

# A country that punishes.

Pressure and repression  
of Polish judges and prosecutors.

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**KOS**

KOMITET  
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The Justice Defence Committee (KOS) is an agreement of 12 organisations associating judges and prosecutors, as well as non-governmental organisations and social initiatives involved in the defence of the rule of law in Poland, which was established to work together when the impartiality of the judges and the independence of lawyers are threatened.

We set up the Justice Defence Committee (KOS) on 4 June 2018, the 29th anniversary of the first free elections in Poland. Since 1989, 4 June has become a symbol of democracy and changes towards the rule of law and a country with the rule of law. It marked the beginning of the work on the new Polish Constitution. It initiated changes in both the justice administration and in every other area of life.

**What was the reason for establishing the Justice Defence Committee?**

After the parliamentary elections in October 2015 and the Law and Justice Party's victory, values of importance to democracy and the division of powers, with which 4 June is associated, started to be gradually undermined by the representatives of the coalition of the ruling parties and its supporters. Step by step, the executive started to take over the supervision of successive institutions of the judicial authorities. Politicians started to interfere in the judiciary, undermine court judgments and the gravity of the office of judge by changing laws and publicly spreading unjustified criticisms of the judges. These actions, which are continuing to date, pose a serious threat to the independence of the courts and the impartiality of the judges.

The Acts on the National Council of the Judiciary and on the Supreme Court became effective in 2018, enabling repressive action to be taken against judges. They awarded almost unlimited power to the Minister of Justice for supervising the system of disciplinary liability of the judges. These Acts pose a particular threat to the independence of the courts and the impartiality of the judges and therefore also the independence of attorneys-at-law, legal counsels, prosecutors and representatives of other legal professions.

It is precisely these changes and the desire to jointly stand up to the threat that became the impulse for the establishment of the Justice Defence Committee (KOS), which was formed to **jointly and therefore more strongly and in a coordinated manner support judges and representatives of the legal professions falling victim to the repression and pressure of politicians and to jointly oppose the acts of the authorities.**

**The objectives of the Justice Defence Committee (KOS) are:**

- to monitor and archive cases of political pressure being exerted on judges, prosecutors, attorneys-at-law, legal counsels and other legal professionals (repression archive);
- to provide legal aid to these people;
- to provide information about cases of pressure being exerted on judges, prosecutors, attorneys-at-law, legal counsels and other legal professionals.

### **Repression Archive**

The Justice Defence Committee (KOS) has created such a tool for monitoring and archiving cases of pressure being exerted on legal professionals. We have presented an overview of the harassed lawyers and various forms of pressure from the current authorities, to which lawyers have fallen victim on the website <http://komitetobronysprawiedliwosci.pl/archiwum-represji/>. This tool is kept updated and supplemented with new information.

## KOS and the justice administration in numbers

- KOS is made up to **12 organisations**:
  - The Professor Zbigniew Hołda Association
  - The Association of Polish Judges “Iustitia”
  - The Association of Judges “THEMIS”
  - The Association of Prosecutors “LEX Super Omnia”
  - The “Free Courts” civic initiative
  - The Helsinki Foundation for Human Rights
  - The Institute for Law and Society, INPRIS
  - The Osiatyński Archive
  - Amnesty International
  - Civil Development Forum Foundation (FOR)
  - The Polish Association of Administrative Court Judges
  - The Judges Cooperation Forum

Lawyers are handling a total of **28 cases** for KOS in defence of judges and are taking part in proceedings before the Court of Justice of the European Union (CJEU), including:

- representation of **9 judges** of the Supreme Administrative Court and the Supreme Court who have been retired;
- representation of **41 judges** in proceedings on the protection of personal rights;
- participation in **2 proceedings** before the CJEU, in the case of **4 requests for preliminary rulings** filed by Polish courts;
- representation of **7 judges** in explanatory proceedings before the Disciplinary Commissioner of Ordinary Court Judges;
- representation of **1 judge** in a case of a transfer to another division of a court, despite his will;
- representation of **1 judge**, who is a Supreme Court judge candidate in a case regarding the examination of the legality of a contest for judicial offices in the Supreme Court.

- KOS has, so far, published:<sup>1</sup>
  - 14 Opinions;
  - 2 Communications;
  - A letter from the Disciplinary Commissioner of the Ordinary Court Judges;
  - A letter to the European Network of Councils for the Judiciary (ENCJ);
  - A legal opinion to a Spanish court;
  - A legal opinion to the European Commission;
  - A legal opinion on the legal effects of the lack of counter-signature of the Polish President's notice on vacancies for judicial positions at the Supreme Court.
  
- KOS has, so far, organised 3 **press conferences**.
  
- 25 **meetings** with partners to the agreement have been held within KOS to date.
  
- 47 NGOs, including organisations that are a part of the Justice Defence Committee (KOS), sent an appeal to the President in December 2017 to veto the Acts on the Supreme Court and on the National Council of the Judiciary. The Polish President, A. Duda, signed both Acts on 20 December 2017. Article 7 of the Treaty on European Union was activated with respect to Poland on the same day.

