**Disciplinary proceedings against judges in the light of the latest amendments to the Supreme Court act.**

**Natalia Hanusek**

Since 2015, there were significant changes in the law in Poland, including the justice system. This legislative activity was undertaken by the previous ruling party (Law and Justice). The described phenomenon was rated negatively by the legal community, as undermining the independence of public institutions and causing their politicization. Additionally, transnational institutions, especially the Court of Justice of the European Union, have identified breaches of the principles of the democratic state ruled by law[[1]](#footnote-1). In 2018, as part of successive amendments, there was a revolution in the system of disciplinary responsibility of judges. It is related, among other things, to changes in the act on the Supreme Court[[2]](#footnote-2). In order to outline the most important issues, it is necessary to introduce the previous shape of the disciplinary procedure.

Disciplinary proceedings against judges are based on the scheme of criminal procedure in Poland. Therefore, it is necessary to maintain appropriate guarantee mechanisms for the accused. The basic law in the described matter is the act on the system of common courts[[3]](#footnote-3), which introduced a fundamental structure for the adjudication of disciplinary cases of judges of common courts in 2001. It is based on the adjudication of appellate courts in the first instance, and the Supreme Court in the second instance. The original categories of disciplinary offenses considered by these courts were clear and flagrant violations of the law (applies to adjudicatory activity) and misconduct to the dignity of the office (violation of the rules of professional ethics, or committing a misdemeanor). Although the introduction of the new law on the Supreme Court (effective 3rd April 2018) maintained the competence of appellate courts to adjudicate in the first instance, it created a new institution within the functioning of the Supreme Court, i.e. the Disciplinary Chamber, which gained competence to adjudicate in principle in the second instance, and in certain cases also in the first.

In February 2020, by amendment to the act on the system of common courts[[4]](#footnote-4), the catalog of general offenses expanded to include further offenses in the form of (1) an act or omission that may prevent or significantly impede the functioning of a judicial body, (2) an act that questions the existence of a judge's official relationship, the effectiveness of his or her appointment, or the legitimacy of the constitutional authority of the Republic of Poland, (3) public activities that are incompatible with the principles of judicial independence and the independence of judges. The above amendment began to be customarily referred to as the ‘Muzzle Law’. Significantly, consideration of violations of this nature in the first instance was within the jurisdiction of the Disciplinary Chamber, as was the adjudication of liability in disciplinary offenses that are both intentional crimes prosecuted by public indictment and intentional fiscal crimes.

The status of the Chamber in question turned out to be problematic, as the members of the body were all judges appointed to positions by the new National Council of the Judiciary. As a result, both domestic and international courts argued that the Disciplinary Chamber was not characterized by independence and that the regulations governing its operation violated the Polish Constitution, as well as EU law[[5]](#footnote-5). Due to particular pressure from the European Commission and the desire to receive funds from the National Reconstruction Plan, by the Act of 15 July 2022 amending the act on the Supreme Court[[6]](#footnote-6), the Disciplinary Chamber was abolished, and the Chamber of Professional Responsibility was established in its place.

With regard to the new chamber, similar remarks can be made to its precursor. This is due to the basically identical scope of competence and problems with the composition of the judiciary, as of the 11 persons appointed by the President of Poland to serve in the Chamber of Professional Responsibility, 6 were nominated by the new National Council of the Judiciary. Also controversial is the requirement for the President to obtain the countersignature of the Prime Minister in the process of nominating judges and the inclusion of jurors in the judicial composition. However, in the literature, the abolition of the Chamber's individuality and its equalization with the other, which report to the First President of the Supreme Court, is viewed positively.

The legislature also decided to introduce the so-called ‘independence test’ in the act on the Supreme Court in order to eliminate doubts about the ability of a particular Supreme Court judge to hear a case. According to Article 29, paragraph 6(2) of the mentioned act, such a test can also be carried out in disciplinary cases. However, the effectiveness of this institution has been questioned in doctrine[[7]](#footnote-7).

This September, the Chamber of Professional Responsibility will have been adjudicated for two years. Statistics kept by the Supreme Court[[8]](#footnote-8) show that in 2022, a total of 736 cases were received for consideration, and only 151 were recognized. In 2023, together with cases from the previous period, there were 1386 cases for consideration, of which 721 were carried over to the next period. However, it should be kept in mind that the Chamber also examines, among other things, cases concerning the responsibility of representatives of other professions (cassation level). In 2022 and 2023, the total number of cases of disciplinary responsibility of judges of the Supreme Court, judges of common and military courts, prosecutors, court assessors and prosecutors recognized by the Supreme Court in the first instance was 72. Of these, completed cases (14) were mostly processed for more than 6 months.

1. See, e.g., Judgement of the CJEU of June 24, 2019 in Case C-619/18; Judgement of the CJEU of November 19, 2019 in Joined Cases C-585/18, C-624/18, C-625/18; Judgement of the CJEU of March 22, 2022 in Case C-508/19. [↑](#footnote-ref-1)
2. Act of 8 December 2017 on the Supreme Court (consol. text, Journal of Laws 2023, item 1093, as amended). [↑](#footnote-ref-2)
3. Act of 27 July 2001 on the system of common courts (consol. text, Journal of Laws 2023, item 217, as amended). [↑](#footnote-ref-3)
4. Act of 20 December 2019 amending the act on the system of common courts, the act on the Supreme Court and some other acts (Journal of Laws of 2020, item 190, as amended), Article 1, item 32. [↑](#footnote-ref-4)
5. See, e.g., Judgement of the CJEU of 15 July 2021 in the case C-791/19; Judgment of the ECHR of 22 July 2021, Reczkowicz v. Poland, 43447/19, HUDOC; Resolution of a formation of the combined Chambers of Civil, Criminal and Labor and Social Insurance of the Supreme Court of January 23, 2020, BSA I-4110-1/20. [↑](#footnote-ref-5)
6. Act of 9 June 2022 amending the Act on the Supreme Court and some other Acts (Journal of Laws, item 1259). [↑](#footnote-ref-6)
7. See, e.g., K. Lipinski, *Statutory test of independence and impartiality of a judge in criminal cases* [*Ustawowy test niezawisłości i bezstronności sędziego w sprawach karnych*], "Palestra" 2022, No. 10; https://palestra.pl/pl/czasopismo/wydanie/10-2022/artykul/ustawowy-test-niezawislosci-i-bezstronnosci-sedziego-w-sprawach-karnych (accessed 26.01.2024). [↑](#footnote-ref-7)
8. <https://www.sn.pl/sprawy/Statystyka_IOZ/Stat_IO_2023.pdf>;<https://www.sn.pl/sprawy/Statystyka_IOZ/Stat_IO_2022.pdf> (accessed 26.01.2024). [↑](#footnote-ref-8)