

# Accusations against a Dean<sup>1</sup>

**A Polish Law Dean has been accused of wrongfully borrowing from a German PhD thesis to write his important monograph.**

**by Marek Wroński**

Published in *Academic Forum* 07-08/2013<sup>2</sup>

Translated from the Polish by Anna Schneider

An intriguing episode of the Polish TV program *Attention!* aired in May 2013. It reported on the bizarre developments that unravelled at the prestigious Nicolaus Copernicus University (NCU) in medieval Thorn, a city situated among the lakes and forests of the tranquil region of Pomerania, on the shore of the Baltic Sea, in northern Poland. The television coverage stirred deep emotions among the academia employed at this respected research and higher education institution named after the famous astronomer who was born in the ancient town of Thorn 500 years ago. As a result, the usually composed and confident Pomeranian scientific community was thrown into emotional disarray.

The feeling of intense anxiety was not new to the Thorn scholars - the issue that reignited their anger had been under investigation already for one and a half years. The controversy began with a letter dated 14 December 2011. It was written by Prof. Wanda Stojanowska, Head of the Department of Family and Juvenile Law at the Cardinal Stefan Wyszyński University (CSW)<sup>3</sup> in Warsaw. The note was addressed to the Dean of the Faculty of Law and Administration at the NCU, Prof. Andrzej Sokal. The communication referred to a review of the monograph *The rights to contact with child under Polish and foreign law* authored by Dr. Justyński, Head of the Department of Civil and Family Law at the NCU, a book published in 2011 in Warsaw by Wolters Kluwer.

Prof. Stojanowska wrote that when reviewing the publication she had discovered indications that the author of the book might have violated Polish authorship law and, in particular, that he may have wrongfully borrowed from a German PhD thesis written by Ms. Natascha Schulze, titled *Das Umgangsrecht. Die deutsche Reform Kontext europäischer Rechtsentwicklung*, which was published in book form in 2001 by Duncker Humblot, Berlin. Enclosed with the letter from the Warsaw professor was a thorough, 20-page comparative

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<sup>1</sup> Translator's comment: The previous English title did not correspond to a sufficient degree to the original Polish title. Therefore, as per the instructions of the author of the original Polish article, the translator has exchanged with a literal translation of the original Polish title.

<sup>2</sup> This is an English translation of an article published originally in the Polish language in a monthly magazine for Poland's academics, *Academic Forum*, in July 2013. (Zarzuty przeciwko dziekanowi, Marek Wroński FA 07-08/2013 Forum Akademickie, Lublin: Akademyka Oficyna Wydawnicza, ISBN: 1233-0930. Retrieved on 27 Jul 2013 from <http://forumakademickie.pl/fa/2013/07-08/zarzuty-przeciwko-dziekanowi/>). The publication is from a series of articles that has been appearing from 2002 each month in the magazine's section called 'From the Archives of Scientific Misconduct' [Z archiwum nieuczciwości naukowej] <http://forumakademickie.pl/publicystyka/nauka/z-archiwum-nieuczciwosci-naukowej/>

<sup>3</sup> Translator's comment: The Cardinal Stefan Wyszyński University in Warsaw is a state university offering religious studies at the faculties of theology, Canon law and Christian philosophy, and secular studies with emphasis on Christian values.

analysis that listed the similarities which had been unearthed after the two publications, Polish and German, had been compared against each other page by page. The meticulous inventory suggested numerous instances of extensive wrongful borrowing in Dr. Justyński's monograph. The list was authored by Father Dr. Mirosław Kosek, an Assistant Professor at the Department led by Prof. Stojanowska.