**It is also worth pointing out that:**

- 90.9% of the 3308 judges who voted believe that the currently operating National Council of the Judiciary is not properly performing its constitutional tasks,  
 (Referendum of the opinions of judges; number of judges who voted: 3308, as at 27 December 2018; <https://oko.press/blisko-3-tysiace-polskich-sedziow-chce-dymisji-krs/>)
  
- 28 **court regions** (of 45) that issue resolutions have refrained from assessing candidates to judicial positions,

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<sup>1</sup> All opinions, communications and other documents issued by KOS are available at: <http://komitetobronysprawiedliwosci.pl/category/glos-kosu/>

(Source: Iustitia, as at 13 January 2019; <https://www.iustitia.pl/nowa-krs-nowy-sn/2800-okregi-sadowe-gdzie-zgromadzenia-wstrzymaly-sie-od-udzialu-w-procesie-nominacyjnym-na-stanowiska-scdziowskie-stan-na-13-01-2019>)

- It took **73 days** for the ruling party to adapt Polish law to the order of the CJEU to immediately suspend the application of the Acts on the Supreme Court,

(Source: Liczba dnia FOR, <https://www.facebook.com/FundacjaFOR/photos/a.415421426024/10156204649991025/?type=3&theater> )

- It took **21 days** for the president to sign the amendment to the Act on the Supreme Court adjusting Polish law to the order of the CJEU. Therefore, he took advantage of the maximum legally admissible number of days for performing this act. The Act was published in the Journal of Laws **after 14 days**.

## First part – the judiciary

### HOW THE LAW HAS CHANGED

1. The new model of disciplinary proceedings with respect to judges was introduced by the amendment of the Law on the System of Ordinary Courts (in the Act on the Supreme Court of 8 December 2017), which became effective on 3 April 2018. **In accordance with the new law, the system of disciplinary liability of judges has been subjected to the almost unlimited control of the Minister of Justice, who is simultaneously the Prosecutor General.** It is now the Minister of Justice who entrusts the duties of a disciplinary court judge, as well as appointing and recalling the Disciplinary Commissioner of Ordinary Court Judges and his two deputies and may request the initiation of proceedings against a selected judge and file an objection if the proceedings are discontinued. He may also appoint a special disciplinary commissioner for handling a disciplinary case against a judge. In certain cases, this commissioner may be a prosecutor.
2. The model of disciplinary proceedings to date was independent of the public authorities. The disciplinary commissioners, namely judges who hold the function of prosecutors in disciplinary proceedings, were appointed by the National Council of the Judiciary (KRS), in which the majority of the members were judges elected by judges, or in other words, not appointed by politicians. According to the new law, the Disciplinary Commissioners are appointed by the Minister of Justice.
3. The Disciplinary Chamber, which has been newly established in the Supreme Court, performs the function of the disciplinary court of the first and second instances for Supreme Court judges and the disciplinary court of the second instance for judges of the ordinary courts (district, regional and appellate). It also hears labour law and social insurance cases regarding Supreme Court judges. The Disciplinary Chamber is largely autonomous. It has its own budget and a separate chancellery of the President of the Disciplinary Chamber; it does not report directly to the First President of the Supreme Court.
4. The objective of the changes was to subordinate the system of penalising judges for disciplinary reasons to the executive, and therefore to obtain the ability to influence judges and their decisions, as well as to obtain tools for investigating and removing uncomfortable judges from the profession.
5. Such a model of disciplinary proceedings poses a threat to the impartiality of judges and the independence of the courts.

## Disciplinary proceedings against judges – organisation

1. Disciplinary commissioners – namely prosecutors of the Minister of Justice – appointed by the Minister of Justice<sup>2</sup> initiate and handle disciplinary proceedings.
2. The disciplinary courts adjudicate on disciplinary matters in the first instance. They are separate courts at the courts of appeal. The Presidents of the Disciplinary Courts are the heads of the disciplinary courts at the courts of appeal.
3. The Disciplinary Court at the Supreme Court has the jurisdiction for adjudicating in disciplinary matters in the second instance. The Disciplinary Chamber of the Supreme Court is the disciplinary court for Supreme Court Judges.
4. The Minister of Justice has appointed an advisory team on ethics and disciplinary proceedings with respect to judges. The team analyses the operation of the reformed system of disciplinary liability of judges. It is supposed to help develop a list of good practices for judges.

how it was	how it is
Disciplinary courts independent of politicians.	Disciplinary courts under the control of the Minister of Justice – Prosecutor General.
Disciplinary Commissioner and his deputies selected by the National Council of the Judiciary from among candidates nominated by general assemblies of judges of the courts of appeal.	Disciplinary Commissioner and his deputies appointed by the Minister of Justice for four-year terms of office. The deputies of the disciplinary commissioner at the courts of appeal and the regional courts are appointed by the Disciplinary Commissioner of the Ordinary Court Judges (including without their consent).

