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## **Not-so-hypothetical cases on the rule of law and judicial independence**

### **I. European Arrest Warrant**

B.W. a national of a Member State is accused by public prosecution of committing several violent acts, punishable with imprisonment. The competent authority of the country where the acts were committed issued a European Arrest Warrant, requesting the country of the suspect's residence to surrender him for the purpose of criminal proceedings.

The suspect questions the admissibility of the warrant pointing out to the following facts concerning the requesting country:

- the fact that the Minister for Justice is now the Public Prosecutor, that he is entitled to play an active role in prosecutions and that he has a disciplinary role in respect of presidents of courts, which has the potential for a chilling effect on those presidents, with consequential impact on the administration of justice;
- the fact that the Supreme Court is affected by compulsory retirement and future appointments, and that the new composition of the National Council for the Judiciary will be largely dominated by political appointees.

The suspect claims there are generally no procedural guarantees in the judicial system of the requesting country and that there is a serious systemic breach of the rule of law principle stated in art. 2 TUE. Furthermore he contends that his right to a fair criminal trial (Articles 47 and 48 of the EU Charter) is bound to be breached.

Article 1 of Framework Decision 2002/584, entitled 'Definition of the European arrest warrant and obligation to execute it':

1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order. 2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision. 3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 [EU].

**Is it justified to rule on the inadmissibility of the EAW without looking at the facts of the case in question?**

## **II. Situation of an individual judge who questions the political process**

Judge A.N. is known in the public domain as an outspoken critic of the judicial reforms introduced by the parliamentary majority. She voices her concerns and outright critique in the traditional and electronic media, claiming that the constitutional division of powers has been dangerously shifted from the independence of courts towards growing political influence by bodies composed of politically nominated members, such as the National Council of the Judiciary elected by Parliament.

Judge A.N. explains that she is concerned about the situation in view of the rule of law, as a citizen of the country.

Opening a disciplinary procedure is being considered by the Disciplinary Proceedings Representative, who claims the judge has overstepped her right to act as an ordinary citizen and went too far in expressing her political views, which is not allowed to judges.

### ***Article 178 of the Polish Constitution***

1. Judges, within the exercise of their office, shall be independent and subject only to the Constitution and statutes.
2. Judges shall be provided with appropriate conditions for work and granted remuneration consistent with the dignity of their office and the scope of their duties.

3. A judge shall not belong to a political party, a trade union or perform public activities incompatible with the principles of independence of the courts and judges.

**Are there sufficient grounds for prosecuting the judge? How would you argue the case against the background of EU law and the above constitutional norms?**

### **III. Political activity of a judge – participation in political and voting events**

Judge O.A. of the Circuit Court in A. is an active member of one of the associations of jurists.

Every year he takes part in plenary meetings of his association, where the justice policy adopted by the current government and by the ruling majority in the parliament is discussed.

He also organises visits for university students at his court. During these events, he actively criticises the new law on the appointment of judges, stating that it is disproportionately dependent on decisions of political bodies.

Recently judge O.A. participated in a voting rally organised by one of the parliamentary political parties, not as member of the public, but acting as a representative of the jurist association.

The regional Disciplinary Proceedings Representative applied to the Disciplinary Court for the judge to be punished for all of the above actions, claiming the judge breached his duty to act apolitically in public life.

**Did the judge breach his statutory obligation by becoming politicised?**

### **IV. Statutory lowering of remuneration**

In X., a EU Member State, the rules on the remuneration of judges are set out in the Judicial System Act, each year as proportionate to the national average salary, made public by the authority competent for statistics for the preceding year.

In view of the COVID Pandemic and the ensuing public finance crisis, in the three consecutive three years since 2021, the government proposed in parliament a freezing of the salary of judges on the level relevant in 2020.

The government claims that in 2021, 2022 and even in 2023 there are sufficient grounds to reduce the remuneration of judges on the basis of force majeure, citing also the ruling of CJEU in Case C-64/16, *Associação Sindical dos Juizes Portugueses v Tribunal de Contas*, where it was held that the second subparagraph of Article 19(1) TEU must be interpreted as meaning that the principle of judicial independence does not preclude general salary-reduction measures, such as those at issue in the main proceedings, linked to requirements to eliminate an excessive budget deficit and to an EU financial assistance programme, from being applied to the members of the Tribunal de Contas (Court of Auditors, Portugal).

The judges contest this stance stating that in the above quoted case, the reduction measures were of temporary character, which isn't the case in the current situation.

**How would you assess the government's proposal having in mind the obligation of Member States stated in art. 19 (1) TUE to create an independent judicial system?**

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