**Defamation lawsuits in Poland against Professor Wojciech Sadurski, as of 20 September 2020**

1. **Private criminal indictment by Polish public television TVP, under Article 212 of the Criminal Code (defamation), 24 September 2020 at 13:30, Local Court (Sąd Rejonowy) in Warsaw, 14th Criminal Department, ul. Ogrodowa 51 a, courtroom 524; case no. 181/19.**

The indictment is based on an allegation that WS committed intentional and deliberate defamation of TVP by saying, in a tweet, that a politician was killed after he had been hounded by governmental media, and that no democrat and opposition politician should enter the premises of that media company. The indictment claims that WS’s tweet suggests that TVP had an impact on the tragic events connected with the death of Gdańsk Mayor Mr Paweł Adamowicz [murdered in Gdańsk on 13 January 2019]. The indictment further claims that the defamation by WS could lower the reputation of TVP in the eyes of the general public, affect its commercial standing, and have a negative impact on its commercial partners, in particular advertisers. TVP demands that, as a criminal penalty, WS pay the sum of PLN 10 thousand [approx. EUR 2500] to a charity WOŚP. The offence of which W. Sadurski is indicted can attract, in addition to a fine, a penalty of up to 1 year in jail. In determining the penalty, the judge is not bound by the penalty sought by a private accuser.

The case went to trial on a procedural motion by WS’s lawyer, and a first instance judge in Warsaw quashed the case on 18 March 2019. However, the accuser (TVP) lodged an appeal alleging serious legal errors by the judge of first instance. The court of appeal agreed with TVP and remanded the case for reexamination by a court of first instance which will consider it on the merits. **The hearing is currently set for 24 September 2020 at 13:30,** .

1. **Civil defamation suit by Polish public television TVP against W. Sadurski, lodged in the District Court [Sąd Okręgowy] for Warsaw on 20 March 2019, case no. XXIV C 276/19, pending.**

This civil suit is based on identical charges to the criminal indictment, see above. The facts of the case are identical, and the arguments are the same. The legal basis is Article 24 of the Civil Code (protection of personal rights). The plaintiff demands a public apology (including in the main Polish online portal Onet.pl, which is extremely expensive; currently assessed at approx.. PLN 100 000 (EUR 25 000), as well as payment of PLN 20,000 (EUR 5000) to a nominated charity.

The first hearing was initially set for 28 January 2020 but was adjourned in the last moment without any reasons being provided; for a report by Professor John Morijn on the non-trial, see

<https://verfassungsblog.de/a-trial-that-wasnt-an-impact-that-was/>

Currently there is no new date set for the hearing.

1. **Civil suit by Prawo i Sprawiedliwość (PiS) i.e. Law and Justice Party (plaintiff) against Professor Wojciech Sadurski (University of Sydney and University of Warsaw). Case number II C21/19, suit lodged on 21 January 2019 in the District Court for Warsaw, 2nd Civil Law Department.**

A suit “for protection of personal rights ” [in Polish ”pozew o ochronę dóbr osobistych”] under Articles 23 and 24 par. 1 of Civil Code.

The first court hearing took place in Warsaw on 27 November 2019. W.Sadurski attended court in person, and was cross-examined as to the circumstances of his statement which was the basis of the suit by the plaintiff. The meeting concluded with judgment to be delivered on 16 December 2019. On 16 December, the trial was adjourned to 23 March 2020. The March hearing was further adjourned to 15 June 2020. **Eventually the judgment was delivered on 18 June 2020 and Judge Sylwia Urbańska dismissed the suit by PiS in its entirety.** The judgment is open to appeal and lawyers for PiS announced that they would appeal.

The initial hearing was observed by a large public, foreign observers (Professor John Morijn, Commissioner of The Netherlands Institute for Human Rights, Professor Dimitry Kochenov, University of Gronigen), Ms Joanna Szymańska, a representative of Article 19 who attempted to lodge an amicus curiae (for unclear procedural reasons, it was not accepted by the Court. For Professor Morijn’s extensive report of the hearing and about the background to the case, see <https://verfassungsblog.de/supporting-wojciech-sadurski-in-a-warsaw-courtroom/>)

**Factual basis:** W. Sadurski published a text on Twitter (10 November 2018) characterizing PiS as “an organized criminal group”. The tweet called upon citizens to boycott a so called “Independence March” to be held in Warsaw. The full text read: “If anyone still had any doubts, after the maneuvers of the past two days this much should be clear: no honest person should go in a parade of defenders of the White race, who have hidden for a moment their “falangas” [a neo-Nazi symbol] and swastikas, in collusion with the organized criminal group PiS”.