<sup>2</sup> Disciplinary Commissioners of Ordinary Court Judges – 5 judges, including 2 military judges (Disciplinary Commissioner Piotr Schab and his two deputies – Michał Lasota and Przemysław Radzik, Disciplinary Commissioner of Military Court Judges, Major Andrzej Wilczewski and his deputy, Major Krzysztof Baranowski), Disciplinary Commissioner of the Supreme Court, Deputy Disciplinary Commissioners at the Courts of Appeal – 11, Deputy Disciplinary Commissioners at the Regional Courts – 45



In the first instance, the role of the disciplinary courts was played by the courts of appeal and, in the second instance, by the Supreme Court.	The new disciplinary courts: in the first instance, the disciplinary courts at the courts of appeal with a panel of three judges or the Supreme Court consisting of 2 Disciplinary Chamber judges and 1 Supreme Court juror; in the second instance – the Supreme Court consisting of two Disciplinary Chamber judges and one Supreme Court juror. The Minister of Justice entrusted the duties to the judges adjudicating in the disciplinary courts.
Judges were chosen at random from among all the judges in the court of appeal (first instance) or the Supreme Court (first or second instance) to adjudicate in a given disciplinary case.	The duties of the disciplinary court judge at the court of appeal are entrusted by the Minister of Justice after consulting the National Council of the Judiciary.
The disciplinary court for the Supreme Court Judges was the Supreme Court.	The disciplinary court for the Supreme Court judges is the Disciplinary Chamber of the Supreme Court.

### How much the Minister of Justice can do in disciplinary proceedings ?

- he appoints judges to the disciplinary court at the court of appeal; the minister consults the National Council of the Judiciary, although their opinion is not binding;
- he specifies the number of judges in the disciplinary courts at the courts of appeal;
- he appoints and recalls the Disciplinary Commissioner of the Ordinary Courts and his two deputies;
- he can initiate disciplinary proceedings and an investigation with respect to a judge;
- he can appeal against a decision of a disciplinary commissioner in which the commissioner discontinued proceedings, the initiation of which the minister requested;
- he can object to the discontinuation of all disciplinary proceedings with respect to a judge: the result of the objection is the obligatory initiation of disciplinary proceedings and the acceptance of the minister's instructions on the course of these proceedings;
- he can appoint a Disciplinary Commissioner of the Minister of Justice, who can also be a prosecutor, for handling any case regarding a judge.

## JUDGES UNDER PRESSURE

After the Polish parliamentary elections in October 2015, the attitude to the profession of judge has been changing with the gradual destruction of the rule of law. The conduct of certain politicians, journalists and even the environment of lawyers, including judges themselves, strike a blow at the gravity of the office of judge, frequently also undermining judicial independence and impartiality. This phenomenon intensified until the Acts were forced through in the Sejm, significantly changing the shape of the justice administration and making the judiciary and prosecution dependent on politicians, thereby breaching the principle of the division of powers in Poland. The law changed. Since the start of effectiveness of the Law on the system of ordinary courts became effective on 3 April 2018, **a new system of disciplinary liability of judges** has started to operate. **Consequently, judges have fallen victim to the pressure of the politicians.**

- Those judges who are socially and publicly active, as well as those who criticise the changes in the justice administration being introduced by the current ruling coalition (Law and Justice, Solidary Poland and Poland Together), are particularly affected by the harassment.
- Both disciplinary proceedings against judges and investigations 'in cases' are in progress (e.g. in the case of a judge's involvement in a simulation of a court hearing organised for educational purposes or in the case of requests for preliminary rulings to the CJEU filed by judges). In the latter case, the judges are called to submit explanations and are questioned as witnesses under the threat of criminal liability. Meanwhile, the Law on the System of Ordinary Courts does not provide for the ability to initiate activities of questioning judges under the threat of criminal liability at the stage of the investigation. This means a breach of the procedures and the applicable law by the judges who are disciplinary commissioners.
- Harassments of judges also appear in the form of indirect pressure, which affects the comfort of their work and adjudication, but also their life in the community.

Pressure regarding the adjudication area:

- Deprivation of judges of the opportunity of promotion

At the session of 12 July 2018, the National Council of the Judiciary (KRS) negatively assessed the candidacy of District Court Judge for Warszawa-Wola, **Marta Kożuchowska-Warywoda** for the position of judge of the voivodship administrative court. Judge Marta Kożuchowska-Warywoda found herself on the 'judge proscription black list' prepared by the Law and Justice politicians because of her activity in support of the rule of law and her activity in the judicial association. The Justice Defence Committee (KOS) spoke up on this matter acknowledging the activities of the National Council of the Judiciary to be 'a breach of the constitutional principle of independence of the judiciary, which is also related to the division of powers' (KOS' opinion 1/2018)<sup>3</sup>.