## Premeditated misappropriation

Dr. Kosek's analysis covers nine chapters of Dr. Justyński's so-called 'professorial book'<sup>4</sup>. This is what Dr. Kosek said after reading the first chapter of the Thorn scholar's monograph: 'The interpretation of the concept of contact with child under foreign law, that the author covers in Chapter One of his publication, had been based entirely on the German monograph by N. Schulze (i.e. on Chapter Two *Der Umgang - Begriff und Form*, pp. 27-33, and Chapter Four *Wesen des Umgangsrechts*, p. 64ff.)'. Dr. Kosek then proceeded to explain that 'the Thorn author first translated (more or less faithfully) into the Polish language the portions of N. Schulze's monograph that analyse various foreign literature sources on the topic he covered in Chapter One and then he incorporated the translated fragments into his own text. To disguise the fact that the text fragments were lifted from the German thesis and to mislead the readers, he meticulously referred in the footnotes to the sources to which N. Schultze referred in her PhD. He even lifted these bibliographical details from the German monograph, i.e. the titles, when and where the works were published, as well as the page numbers where

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<sup>4</sup> Translator's comment: 'Professorial book' is a dissertation which is published in book form and which constitutes one of the main requirements for the highest academic title in Poland, that of professor. This lifetime distinction, connected with exceptionally high social status and very generous remuneration, is officially conferred by the President of Poland upon a highly accomplished academic. A new professor is automatically rewarded with a professorial appointment and the associated, highly attractive salary. The position is until retirement because the decision to terminate a professor with 'due course', can only be made by the President of Poland, and this is unlikely to happen. Professors are frequently chosen to high level university functions such as deans and vice-chancellors and thus have a lot of power. Their numerous privileges continue after retirement. Even though the decision to award professorship is made by the President of Poland, the Central Commission for Degrees and Titles (CCDK) submits the recommendation after they have determined that a candidate has met the mandatory requirements. In practice the President always follows the CCDK's suggestions. Thus, effectively, it is the members of the CCDK, who themselves are professors, that decide upon whom to confer the title that denotes a lifetime of coveted privileges. Apart from the matters related to scientific research and tertiary education, professors decide on a variety of issues that are important to Poland's present and future. Many government ministers have this title and one of Poland's presidents also had it. The condition that only the President can terminate professors fosters academic freedom due to the fact that such a decision first needs to be carefully assessed and deliberated over by the CCDK before it can be presented to the President. This makes the termination process difficult to instigate and slow to execute enhancing the security of the professor's post. The negative outcome of the institution is that a rigid power structure has been created that enables the eminent academics to misuse their power. The admission to professorship is therefore reserved to individuals of the highest personal and professional integrity of whom it is certain that their conduct will always adhere to the strictest ethical standards and extreme care is taken when selecting the candidates to the title. However, in practice many professorships have been conferred upon undeserving individuals who did not meet the stringent criteria which contributed to the abuse of the institution. This article is a study of a case in which a candidate used extensive borrowings from a German PhD thesis in his professorial book, cleverly disguising the appropriations and hoping that the borrowings from a foreign book would be difficult to identify after translation. Such manoeuvring should automatically and instantly exclude the candidate from applying for professorship but the reality proved different.

the analysed fragments could be located in the original works. However, he did not clearly mention that the excerpts that he had translated into the Polish language came from the PhD thesis by N. Schultze. Instead, he tricked the readers to believe that the views he presented in his professorial book were his own. Meanwhile, from the comparison of the two books it is clear that the opinions he introduced are merely translations of the opinions expressed by N. Schultze in her monograph. In this way Dr. Justyński managed to create an impression that he had studied many foreign works on the subject he wrote about in this monograph and pretends to be an expert on. Meanwhile, he wrongfully borrowed large parts of the analyses written up by N. Schultze and even the references that she listed, and then translated and pasted them into his professorial book.’

According to Dr. Kosek, in the sections ‘where the Thorn author discusses foreign law, he neither strives to extend his treatise’s content beyond the information contained in N. Schulze’s monograph nor does he attempt to introduce any additional sources to enrich the list of literature items that were previously referred to in the German book. The only exception in Chapter One is a comment on page 31. Strikingly, this fragment was actually written personally by Dr. Justyński and in this one excerpt, without doubt, he expressed his own point of view.’

