



*Aleksandra Sołtysińska, Judge, District Court in Cracow
Riga, 21 June 2024*

CASE STUDY FOR THE WORKING GROUP ON THE GREY AREAS OF JUDICIAL INDEPENDENCE

Please read carefully in advance of the working group on 21 June 2024.

Judge Kowalski is a district court judge in a member state of the European Union. He presides over criminal cases and specializes in criminal judicial cooperation in the European Union. He is also an active member and spokesperson for the National Association of Judges. In addition, Judge Kowalski is involved in academic activities and is employed part-time at the University. He specializes in the economic law of the European Union. According to national law, a judge may not engage in outside employment except for academic and teaching activities. Permission for additional work must be obtained from the president of the court.

The judge is the father of two children, one of whom has leukemia. Judge Kowalski and his wife are members of the Leukemia Patient Support Association.

In his professional and personal life, Judge Kowalski encounters difficult situations that he must deal with in an appropriate manner.

Look at the following events and discuss with your working group members how the judge in question should act from the perspective of the grey areas of judicial independence. Which elements and arguments are relevant in your opinion?

- 1) The judge was offered to give a lecture on EU economic law to lawyers. The honorarium for the lecture was to be paid by the Bar Association. Among those attending the lecture were lawyers representing defendants in cases before Judge Kowalski. During a coffee break, one of the defense attorneys, who is also a deputy, initiated a conversation with Judge Kowalski about proposed changes to the rules governing the preparation of sentencing memoranda. The interlocutor wanted to obtain Judge Kowalski's opinion on the matter in order to present it to his party's club.
- 2) Judge Kowalski was invited by a well-known international law firm to write a legal opinion on EU economic law to be presented to another court in another city in support of the position of the party represented by the said law firm. Judge Kowalski asked the president of the court for permission to write the legal opinion. The Court President asked the judge to supplement the request by stating the fee offered. Judge Kowalski indicated the fee offered, but the court president disagreed, claiming that writing an opinion for an international law firm would undermine the judge's independence. The President of the Court informed the judge that his decision could not be appealed.

- 3) In the context of judicial cooperation in criminal matters in the EU, Judge Kowalski received a request from one of the murder convicts, who has dual citizenship, to transfer his sentence to be served on the territory of the Italian Republic. In a preliminary examination of the case, Judge Kowalski found that the convict could apply for the transfer of his sentence on the basis of his citizenship in the Italian Republic. Judge Kowalski knew from hearsay that the convict had threatened other judges that he would shoot them when he left prison. Some judges had even spoken to him, raising the possibility that, under Italian law, the convict could apply for conditional early release. Judge Kowalski wants to settle the case as soon as possible because the convict regularly calls the court from prison to ask when his case will be heard.
- 4) In connection with another case involving the execution of a European arrest warrant, Judge Kowalski was visited by a lawyer friend who asked that the case not be scheduled quickly because his client wanted to get his family affairs in order before leaving. Judge Kowalski began to wonder if he should exclude himself from hearing the case, since he knows the defense attorney and they sometimes ride bikes together.
- 5) Reflecting on subsequent cases, Judge Kowalski noted that one of them involved events told to him by a doctor friend whom he regularly visits with a child suffering from leukemia. The doctor told him about a case of murder in a family where his cousin was murdered by her partner out of jealousy.
- 6) In connection with the recent judicial reforms, Judge Kowalski was required:
 - to disclose all associations to which he belongs,
 - to disclose the nationality of his wife,
 - to disclose his assets and place of residence.The above information was made public.
- 7) In addition, the National Legislature decided that due to the difficult situation caused by the negative consequences of the COVID-19 pandemic, the salaries of judges and prosecutors for the fiscal year should be reduced by 20%.
- 8) As a spokesman for the National Association of Judges, Judge Kowalski began to speak negatively about the judicial reforms and the reduction of judges' and prosecutors' salaries. Judge Kowalski also began to express his opinions on his Facebook and Instagram pages.
- 9) Judge Kowalski, together with other judges, began to conduct educational activities to inform the public about the situation of the judiciary.
- 10) The President of the Court was not satisfied with the judges' educational activities or their media statements and issued an order that each judge who decides criminal cases must decide 50 cases within six months. Judges who fail to issue a sufficient number of rulings may be subject to disciplinary action.
- 11) In addition, the president of the court decided to transfer Judge Kowalski to the civil division. Judge Kowalski did not agree to the transfer, but the court president decided that the judge's consent was not required. At the same time, the President of the Court issued an order requiring the judges transferred to another department to complete all cases previously assigned to them.

12) When hearing European arrest warrant cases, Judge Kowalski found that many judges executing warrants in other Member States approached him with detailed questions about the status of the judge who issued the warrant and the status of the judges who will decide on the defendant sought by the European arrest warrant. The questions concerned the circumstances of appointment, promotion and possible disciplinary proceedings and transfer to other departments. Under current law, Judge Kowalski had no authority to review the status of other judges. Judge Kowalski was aware of the negative consequences of the judicial reform, but became concerned that allegations about the status of judges were being raised by defendants solely to avoid criminal liability.

Please consider what remedies are available to judges who believe their independence is being undermined?

Does independence only relate to the right to a fair trial when the court is required to meet the condition of independence?

Is there a subjective right to independence?



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