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<sup>3</sup> <http://komitetobronysprawiedliwosci.pl/stanowiska-komitetu-obrony-sprawiedliwosci-kos-w-sprawie-negatywnej-opinii-krajowej-rady-sadownictwa-wobec-sedzi-marty-kozuchowskiej-warywdody/>

- Contesting the rights of the judges to which they are entitled by law

Seven Supreme Court judges submitted a request to the Court of Justice of the European Union (CJEU) for a preliminary ruling on 2 August 2018. The request applied to the compliance with European Union law of the removal of judges from office by statute and retiring them by reducing the retirement age. Additionally, the Supreme Court suspended the application of these regulations until the time of a receipt of a response from the CJEU. After the Supreme Court Judges exercised this right, which arises directly from the Treaty on the Functioning of the EU, the deputy prosecutor general made a public statement accusing these judges of a gross breach of their rights<sup>4</sup>.

Additionally, **Ewa Maciejewska**, Judge of the Regional Court of Łódź and **Igor Tuleya**, Judge of the Regional Court of Warsaw, who submitted requests for preliminary rulings to the CJEU regarding the compliance of the regulations on the disciplinary liability of judges introduced in April 2018 with European Union law have also been suffering the consequences of this. In response to the action of the judges, Deputy Disciplinary Commissioner Przemysław Radzik summoned them to submit statements on their possible 'judicial excesses' involving them causing the submission of a request for a preliminary ruling despite the conditions of Article 267 of the Treaty on the Functioning of the European Union in the procedure of the regulations on disciplinary proceedings. KOS issued an Opinion (KOS Opinion 12/2018)<sup>5</sup> in response to the action of the disciplinary commissioner.

Judges of the Supreme Administrative Court also submitted two requests for preliminary rulings to the CJEU. In this case, the doubts apply to the breach of the principle of the division and balance of powers by the method of electing members to the National Council of the Judiciary, as well as the principles of a state run by the rule of law and the right to an effective remedy and effective judicial protection by awarding resolutions of the National Council of the Judiciary on the appointments of candidates to judicial offices of the Supreme Court the attribute of non-appealability. The Justice Defence Committee (KOS) issued an appeal on this to the public authorities to refrain from taking steps regarding requests for preliminary rulings until they are settled by the CJEU (KOS Opinion 10/2018<sup>6</sup>). See also: KOS Opinion 7/2018<sup>7</sup>.

Disciplinary Commissioner Michał Lasota also summoned a Regional Court Judge from Gorzów Wlkp., **Kamil Jarocki**, to submit a written statement in connection with the Regional Court in Gorzów Wlkp. requesting a preliminary ruling from the Court of Justice of the European Union in the procedure of Article 267 TFEU. He had previously approached the president of the Regional Court in Gorzów Wlkp., Jarosław Dudzicz (a member of the body performing the function of the National Council of the Judiciary and of the Minister of Justice's Group on

4 <https://pk.gov.pl/aktualnosci/aktualnosci-prokuratury-krajowej/oswiadczenie-zastepcy-prokuratora-generalnego-dotyczace-postanowienia-sadu-najwyzszego-z-dnia-2-sierpnia-2018-roku/>

5 <http://komitetobronysprawiedliwosci.pl/opinia-komitetu-obrony-sprawiedliwosci-kos-ws-dzialan-zastepcow-rzeczniaka-dyscyplinarnego-sedziow-sadow-powszechnych-skierowanych-przeciwko-sedziom-cwie-maciejewskiej-i-igorowi-tulei/>

6 [http://komitetobronysprawiedliwosci.pl/opiniakos\\_10\\_2018/](http://komitetobronysprawiedliwosci.pl/opiniakos_10_2018/)

7 <http://komitetobronysprawiedliwosci.pl/opinia-komitetu-obrony-sprawiedliwosci-kos-ws-przekazania-prezydentowi-rp-uchwal-nowej-krajowej-rady-sadownictwa-z-rekomendacjami-kandydatow-do-sadu-najwyzszego/>

actions taken in disciplinary proceedings regarding judges and court assessors) to submit a certified copy of the order issued by the Regional Court in Gorzów Wlkp<sup>8</sup>.

- Interference and contesting judgments

**Dominik Czeszkiewicz**, a judge of the District Court in Suwałki, who adjudicated in the case of activists of the Committee for the Defence of Democracy (KOD) accused of interrupting the opening ceremony of an exhibition attended by Mariusz Błaszczak and Anna Maria Anders, is a victim of pressure involving the initiation of disciplinary proceedings for a judgment that had been issued. Judge Czeszkiewicz declared that the KOD activists are innocent, after which the deputy disciplinary commissioner at the Regional Court in Suwałki, Regional Court Judge Maciej Romotowski, raised two charges against the judge. The first applied to tardiness in setting a date for a hearing of an underage witness and the second related to the failure to improve his professional qualifications.

The disciplinary commissioner ultimately discontinued the proceedings against the judge.