What is more, the Thorn academic adopted another ingenious approach: ‘In seven (!) footnotes he actually referred directly to N. Schulze’s monograph. These references he then interspersed with references to the literature items used by N. Schulze in her PhD thesis, as explained above. This made an impression that N. Schulze’s book was one of the many that Dr. Justyński had drawn on, but in fact the German PhD treatise is the Thorn scholar’s almost only foreign source’.

Dr. Kosek made similar discoveries when analysing the next chapters of the professorial book. Referring to Chapter Three, he said, ‘Considering that Dr. Justyński used the monograph of N. Schulze to such a large extent, it was dishonest on his part to refer to the German author’s work in ten footnotes only and only in those to treat her thesis on par with the other literature sources – which incidentally he had not even referenced himself in the strict sense but rather, again, wrongfully appropriated the details from N. Schultze (e.g. see Footnote Ref. No. 22 on page 41)’.

Dr. Kosek further commented in the following way: ‘The part of Chapter Four that relates to foreign legal norms was based once more on the German monograph (see Chapter Five, Point C *Nahestehende Dritte*, pp. 135-167). When discussing the third parties’ rights to contact with child (grandparents, great-grandparents, siblings, cousins, aunts and uncles) the author relies solely on the literature and the previous legal decisions covered in the sources used and analysed by N. Schulze. An exception are the rights to contact with “four-legged friends”. The views on this topic are not copied from the German monograph. (...) There is no doubt, however, that the major part of the considerations originates from it. (...). It is also worth mentioning that part of the reflections contained in the professorial book had been lifted from the author’s own article published in the journal *The Family and Law*, No. 14-15/2010, pp. 96-101 which is contrary to ‘professorial book’ principles. Dr. Kosek analysed next the ‘redaction criticism’ in the Footnote Ref. No. 23 on page 91, which was also appropriated from N. Schulze’s work. In this footnote, Dr. Justyński referred to ‘the studies conducted in France’. This was supposed ‘to emphasize the relevance of the problem to the current practices as well as its social significance’. Dr. Kosek concluded: ‘A sad truth has emerged. Dr. Justyński used a precise and premeditated tactic when borrowing and thus committed deliberate acts of unacceptable appropriation from N. Schulze’s thesis. He never mentioned the fact that these fragments in his books were not his own but borrowed. This type of writing deserves a name: “premeditated misappropriation”’.

## Lack of integrity

In the conclusions of the analysis of Chapter Five, Dr. Kosek stated that there were indications of ‘numerous acts of borrowing from two chapters of N. Schulze’s monograph: from Chapter Nine, which analyses the relationship between parental authority and the rights to contact with child (see for instance p. 349) and from Part Four of Chapter Six in which the author discusses the rights to contact with child in terms of parental duties (cf. p. 215ff.)’.

An unusual (for Dr. Justyński - *translator’s comment*) practice can be observed in this part of the Thorn scholar’s monograph: ‘In several places in this chapter, the author actually used additional foreign sources beyond the items that the German author included in her book. Interesting conclusions can be drawn from analysing the way Dr. Justyński utilized these extra sources. It appears that the method was exactly the same as the technique he applied when he appropriated from N. Schulze’s monograph. As an example let us examine the way that the Thorn academic used the publication by Katherine Prüm *Die Folgen Verletzung des Umgangsrechts* (The consequences of the breach of the right to contact, Verlag Dr. Kovač, Hamburg, 2006). He refers to this book four times (see Footnotes Ref. Nos. 82, 85, 91, 107) but actually uses it more often (however, without referring to it). These additional fragments have been appropriated in the form of free translations, without acknowledging that their source was Katherine Prüm’s book. In the footnotes Dr. Justyński refers to the literature and previous legal decisions to which K. Prüm referred, and for each item meticulously lists (of course) – or more precisely speaking - lifts from the German publication - the item’s title, place and year of publication, and even page numbers (in particular, compare pp. 139/140 in Dr. Justyński’s monograph and pp. 11-12 in the monograph by K. Prüm)’.

