



Warsaw, 8 May 2018

## ODF WINS COURT DISPUTE WITH POLISH MFA ONCE AGAIN

**In the dispute with the Ministry of Foreign Affairs since August 2017, the Open Dialog Foundation once again defended its position: The Regional Court for the capital city of Warsaw decided to dismiss the Minister of Foreign Affairs's complaint against the previous decision of the court of 7 December 2017 on the refusal to establish a board of trustees (and thus replacing the current Management Board) in our organisation.**

Therefore, the attempts of Minister Witold Waszczykowski, and then his successor Jacek Czaputowicz, for ODF hostile takeover failed.

In its extensive justification, the court almost completely shared the stance of the Foundation, formulated many times earlier, also in the correspondence with the Ministry of Foreign Affairs:

- The disputed publication on Facebook from July 2017 (*May the state stop: let's shut down the government!*<sup>1</sup>) was Bartosz Kramek's private text, not the official statement<sup>2</sup> of the Foundation since it was published on his private profile;
- Bartosz Kramek<sup>3</sup> has never been a member of the ODF Management Board (according to the Act on Foundations, on the basis of which the Ministry of Foreign Affairs was operating, **the action of the Foundation's Management Board** would have to violate the provisions of law **in a significant way**); it is of no importance that Bartosz acts as the Head of the Foundation Board and its proxy;
- The Ministry of Foreign Affairs, neither to us nor to our lawyers, **was able to indicate exactly which legal norms were, in their opinion, violated** (which was stressed several times in the court's justification);
- Even assuming that the sharing of Bartosz Kramek's publication on the ODF profile was synonymous with the action (statement) of the Foundation's Management Board, it could not have been considered a serious violation of the law, because **it is not a violation of law to consider the ideas and forms of social protests against government policy and politicians of the ruling party**, and besides...
- The constitution guarantees freedom of speech, including the right to manifest one's views, as well as the right to assembly and association (i.e., freedom of activity of non-governmental organisations).

The above decision may be appealed to a higher court; in this case, the District Court in Warsaw. Therefore this may not be the end, although, in the light of the decisions of the courts to date and

<sup>1</sup> <https://goo.gl/ddBbwX>

<sup>2</sup> <https://www.facebook.com/OpenDialogFoundation/posts/1564639473578110>

<sup>3</sup> <http://en.odfoundation.eu/team/bartosz-kramek>



**OPEN DIALOG**

**Brussels Office**  
155 Rue de la Loi,  
Postal box: 27  
1040 Brussels, Belgium

**Open Dialog Foundation**  
11 a Szucha Avenue, office 21  
00-580 Warsaw, Poland  
T: +48 22 307 11 22

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arguments included in the justification, we may think that further actions in this area of the Ministry of Foreign Affairs would rather pose a significant risk of another public embarrassment for them.

In connection with last year's post of Bartosz Kramek and the Foundation's activity in defense of the rule of law in Poland, there are still a number of politically motivated proceedings, among others customs and tax control (Łódź Customs and Tax Office), as well as the investigation under art. 255 § 1 of the Criminal Code - provocation to commit a fiscal offense or crime (District Prosecutor's Office in Warsaw).

Among others, the delegates of the Parliamentary Assembly of the Council of Europe<sup>4,5</sup> and the international coalition of NGOs Civil Solidarity Platform<sup>6</sup> have so far performed in the defense of critical non-governmental organizations and civic initiatives in Poland.

A serious risk factor for us could be entrusting the case to the judge subordinate to the government via Random Assignment System – the recently implemented and controversial computer system which randomly (however, there are different and dangerous exceptions) assigns the signatures of cases to judges adjudicating in a given court department. Officially, the system aims at eliminating the human factor during assigning cases to judges that, in the opinion of the Minister of Justice, led to many misuses in the previous assignment system.

Fortunately, almost all the judges who have so far adjudicated in the cases of disobedient citizens and civic initiatives, are defending them. And it appears this is the case with our dispute as well.

**For more detailed information, please contact:**

Bartosz Kramek – [bartosz.kramek@odfoundation.eu](mailto:bartosz.kramek@odfoundation.eu)

*The Open Dialog Foundation*

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<sup>4</sup> <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24220&lang=en>

<sup>5</sup> <https://goo.gl/GyhD6Y>

<sup>6</sup> <http://en.odfoundation.eu/a/8637,statement-of-the-members-of-the-civic-solidarity-platform-polish-authorities-reduce-the-space-for-the-activities-of-ngos-including-human-rights-organizations-in-the-country>