The disciplinary commissioner contested a judgment of a judge of the Regional Court in Poznań, **Sławomir Jęksa**, who adjudicated in the case of Joanna Jaśkowiak, wife of the mayor of Poznań. Joanna Jaśkowiak used bad language during a demonstration in defence of the Constitution. Judge Jęksa passed judgment proclaiming her innocent and, in the justification, criticised the breach of the rule of law in Poland by the authorities. He acknowledged that, in this situation, Joanna Jaśkowiak's act was socially damaging, whereas her words 'were perhaps necessary'. The consequence of the justification formulated in this way was the initiation of an investigation by the disciplinary commissioner. Disciplinary Commissioner Przemysław Radzik stated that such a justification 'puts the dignity of the judge to shame and undermines confidence in his independence and impartiality of his political judgments'. The proceedings have not yet ended.

Furthermore, Piotr Taraszkiewicz, who manages the criminal division of the court in which Judge Czeszkiewicz adjudicates, received a warning for the lack of appropriate supervision over Judge Czeszkiewicz.

- Deprivation of the ability to adjudicate – Supreme Court and Supreme Administrative Court judges

The parliamentary majority restricted the ability of Supreme Court judges and Supreme Administrative Court judges to adjudicate by means of the Act on the Supreme Court. The politicians used a statute to reduce the retirement age at which the judges have to retire.

In this way, the Law and Justice party tried to shorten the term of office of the First President of the Supreme Court, which is specified directly in the Constitution. The Justice Defence Committee, KOS, issued an opinion in the case of the First President of the Supreme Court, Małgorzata Gersdorf, assessing the Act introducing this rule as being in conflict with the Constitution (KOS Opinion 2/2018)<sup>9</sup>.

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8 <https://www.iustitia.pl/postepowania-dyscyplinarne/2767-zastepca-lasota-szuka-ekscesu-w-gorzowie-wlkp>

9 <http://komitetobronysprawiedliwosci.pl/sytuacja-pierwszej-prezes-sadu-najwyzszego/>

The Supreme Court judges who did not agree to retirement appealed to the Supreme Court against the negative opinions issued with respect to them by the National Council of the Judiciary (KRS). The right to file an appeal arises from the Act on the National Council of the Judiciary. In response, on 27 July 2018, Judge Maciej Mitera, press officer of the new KRS, informed the Polish Press Agency that the Chairperson of the new KRS, Judge Leszek Mazur, would not send the appeals in question to the Supreme Court and would not set a deadline for their consideration. The Justice Defence Committee (KOS) also issued an opinion on this matter stating that 'the refusal to set a deadline for the consideration of the submissions filed by the Supreme Court judges prevents judicial control over the resolutions of the new KRS and, in fact, deprives these people of the right to a court hearing, which arises from the provisions of the Polish Constitution, the European Charter of Human Rights and the Charter of Fundamental Rights of the EU' (KOS Opinion 3/2018)<sup>10</sup>.

The Court of Justice of the European Union spoke up on the matter of the retirement of the Supreme Court and Supreme Administrative Court judges. The Vice President of the CJEU issued an order obligating Poland to immediately suspend the application of the provisions of the Act on the Supreme Court with regard to the reduction in the retirement age and the president giving consent to the judges continuing to judge until the final judgment is issued in the dispute with the European Commission (FOR Communication 34/2018)<sup>11</sup>.

- Initiation of criminal proceedings

**Agnieszka Pilarczyk**, judge of the District Court for Kraków Śródmieście, was handling the case of doctors contributing to the death of Justice Minister, Zbigniew Ziobro's father. In this case being heard before the court, the prosecution office initiated proceedings on Judge Pilarczyk failing to fulfil her official duties involving the acceptance of an overstated costing of an expert opinion. It is not insignificant that Minister of Justice, Z. Ziobro, simultaneously holds the function of Prosecutor General, namely that he is the head of the prosecutors. These events did not affect the judgment issued by Judge Pilarczyk who declared that the doctors are not guilty. Minister Z. Ziobro's family appealed against this judgment. The proceedings in the case are still pending.

- Excessive burdening of judges with cases

The courts have a system of random allocation of cases to judges, which, as was declared, has the objective of improving the effectiveness of the work of the courts. However, the Ministry of Justice does not want to disclose the algorithm according to which cases are allocated to individual judges. In practice, it transpires that random drawing in the system leads to large disproportions in the number of cases allocated and, furthermore, the practice of discretionary exclusion of a judge from the drawing is applied, which leads to excessively burdening some judges outside the random drawing system if only through the method of organising substitutions.