Dr. Kosek assessed the quality of the Chapter’s scholarship and the level of effort of the Thorn scholar, using the following words: ‘N. Schulze discussed the matter extremely thoroughly, taking into account numerous examples of the past legal decisions (in particular she applied this meticulous approach to the question of the basis for judicial interference with the right to contact). Dr. Justyński significantly shortened those analyses but this does not add to the integrity of his work. This is apart from his glaring dishonesty due to his numerous, premeditated wrongful appropriations’.

In Chapter Seven, Dr. Kosek pointed to eight fragments borrowed from N. Schulze’s monograph but ‘not acknowledged in the footnotes. These fragments were from Chapter Seven, point D, of the German thesis (*Durchsetzung des Umgangsrechts*). Dr. Justyński’s method of appropriating in this part of the book closely resembles his tactic from the previous sections’. In the last (ninth) Chapter there are also many instances of fraudulent borrowings.

In summary, Dr. Kosek says that ‘with regard to the issue of the right to contact with child under foreign law, T. Justyński’s book closely follows N. Schulze’s monograph. There is evidence of close agreement between the two books, especially in the development of the discussion thread and the same reasoning has been used in the corresponding parts of the two works, paragraph after paragraph - see, e.g. pp. 22, 51 - 52, 135 - 136 in T. Justyński’s treatise and the following, corresponding pages in the thesis by N. Schulze: 28, 97 - 98, 217 - 218).

In his entire book the Polish academic refers more than eighty times directly to the monograph by N. Schulze (in each chapter there are from a few to a dozen odd instances of such attributions), interspersing these references with the references to the literature and examples of the past legal decisions discussed by the German author in her PhD thesis.

## The fruit of his toil

Dean Prof. Sokal passed the letter with the allegations to Dr. Justyński and the Thorn scholar responded to it in a comprehensive, sixteen-page note dated January 16, 2012. He stated that he believed the accusations have been made because of his criticism of Prof. Wanda Stojanowska's views and that the purpose of the attack is 'to discredit [his] monograph using unfair tactics'. He strongly denied plagiarism allegations, emphasizing that his monograph 'is a result of more than three years of intense labour as well as the annual, at least six-week long visits to foreign libraries and also extensive studies abroad (his long-term fellowships totalled about seven years), which allowed him to accumulate a tremendous amount of knowledge of foreign law and literature (in particular the German literature)'. The allegations that his work does not extend beyond the scope of N. Schulze's monograph and that it lacks his own contribution he called malicious and false. The Thorn scholar stressed that the accusations of Dr. Kosek can only apply to one fifth of his book. He confirms that there are similarities between fragments of his work and the German monograph, but explains that this is only to be expected since he refers to the latter as many as eighty times because 'as an extremely analytical PhD thesis the German book is an important information source. Additionally, Ms. Schultze, in a manner similar to his, applied a method commonly used in the examination of civil law when analysing the legal institutions and this may have resulted in further similarities'. He underlines that 'this PhD thesis is, first of all, a compilation of views, the vast majority of which had long been universally accepted (to the extent that they have become a common feature in textbooks)', and thus, frequently, the German scholar states opinions that she had also adopted from other authors' works, for example: 'the work of H-P. Simon, *Das Wesen des Umgangsrecht* which was written 23 years before N. Schulze's thesis, and parts of which were used in Chapter Four of the German book (*Wesen des Umgangsrechts*) as well as in some other parts'.

The Polish academic vigorously refutes Dr. Kosek's claim that the chapters in his monograph were 'partially' based on the work of N. Schulze, claiming that it is impossible to argue such allegations in a meaningful way. In his view, if he cited the German author in each chapter several times, it is obvious that he used her book. However, for him, it was only one of many sources, and this fact his detractor was not willing to accept. Finally, he reiterated that his work is not plagiarism, nor is it a translation because, according to the established view, 'a plagiarist of scientific work is a person who acquires the "core" of someone else's work while claiming to be the author while all the instances of borrowing in his book are at the most violations of citing and referencing rules (see Beata Gadek-Giesen, *Plagiarism in academic works*, ZNUJ 2011, 2, 63)'.

