

SUPREME COURT
of the Republic of Poland
First President of the Supreme Court
Prof. Małgorzata Gersdorf

Warsaw, 19 June 2018

Declaration
of the First President of the Supreme Court in connection with the statement of the Head of
the Cabinet of the President of the Republic of Poland, Krzysztof Szczerski of 10 June
2018.

The question about the truth and its essence is a fundamental issue that has always been considered in various contexts and meanings. It is sufficient to refer to the Gospel of St. John, while the conclusion that the essence of Christianity and humanity is hiding behind this question is also becoming obvious to the modern man. It is not my intention, nor do I feel qualified to take up a discussion on the matter of understanding the truth regarding the functioning of the justice system, either in the religious or in the philosophical dimension, although I am forced to, once again, decidedly oppose the lying insinuations, which are certainly not supported by any facts, targeted at the Supreme Court, which have recently re-emerged in the public sphere. This especially applies to the statement of the head of the Cabinet of the President of the Republic of Poland, Krzysztof Szczerski, who stated in TVP Info on 10 June 2018 that "impunity will end in Poland in July, when the law on the Supreme Court enters into force." He added that "the court system was designed in such a way that the Supreme Court (...), with which a cassation may be filed, was a guarantee, in this personal system, of a certain impunity of some circles".

It is not known whether this assertion is an expression of ignorance, ill will, cynicism or just because it arises from the need to impose a particular message in the discussion on the changes that will take place in the Supreme Court after 3 July 2018. I assume that Dr. hab. Krzysztof Szczerski, a professor of the Jagiellonian University, is a very well-educated man, who still remembers the words of his doctoral oath that he will seek to "discover and spread the truth – the greatest treasure of humanity", all the more so that it not only applies to the development of scientific research, but also broadly-understood public activity, especially since this also refers to behaving in a dignified manner. However, I am aware of the institutional conditions in which the author of the quotation operates, the expression of which is the recent statement by Ms. Zofia Romaszewska, who said that "the president (...) is breaching the Constitution much less than the opposition breached it – if we are talking about breaching it" (interview with RMF FM of 16 June 2018). This is no consolation for a lawyer. This is a type of unique legal "Stockholm syndrome".

But let us start from the beginning. I am leaving aside the fact that the Act on the Supreme Court already entered into force in April, whereas the judges, who did not receive the President's consent to continue to hold their office, are to retire on 4 July 2018. It should also be remembered that the new Act on the Supreme Court does not tolerate such a "structure of the court system in which a cassation may be filed with the Supreme Court." Furthermore, new instruments have been introduced into the Act on the Supreme Court, giving the ability to overrule final court judgments, which will be possible through the institution of the extraordinary complaint. Therefore, in my opinion, Dr. hab. Krzysztof Szczerski's statement confirms the argument that I have put forward for months, that all these changes in the justice system are not about any social good, but purely about the replacement of staff, in accordance with the infamous rule that (implicitly – favourable) staff are the most important. After all, this is evidenced by the new membership of the Constitutional Tribunal.

When, at today's stage of the dispute about the constitutionality of the Acts changing the Supreme Court, it is stated that neither the First President of the Supreme Court nor any other body can question the breach of the constitution and if they think so, they should approach the Constitutional Tribunal, this is an ordinary mockery of the common sense, because nobody has any doubts that the current Constitutional Tribunal is not fulfilling its systemic functions. Perhaps shortly, the Supreme Court will work with similar efficiency and effectiveness for the good of the "new" Republic of Poland, or at least its two new chambers (in fact "supercourts"), just as the Constitutional Tribunal, will take care of "justice" in the court judgements and the impeccable attitude of the adjudicating judges with due diligence.

Dr. hab. Krzysztof Szczerski's statement ideally suits this trend of narrative about the justice system, although he does not explain what this "certain impunity" was to have involved and to which "some environments" it applies. It can be seen that there is an intellectual bond with the statements made by Prime Minister Morawiecki, who, a few days earlier, stated in a similar manner and without any justification, that, in the court in Kraków, "everything points to the fact (...) that an organized criminal group was operating there" (statement of 13 June 2018). After all, Prime Minister Morawiecki has repeatedly spoken out about the courts without any grounds in reality, which were later corrected by the Supreme Court (see, for example, the article in the Washington Examiner, the statement on the release of S. Kociółek from criminal liability). This is pure hypocrisy, both from a legal and simply a human point of view, which could also just as well be described as an insult of the Polish public.

It is also worth noting that, contrary to the presidential minister's assertions, in July 2018, when Article 111 of the Act on the Supreme Court is to take effect, the retirement of judges of the Supreme Court who had turned 65 before 3 April 2018 may, at most, lead to a catastrophic collapse in the judicial activity of the Supreme Court. Ignoring the fact that it obviously breaches the principle of the irremovability of judges expressed in Article 180, para. 1 of the Constitution, to give it the context, it is worth referring at this point to the words of judge Leszek Mazur, chairman of the so-called new National Council of the Judiciary, elected to this body by the Sejm of the 8th term of office. Although I still uphold my reservations about the membership of the National Council of the Judiciary, I must, again, agree with his statement. In an interview for Radio Olsztyn, given on 14 June 2018, he stated that "with individual terms of office and the replacement of its membership, it is possible to exchange experiences and information. We do not have such an opportunity and we have to learn everything from the beginning. Errors are inevitable (...)".

The ruling party is heading towards the same with the Supreme Court. Only that the effects of the mistakes made as a result of the lack of the natural exchange of experiences and information between the current and the new judges will be much more noticeable to the citizens than those committed in the National Council of the Judiciary or the Constitutional Tribunal. However, what is most unpleasant and reprehensible in Minister Szczerski's statement is the gross breach of the good reputation of the judges of the Supreme Court, who turned 65 before 3 April 2018. This is because it is their retirement that is supposed to bring "an end to a certain impunity". It should be expected that statements formulated by people holding prominent positions, let alone representatives of science, should not breach the personal rights of others, particularly in such a way as this took place. It can only be remembered that a judgement (albeit non-final) was recently passed confirming the State Treasury's liability for damages for such statements formulated by the representatives of the authorities (see the proceedings filed by one of Warsaw's judges against the State Treasury – the Minister of Justice). Perhaps, if it becomes final, the Extraordinary Control and Public Affairs Chamber will not remain. And perhaps, this is what this so-called reform

is about. Then, it will be possible to rule on behalf of the Nation with complete impunity. I hope I am wrong, but it seems to me that it will then be possible to say that the "impunity of certain circles" started in July 2018. Even so, the grace and the will of the Nation is not eternal, it can be capricious and unpredictable. Even if this does not happen soon, historical experience shows that it is a matter of time when those in power lose it. Let us hope the Nation will not then want to assess their actions according to the undemocratic and unconstitutional measures that they themselves are forming today by way of the narrative created and legal instruments adopted.

A handwritten signature in blue ink, appearing to read "Miguel Ángel", written in a cursive style.