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<sup>10</sup> <http://komitetobronysprawiedliwosci.pl/odmowa-przekazania-przez-przewodniczacego-nowej-krajowej-rady-sadownictwa-odwolan-zlozonych-przez-sedziow-sadu-najwyzszego/>

<sup>11</sup> <https://for.org.pl/pl/a/6450,komunikat-34/2018-nowelizacja-ustawy-o-sadzie-najwyzszym-nie-przywraca-praworzadnosci>

The president of the Regional Court in Kraków burdened **Waldemar Żurek**, judge of the Regional Court in Kraków with numerous volumes of case files in which the court has not performed any activities for a long time. If it is found that the court is taking too long with the proceedings, Judge Żurek and the division in which he adjudicates will be held responsible for this. Furthermore, after the judge was transferred to another division despite his will, he did not receive an assistant or a reporting clerk. With such a work load and rate at which he has to perform his duties, it is certain that sooner or later he will make a mistake. He will also suffer the consequences of that.

- Attempt to undermine the effects of the work of a judge and attempts to ‘dig up some dirt’

It is common practice for disciplinary commissioners to check selected judges in terms of the effectiveness of their work. In order to do this, the disciplinary commissioners check the last years of work of the specified judge and review his case files without previously specifying any allegations with respect to him.

As a result of such actions, Deputy Disciplinary Commissioner of Judges of the Ordinary Courts P. Radzik recently issued a decision to initiate proceedings and press charges against **Monika Frąckowiak**, Judge of the District Court of Poznań Nowe Miasto i Wilda and **Olimpia Barańska-Małuszek**, Judge of the District Court of Gorzów Wielkopolski. He accused Judge Frąckowiak of committing a total of 172 disciplinary torts and judge Barańska-Małuszek of committing 10 disciplinary offences. In both cases, Disciplinary Commissioner Przemysław Radzik demanded the provision of the results of the judicial effectiveness. The court’s president was supposed to provide the results of Judge Barańska-Małuszek’s work for the last three and a half years, with particular emphasis on cases with tardiness of proceedings. The disciplinary commissioner required the president of the court to provide all of Judge Frąckowiak’s statistics, inspections and opinions on the judge for the last three years of her work. According to the disciplinary commissioner’s instructions, the court president was to specify, in particular, whether Judge Frąckowiak had ever questioned the instructions of her superiors and, if so, in what form. It should be added that both Judge Frąckowiak and Judge Barańska-Małuszek are activists of the Iustitia Association of Polish Judges and have frequently publicly criticised the acts of the authorities regarding the rule of law and the justice administration.

The disciplinary commissioner sent a similar letter to the Regional Court in Łódź with a demand to provide information on the judgments of **Ewa Maciejewska**, Judge of the Regional Court in Łódź from the last three years of her work. The president of the court was to especially take into account the cases in which the State Treasury was a party. Judge Maciejewska is an author of a request for a preliminary ruling submitted to the CJEU.

Deputy Disciplinary Commissioner Przemysław Radzik also initiated an investigation into the judgments of **Arkadiusz Krupa**, Judge of the District Court in Łobza, from the period from January 2015 to the end of August 2018. The commissioner requested the president of the District Court in Łobza to send official opinions on Judge Krupa, as well as information on the stability of his judgments, the punctuality of preparing justifications, the average number of cases in the judicial office and the punctuality of setting dates for cases. Judge Krupa is the author of satirical cartoons, ironically presenting court realities and the activities of the authorities, which are published in various journals.

The Disciplinary Commissioner also used the clarification activities taken up with respect to **Włodzimierz Brazewicz**, Judge of the Court of Appeal in Gdańsk regarding the 'political nature' of a meeting that the judge chaired as a pretext to check the efficiency of the judge's work and to collect information on him. After the questioning, Deputy Disciplinary Commissioner Michał Lasota sent a letter to Judge Brazewicz obligating him to submit a declaration on the late preparation of justifications and the 'failure to observe the official route by approaching, namely calling third parties as witnesses (...) in a case related to the office held and the publication of this information.' Commissioner M. Lasota also approached the management of the Court of Appeal in Gdańsk requesting the preparation of an opinion on the judge's work, the statistical results of his work and information on whether any disciplinary activities had taken place with respect to him in 2002–2007<sup>12</sup>.

Pressure related to the organisation of work and official subordination of judges:

- Changes in the court's organisation structure

The pressure also involves the deliberate restructuring of the court, for instance, in the form of the liquidation of a court division in order to remove a judge – the head of the division. The Minister of Justice, Zbigniew Ziobro, plans such activities.

Consequently, the division that the Ministry of Justice is planning to liquidate is one of the commercial divisions at the District Court for Poznań – Stare Miasto. The head of this division is Judge **Bartłomiej Przymusiński**, who has already been called for questioning by the disciplinary commissioner in the case of his involvement in a simulation of a court hearing during the Pol'and'Rock festival.

**Dariusz Mazur**, Judge of the Regional Court in Kraków, where he is the head of the Criminal Division, may also experience a similar situation. Judge Mazur is a member of the Association of Judges, 'Themis'.

- Replacement of presidents and vice-presidents of the ordinary courts

The presidents and the vice presidents of the ordinary courts were replaced shortly after the amendment of the Law on the System of Ordinary Courts in July 2017. The Minister of Justice, Zbigniew Ziobro, is responsible for the replacement.