## Public diatribe

Dean Prof. Sokal presented the two letters, the first one with the allegations made by Prof. Wanda Stojanowska and the second one, with Dr. Justyński's clarifications, to the then Vice-Chancellor, Prof. Radzimiński. Consequently, on 10 February 2012, the latter asked Disciplinary Officer, Prof. Sygit, to initiate an investigation of the accusations of the Warsaw scholars and also requested a legal opinion from the Institute of the Intellectual Property Law at the Jagiellonian University in Cracow, which is headed by Prof. Markiewicz.

Meanwhile, on April 17, 2012, the election was held for the position of Dean of the Law Faculty at the NCU. Dr. Justyński was one of the candidates. At the pre-election meeting, he denied the allegations, classifying them as personal attacks aimed at distracting the readers from appreciating the content of his book. The Thorn academics who were aware of the

ongoing investigation, were faced with a difficult choice. They knew that the first candidate was “under the cloud”. However, the other candidate for different reasons, was even less acceptable. It is thus not surprising that by a few votes Dr. Justyński became Dean-Elect.

In the May 2012 issue of the prestigious monthly *State and Law*, Dr. Kosek published a polemic with an earlier, very positive review of Dr. Justyński’s book, written by M. Goettel in *State and Law*, No. 12/2011. Dr. Kosek concentrated on ‘the comparative aspect of the legal analysis conducted by Dr. Justyński in his monograph, and in particular on the manner, the degree and extent of the use of the foreign literature sources’. On a few pages Dr. Kosek presented evidence that ‘the book, in its crucial parts which relate to the right to contact with child under foreign law, has essentially been based on only one source – the monograph by N. Schulze’. He also mentioned that ‘the direct references to the monograph of N. Schulze are not always accurate’.

Dr. Justyński’s answer to Dr. Kosek’s article was published in the July 2012 issue of *State and Law*. He disagreed with Dr. Kosek’s comments, accused him of ‘a remarkable bias and selectivity’, and expressed a view that ‘from someone who is a priest and automatically a spiritual leader for the Christian Church community, and who additionally is an academic employed at the university named after the esteemed Cardinal Stefan Wyszyński<sup>5</sup>, one would expect a lot more honesty and integrity’.

He vigorously denied that he borrowed or translated from a foreign source, admitting however that his work is partially of informative nature, and thus he referred many times to the book by Dr. N. Schulze. In the conclusions he adds that Dr. Kosek’s criticism used ad personam arguments because his professorial book criticizes the views of Prof. Wanda Stojanowska – a superior of M. Kosek.

A reply from Dr. Kosek appeared in the April 2013 issue of *State and Law*. He presented concrete examples of the fragments borrowed by Dr. T. Justyński from N. Schulze. He also stated: ‘The author should be reminded that ad personam arguments, as unethical, are inadmissible in a scientific debate. When reading some of the fragments of T. Justyński’s response to my arguments, it is hard to resist a conclusion that the author is deliberately trying to shift the discussion to personal issues in order to divert the attention from the problems that really matter. Perhaps in some circumstances that would be appropriate but not in application to the present problem’.

Dr. Justyński’s ‘reply to the reply’ appeared in the June 2013 issue of *State and Law*. He attempted to defend himself against the accusations that he wrongfully borrowed by trying to prove that despite the existence of similar fragments in both books ‘the work by N. Schulze is of a typical reporting and documentation nature (...) and it almost completely lacks any (copyright protected) personal views of the author’. In the final part of the reply the author writes that it is the Faculty of Prof. Stojanowska that is known for ‘vicious harangues, bristling with epithets, including ad personam attacks’. After that the Editor-in-Chief of *State and Law* announced that the journal will not publish any further discussion on the topic.

