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### The plaintiff who turned into a prosecutor

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# The Plaintiff who turned into a Prosecutor

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John Morijn

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Readers of this blog are familiar with how the Polish government, led by the Law and Justice party (PiS) and the institutions it controls, is trying to silence Professor Wojciech Sadurski in a coordinated campaign of lawsuits (see [here](#), [here](#), [here](#) and [here](#)). On Friday 2 October 2020, he was again in court. This time for his third case: a criminal lawsuit brought by TVP, the public but *de facto* purely pro-government TV-station. The basis of the criminal defamation charges by TVP, let us recall, is a tweet published shortly after the murder of the Mayor of Gdańsk. It stated that a politician was killed after he had been hounded by government media, and that after this event no democrat and opposition politician should enter the premises of TVP, which Sadurski described as a Goebbelsian media company.

This criminal case was initially scheduled for 24 September 2020. Again, [as before](#), the hearing was re-scheduled at short notice as well as allocated to one of the smaller courtrooms. As a strategy to dissuade support it does not work. Sadurski again found himself backed by many NGOs such as [Article 19](#), which also submitted an *amicus brief*, as well as the Open Dialogue Foundation and the (Polish) Journalists' His cases also received media coverage, such as by [The Guardian](#) and the independent Polish newspaper [Gazeta Wyborcza](#). Given COVID-induced travel restrictions Professor Sadurski was authorised to participate digitally, from Australia. The judge allowed him to give a statement (see [here](#)), that is re-produced here with only the slightest of editorial touches.

**The Court:** Do you understand the charge against you?

**Sadurski:** Yes.

**The Court:** Do you plead guilty of this charge?

**Sadurski:** No, I don't plead guilty.

**The Court:** Do you want to give an explanation?

**Sadurski:** Yes.

**The Court:** I am listening.

**Sadurski:**... My incriminatory entry on Twitter, appeared on the 16th of January [2019]. I want to remind you that this ... is two days after the murder of the Mayor of Gdańsk, Mr. Adamowicz ... a period of fear, despair and sadness. The Judge of the regional court of Warszawa-Mokotów, Judge Joanna Woch, very beautifully wrote, in her ruling on the discontinuance of the proceedings in this case [later appealed by PiS, this

appeal against discontinuance granted by the court, leading to the restart of the case of which this is the hearing, jm]: *On those statements and those times we should look through the prism of great sadness and mourning.* I also shared this great sadness and mourning. However, this ... did not exclude a rational reflection on *why* this happened, and this reflection could not miss the media context of those events because they did not happen in a media vacuum. Political murders never do.

After all, over the dying body of Mayor Abramowicz, there was a specter of the first president of independent Poland, who was murdered on the 16th of December 1922 after a hateful, unparallel bashing by nationalist media.

I also remembered well ... my recent visit to a small museum, in Dallas, Texas... It was created in the old book storage from which the President of the United States was shot dead. The most poignant impression was not even of the photos of a dying John F. Kennedy, but reproductions of local press and articles from before [his] arrival, which were full of hate towards the President. You could not help but see here an analogy. You could not be indifferent to the media context in which the murder of Mayor Adamowicz took place.

And what was the reaction, Your Honour, of TVP? Was it a reflection on how they had treated the Mayor of Gda#sk in their news reports? Was it a reflection on 1800, I repeat 1800, news stories vilifying the Mayor of Gda#sk? It is well documented by Ms Agata Szcze#niak from renowned OKO.press. 1800 negative information about this 'villain' of the TVP!

Was there any reflection by TVP after those events? No. The reaction ... was the production of the series of indictments and civil lawsuits against everybody who dared to criticise the program policy of TVP, with one, "gracious" exception of the widow of Mayor Adamowicz.

Because, Your Honour, I am not the only person criminally accused or civilly sued by the TVP. ... I think I am the only one who [is] both criminally accused and civilly sued, because as the Court knows, parallel to those proceedings there are civil proceedings taking place against me, about the protection of moral rights of reputation, on the basis of exactly the same Twitter entry.

..[T]he grotesque and absurd reflection of the fact that I am one of many [pursued by TVP] is the fact that in the indictment and justification, three times – I highlight: three times – in the space of only five pages, I am referred to in plural, as 'defendants'. I do not think that TVP considers me to be a plurality of people in a single body or uses the plural number as *pluralis maiestatis*. I think the explanation is much simpler. It is a crass sloppiness. They copied and pasted from different indictments and they did not even correct it...

Well, Your Honour in all the proceedings that already took place, the private prosecutor or the company acting as plaintiff, disgracefully lost, including in a case against the Ombudsman, Professor [Adam] Bodnar.. My case is much easier than those other cases for two reasons. First, in my entry, I do not use the word 'TVP' but 'governmental media'. This is the wonderful paradox of this indictment because from what I know, TVP always denies that they are governmental media. *We? Governmental? Never! We are public media. We are national media.* Even Mr Jacek Kurski head of TVP, said *we are not governmental media*, but for this specific act of harassment of their critic, they suddenly find in themselves governmentality. Is it a vindication of a beautiful Polish proverb 'Hit the table and the scissors will ring'? Or even better: 'The hat burns on a thief'?