The first to be affected were three vice presidents of the Regional Court in Warsaw, the largest court in the country, where numerous sensitive cases are being handled. A total of 158 presidents and vice presidents were replaced in this period, including everyone in the largest courts in the country<sup>13</sup>.

It should be presumed that the objective of these replacements was to assume control over the judiciary and to fill the positions in the courts with people connected with the executive.

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<sup>12</sup> <https://www.rp.pl/Sedziowie-i-sady/301179966-Przesluchanie-sedziego-Brazewicza---RPO-interweniuje-urzecznika-dyscyplinarnego.html>

<sup>13</sup> <https://oko.press/lista-158-stowarzyszenie-iustitia-zdobylo-nazwiska-prezesow-i-wiceprezesow-zwolnionych-przez-resort-ziobry/>

- Transfer to another division of the court despite the judge's will

This is a type of harassment, which is appropriate to official subordination. The court president, who was previously replaced by the Minister of Justice, makes the decision to transfer a specific judge to another division within the same court.

**Waldemar Żurek**, Judge of the Regional Court in Kraków received such a decision. Judge Żurek was the press officer of the National Council of the Judiciary. He is currently actively working in the public sphere in support of the independence of the courts. Judge Żurek was transferred from the 2nd Civil Appeal Division to the 1st Civil Division (first instance) without the legally required consultations with the court's council purely by way of a decision of the President of the Regional Court in Kraków, Dagmara Pawelczyk-Woicka, who was appointed to the position of president by Z. Ziobro. According to Judge Żurek, this is a demotion, because the appeal division considers cases of the second instance, while the 1st Civil Division considers cases in the first instance. The judge filed an appeal to the National Council of the Judiciary, in which Judge Pawelczyk-Woicka, who issued the contested decision, is a member. The Justice Defence Committee (KOS) issued a communication on this matter, expressing its adamant objection to Judge Waldemar Żurek's transfer, acknowledging this decision as being in conflict with the applicable regulations (KOS Communication 1/2018)<sup>14</sup>.

**Monika Smaga-Leśniewska**, Judge of the District Court for Poznań Stare Miasto found herself in a similar position. She was transferred from the Criminal Division to the Civil Division within the District Court in Poznań. The reason for this was the failure to apply a temporary arrest to a former senator, a partyless candidate supported by the Civic Platform (PO) party, accused of corruption by the current authorities.

- Deprivation of a judge of his function

**Waldemar Żurek**, Judge of the Regional Court in Kraków, was dismissed from his function of press officer of the Regional Court in Kraków. The decision was made by Court President Dagmara Pawelczyk-Woicka, despite the lack of the required opinion of the Court Council. The court president signed the minutes of the Council meeting with the vote on the dismissal of Judge Żurek, which refers to this decision being made unanimously, by which she gave false testimony. Certain members of the Council disagreed with the wording of the minutes formulated in this way. As part of the objection, they resigned from membership of the Court Council. In response to their decision, they were dismissed from their functions of heads of divisions and president of the district court.

Pressure regarding the non-adjudication area:

- Breaching or abusing procedures with respect to judges

Deputy Disciplinary Commissioner of Judges of the Ordinary Courts, Przemysław Radzik, summoned **Igor Tuleya**, Judge of the Regional Court in Warsaw and **Włodzimierz Brazewicz**, Judge of the Court of Appeal in Gdańsk for questioning. They were summoned as witnesses at the stage of the investigation being handled by the deputy disciplinary commissioner. The

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<sup>14</sup> <http://komitetobronysprawiedliwosci.pl/komunikat-komitetu-obrony-sprawiedliwosci-dotyczacy-przeniesienia-sedziego-waldemara-zurka-do-innego-wydzialu-sadu-okregowego-w-krakowie-wbrew-jego-woli/>



investigation applied to what the deputy disciplinary commissioner considered to be a political nature of a meeting, in which Judge Tuleya took part and which Judge Brazewicz chaired. No provision of the Law on the System of Ordinary Courts or the Criminal Procedures Code used additionally provides for the ability to initiate activities of questioning witnesses under the threat of criminal liability at the stage of the investigation. The pending proceedings are not being handled against the judges, but 'in the case'. It is only admissible to obtain information from the judge at this stage of the proceedings by way of a voluntary declaration which is not subject to the procedure of Article 233 of the Penal Code (PC), i.e. liability for giving false testimony.

Furthermore, during the questioning by the disciplinary commissioner, Judges Tuleya and Brazewicz were deprived of the ability to consult their proxies. The commissioner refused to allow the proxies of the judges to participate in the questioning, despite the obvious need to protect the interests of the judges. The Justice Defence Committee addressed this matter by issuing an opinion (KOS opinion 8/2018)<sup>15</sup> and sending a letter to Piotr Schab, Disciplinary Commissioner of Judges of the Ordinary Courts<sup>16</sup>.