At the end of February 2013 a short article appeared in the Thorn's *Pomeranian Gazette*. Without mentioning his name or position, Dr. Kosek once more presented the charges against Dr. Justyński’s professorial book. He quoted a statement made by the university spokesman who announced that in November 2012 the District Prosecutor’s Office in Gdańsk<sup>6</sup> took up

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<sup>5</sup> Translator's comment: Stefan Wyszyński (1901 – 1981) was a highly respected archbishop of the Roman Catholic Church in Poland, known for his moral integrity, including his heroic and principled stand against Nazism and Communism.

<sup>6</sup> Translator's comment: Gdańsk is the fourth-largest city in Poland, the capital of the region of

the matter, and therefore in mid-December the Disciplinary Officer of the Nicolaus Copernicus University suspended the investigation, supposedly not wanting to duplicate the procedures.

## Attention!

The thought-provoking report by Tomasz Patora on the alleged scientific misconduct committed by Dean Justyński was presented in the TV program *Attention!* on May 8, 2013. An earlier article by journalist Patora on the subject, titled 'Attack under the guise of defence' was published in the weekly *Angora*<sup>7</sup> (No. 17, 28 April 2013). It sparked a lot of interest and agitation, especially as it disclosed that in mid-July 2012 Dr. Justyński sent to the Bishop of Płock, Dr. Libera, an unpleasant complaint letter against Dr. Kosek (who at the time was Rector of the Major Seminary<sup>8</sup> in Płock<sup>9</sup>). In the note he alleged that 'A web of intrigue was spun against me by Prof. Wanda Stojanowska and Fr. Kosek joined the conspiracy with gusto'. He also drew attention to the 'unprecedented conduct of Fr. Kosek which does not correspond to the dignity of the Christian priesthood' stressing that the writings of a man of the cloth 'should not be full of hatred and be dripping wet with venom'.

Prof. Stojanowska publicly stated that she has no conflict with Dr. Justyński and that hers and Dr. Kosek's sole motivation was concern for scientific integrity.

The Nicolaus Copernicus University's Vice-Chancellor, Prof. Trentyn, interviewed on live TV, confirmed that the legal opinion requested by the university and prepared by the Jagiellonian University, unambiguously identified a violation of copyright.

On June 27, 2013, the Thorn's daily newspaper the *News* reported that Vice-Chancellor Prof. Trentyn told the journalists at a press conference that the NCU's Disciplinary Officer, Prof. Sygit has proposed to impose upon Dr. Justyński a disciplinary penalty in the form of reprimand. This decision will now be presented to the offender and then Prof. Sygit will submit it to the University Disciplinary Committee. After the Committee initiates formal disciplinary proceedings, the Vice-Chancellor will suspend Dr. Justyński from his teaching duties at the University.

Dr. Justyński is steadfastly protesting his innocence, denying any deliberate wrongdoings that would have resulted in copyright infringement. He has had several legal opinions and two reviews prepared to prove his righteousness but unfortunately presenting them would exceed the length limits of this article. We will keep you informed of any further developments in relation to the assessment of the dubious monograph of the Dean who is aspiring to the lifetime title of professor, the highest and most revered university honour in Poland, to be conferred upon him by the country's President in recognition of his outstanding achievements and exceptional professional and personal integrity. The irony is difficult to miss.

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Pomerania on the Baltic South coast and Poland's principal seaport.

<sup>7</sup> Translator's comment: *Angora* is a Polish language weekly press review published in Warsaw, Dortmund, Chicago, Toronto and New York.

<sup>8</sup> Translator's comment: Major seminary is a Roman Catholic theological college training future priests.

<sup>9</sup> Translator's comment: Płock is a regional town in central Poland, on the Vistula river.

### **Correction**

I would like to appologize to the Dean of the Faculty of Environmental Engineering, the Technical University of Cracow, Prof. Elzbieta Nachlik, and all the other Faculty staff for the incorrect information that stated that the defence of PhD thesis of Mr. Rafał Schmidt was held at their Faculty. The defence took place at the Faculty of Chemical Engineering and Technology, the Technical University of Cracow as stated previously in the article *Dual PhD* in the May 2013 issue of the *Academic Forum*. **Marek Wroński**