the District Court in Konin and is authorized to adjudicate as a judge of that court".** Additionally, the judge receives full remuneration, without performing any judicial activities, although he should receive a salary of 75 percent of his remuneration, which, according to the National Council of the Judiciary, **constitutes an excess of powers.**

## REPAIRING THE COURTS, BUT HOW? – ANALYSIS OF THE SITUATION OF FAMILY COURTS BY JUDGE TOMASZ BROLSKI

On May 20, 2025, **the Dziennik Gazeta Prawna published an article by a member of OZS Aequitas, a judge of the District Court for the Capital City of Warsaw, Tomasz Brolski.** It discussed the reasons for the resignation - in the draft act amending the Act - Law on the System of Common Courts prepared by the Ministry of Justice - from the current exclusion of assessors from adjudicating in family cases. In addition, it presented the situation of family courts in the event of the entry into force of ministerial draft acts regarding the so-called restoration of the rule of law.

**<https://serwisy.gazetaprawna.pl/orzeczenia/artykuly/9802312,asesorzy-sposobem-na-zalatanie-luki-kadrowej-w-sadach-rodzinnych.html>**