**The plaintiff demanded:**

1. A public apology, the text of which reads: “I apologize to the political party Prawo i Sprawiedliwość for unlawfully calling it an organized criminal group on 28 November on Twitter. I declare that there were no grounds for formulating such a description. I regret that, as a result of my unlawful actions I have groundlessly breached the good name of the Law and Justice Party”. The apology is to be placed on Twitter, as a pinned tweet, for 14 days”;
2. An injunction restraining the defendant from making any future statements which imply that the activities of the party PiS may be in any way compared to any criminal activities;
3. Payment of PLN 20 thousand [approx. EUR 4600, US $ 5230] to a nominated charity (a hospice in the town of Białystok);
4. Payment of all legal costs and costs of legal representation.

**Reasons for the judgment dismissing the suit (summary):**

General: Comparing the modus operandi of PiS ([Law and justice, currently the ruling party in Poland) to the functioning of an organized criminal group was a metaphor and is within the boundaries of permitted criticism. The suit was dismissed. The judgment is appealable.

Specific points made by Judge Sylwia Urbańska:

* The use of metaphor (comparing a party to an organized criminal group) was an expression of opinion about the abuse of the state apparatus by a political party for its own purposes, making use of nondemocratic methods;
* Judge Urbańska referred to the Constitution of Poland (Art. 54), international human rights conventions, case law of the Polish Supreme Court and of the European Court of Human Rights (ECtHR)
* The court explained that it must weigh and balance two values: freedom of speech and the right to a good name;
* The court emphasized the key importance of freedom of expression in democratic societies - which extends to statements which may be shocking and harsh - because this is required by pluralism;
* The court found that the expression by Wojciech Sadurski (WS) was an expression of opinion. It was a metaphor, a comparison, and not a statement of fact;
* The statement by WS was on Twitter, i.e. a medium characterized by brevity and immediate responses. Such a medium may justify sharper statements;
* The situational context is also important. WS’s statement was made on the eve of the “Independence March” of 11 November 2018 [Poland’s Independence Day], an event which in Poland regularly triggers great emotions, especially after the March a year before, in 2017. At that time, the Judge recalled, foreign media and the European Parliament had found that it was one of the most significant assemblies in Europe of a fascist, nationalistic, xenophobic character;
* WS’s Tweet revealed his emotional attitude to the planned Independence March; it is framed in terms of “decency”; it is an opinion in terms of right and wrong. It is clear that a person who holds such opinions must not remain passive and inactive if they are to act decently;
* The statement by WS may be disliked, might shock and irritate, but this is a matter of taste and culture rather than legal prohibitions;
* Another important factor is that the defendant is a critic of a ruling party; according to the judge it is one of the implications of ECtHR’s case law that there are some groups which have a slightly broader space in public discourse: journalists, politicians, and active participants in public discourse, who express criticism of the authorities. The same case law implies that politicians, public figures and political parties must be prepared to cope with harsher criticism. In particular, this applies to a ruling party which must tolerate criticism of itself and of its members, and in this context Judge Urbańska referred to several ECtHR cases against Poland which established such standards of freedom of expression.

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**General**

All these cases sparked multiple responses and reactions from scholarly and human rights institutions, NGOs, think tanks etc around for the world. They include (a non-exhaustive list):

# Statement by International Bar Associations’s Human Rights Institute, of 27 July 2020, “IBAHRI calls on Poland to drop charges against law professor Wojciech Sadurski”

<https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=7A170A98-C4E7-44FB-98DA-84D6A16F6DF9>

1. Article 19 (and six other International NGOs) statement of 11 June 2020: “Poland: SLAPP suits against Professor Sadurski should be dropped”, <https://www.article19.org/resources/poland-slapp-suits-against-professor-sadurski-should-be-dropped/>
2. “Open Letter in Support of Professor Wojciech Sadurski”, signed by over 700 scholars, 6 May 2019, Verfassungsblog, <https://verfassungsblog.de/open-letter-in-support-of-professor-wojciech-sadurski/>
3. Open letter: “Stand with Wojciech Sadurski: his freedom of expression is (y)ours”, signed by 350 scholars, Verfassungsblog 18 November 2019, <https://verfassungsblog.de/stand-with-wojciech-sadurski-his-freedom-of-expression-is-yours/>
4. The cases are mentioned in the Greenpeace report about SLAPPs (Strategic Lawsuits Against Public Participation) of July 2020, <https://storage.googleapis.com/planet4-eu-unit-stateless/2020/07/20200722-SLAPPs-Sued-into-Silence.pdf>