The second reason... why ... my case is easier than those other ... lawsuits ... is that in this specific entry, I do not write anything about a causal link between TVP's programmes and the ... murder of Mayor Adamowicz. There is not a single word to that effect. There is nothing about responsibility for the murder ... In this entry, I write about the CHRONOLOGICAL sequence. I write that **after** Adamowicz was hounded by government media, no honest person should go to those media. After. It is a chronological sequence. The private prosecutor commits the most elementary logical fallacy, known in Latin as *post hoc ergo propter hoc*, meaning 'after, so caused by it'.

Therefore, we have another paradox. I am accused of something that is *not* in my entry, but I am not accused of what *is* in there. Because I admit... that I used a very harsh word ...: 'Goebbelsian' media'. Yet, I call the Court's attention to the fact that there is not a word about it in the indictment or in the reasons provided. This silence is understandable. Because TVP uses this invective, left and right, against its opponents. Not that long ago, as it is stated in our evidence, Mr Jarosław Olechowski who is the head of news in TVP wrote about his opponent that he is 'like Goebbels'. "A professor like Goebbels". I was this opponent, Your Honour. I was equated, by a TVP employee, with Goebbels. That is how another paradox completes itself. ...

Your Honour, not that long ago, in March 2016, the Strasbourg Court ruled on a case analogous to this case. It was a case in which a Polish citizen accused Poland of breach of his right to freedom of expression (article 10 ECHR). He won that case. Earlier this citizen had lost civil proceedings with a very important media organisation in Poland. The Strasbourg Court ruled that even civil proceedings about the protection of reputation violate freedom of expression, because in the case where public discourse comes into play a greater scope for expression should be awarded than in other cases. It also highlighted that when we deal with opinion and not facts, freedom of speech is almost unlimited. Moreover, it stated that media and journalists should tolerate a much more severe critique of their action than everybody else. The analogy between the two cases is complete, with an exception that in this case today, those are *criminal* proceedings. Therefore,

*a fortiori*, because these proceedings are even more severe towards me, the Strasbourg jurisprudence would be all the more so on my side.

Your Honour, ... this case from March 2016 is called [Kurski vs Poland](#). The Polish citizen ... was Mr Jacek Kurski. This is another beautiful paradox of this case. The same Jacek Kurski, as Head of TVP, accuses me, with his own signature under the power of attorney, of doing something that the ECHR established as protected expression, *his* expression.

... The prosecutor accuses me of undermining its reputation, renown, good name. I agree. The reputation, renown, good name of TVP are catastrophic. All polls and research point to that, also the ones referred to in our evidence. However, the accusations are addressed towards a wrong person. This catastrophic reputation, terrible renown and lack of good name are not a consequence of a critique by people like me or other critics of TVP. They were such before my Twitter entry and after. It is clearly shown that from all national television channels concerned with information and journalism, the prestige of public television is the lowest, and the lowest by a long shot. This is not a result of viewpoints which public television is now trying to suppress by harassing critics like me. It is a result of its program policy. It is a result of vulgar and aggressive indoctrination and propaganda which is coming from public television 24 hours per day. So I would recommend to Mr Kurski, ... benefactor of the ECHR, to seriously consider their program policy, instead of spending money of taxpayers, including mine, to harass its opponents.

The last sentence, Your Honour. Every media in the world is interested in expanding the freedom of expression because it is in their vital interest. This is what allows them to exist, function and flourish. It is in the DNA of the media, to have the most expansive freedom of expression. This is the last paradox ... This private prosecutor [TVP, jm] is such a strange, so-called "media" company in that it is interested in narrowing the freedom of expression rather than expanding it. The evidence of it is the indictment [in this case] which was read out today and a parallel suit against me for the protection of reputation. If TVP is successful in its attempt to limit freedom of speech, and I am sure it will not happen, then all those theories about Poland heading towards authoritarianism of which ... TVP is part, will become a self-fulfilling prophecy.

Thank you, your Honour.

*TVP v. Sadurski-criminal leg* will continue on 3 December 2020. This is because the judge allowed a TVP motion to hear its CEO, Jacek Kurski. He will then be invited to explain why, in circumstances extremely similar to his own ECHR case, a completely different standard should apply to those criticising as opposed to those receiving criticism. I will book a front row seat for part 2 of this hearing in "Sadurski 3". I want to be there, whenever the case will be (re-)scheduled. (I may even put myself on a rigorous diet pre-emptively to ensure fitting on even the tiniest bench of even the tiniest Warsaw courtroom). Quite simply because freedom of expression

and academic freedom, and those courageously relying on it, are worth protecting and supporting. Quite simply because I am #WithWoj.

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