- Searching for connections between judges and politics

**Włodzimierz Brazewicz**, Judge of the Court of Appeal in Gdańsk, was summoned by the Disciplinary Commissioner as a witness in the case of a meeting which he chaired at the European Solidarity Centre with Judge Igor Tuleya. This was an open meeting, held in a public place, so politicians were able to attend. The Disciplinary Commissioner described the nature of the meeting as political on this basis.

- Restriction of educational activities of judges

**Igor Tuleya**, Judge of the Regional Court in Warsaw, received a summons and was questioned by Przemysław Radzik, Deputy Disciplinary Commissioner of the Judges of the Ordinary Courts in the case of the judge's participation in the Pol'and'Rock festival. A simulation of a court hearing was held at the festival. However, the Disciplinary Commissioner considered this to be exceeding the limits of freedom of speech by a judge<sup>17</sup>.

**Monika Frąckowiak**, Judge of the District Court for Poznań Nowe Miasto i Wilda, **Arkadiusz Krupa**, Judge of the District Court in Łobza, as well as **Bartłomiej Przymusiński**, Judge of the District Court for Poznań Stare Miasto, received similar summons for questioning in the case of participation in the festival and the simulation of the court hearing.

According to Disciplinary Commissioner P. Radzik, 'during the parody of the court hearing he was conducting, Judge Krupa used the official attire in the form of a gown and chain with the image of an eagle, which breached the gravity of the office held and constituted a discredit to the dignity of a judge.'

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15 <http://komitetobronysprawiedliwosci.pl/opinia-komitetu-obrony-sprawiedliwosci-kos-ws-przesluchania-sedziego-igora-tulei/>

16 <http://komitetobronysprawiedliwosci.pl/list-komitetu-obrony-sprawiedliwosci-kos-do-rzeczniaka-dyscyplinarnego-sadow-powszechnych-sedziego-piotra-schaba-ws-ss-igora-tulei/>

17 <https://oko.press/rzeczniak-dyscyplinarny-ziobry-przesluchuje-sedziow-z-iustitii-za-udzial-w-festiwalu-owskiaka/>

Judge P. Radzik, Deputy Disciplinary Commissioner of the Ordinary Courts ended his investigation with respect to Judge Monika Frąckowiak and Judge Arkadiusz Krupa, about which Disciplinary Commissioner P. Schab provided notice in his communication<sup>18</sup>.

- Prohibition to promote the Constitution in public places

The National Council of the Judiciary passed a resolution on 12 December 2018 prohibiting judges from wearing any items in public places which could identify them with a political party, trade unions or a social movement. The resolution was passed in response to judges wearing T-shirts with the inscription 'KonsTYtucJA' [Constitution] which express the superiority of the Constitution in a state with the rule of law.

- Proceedings for statements in the media by judges

**Igor Tuleya**, Judge of the Regional Court in Warsaw, was summoned by Przemysław Radzik, Deputy Disciplinary Commissioner of the Judges of the Ordinary Courts to provide explanations in the case of the judge's participation in information programmes (e.g. in TVN24). While speaking publicly, Judge Tuleya criticised the changes in the Supreme Court and the functioning of the National Council of the Judiciary.

The verification of the judicial effectiveness of **Olimpia Barańska-Małuszek**, judge of the District Court in Gorzów Wielkopolski was justified by Disciplinary Commissioner P. Radzik by Judge Barańska-Małuszek's appearances in the media, in which she criticised the changes being introduced in the judiciary.

- Pressure of the prosecution service on the judges

This applies to the prosecution service headed by the Prosecutor General, namely the Minister of Justice, who bears an influence on the decisions made by his subordinate prosecutors.

Judges of the Supreme Court experienced pressure from the prosecutors in the case already described above about referring a request for a preliminary ruling to the CJEU. In response to the action of the Supreme Court judges, the deputy prosecutor general issued a statement in which he accused them of a gross breach of their rights.

The Head of the Branch Office of the National Prosecution Office in Rzeszów, Prosecutor Rafał Teluk, called **Anna Romańska**, Judge of the Regional Court in Rzeszów in August 2018, instructing her to change the decision she had issued. In the decision, the judge had returned the indictment to be supplemented, against which the prosecution office appealed, whereas the Regional Court set aside the appeal.

- Reaction of the Commissioners to critical resolutions of Assemblies of Judges

The Assembly of Judges of the region of the Regional Court in Poznań of 3 January 2018 passed three resolutions. The first of these applies to judges withholding from issuing opinions on candidates applying for promotions to courts of higher instances, about which the National Council of the Judiciary decides. In their resolution, the Poznań judges wrote, among other things, that they are withholding from issuing opinions on promotions until the requests for the preliminary rulings regarding, among other things, the choice of judges to the new National

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<sup>18</sup> [http://rzecznik.gov.pl/?fbclid=IwARohJIfRl89Ock4OKF1m92E4QysWnBKP-VTGjXSqtk\\_bDj8um-2MsqwcGdl](http://rzecznik.gov.pl/?fbclid=IwARohJIfRl89Ock4OKF1m92E4QysWnBKP-VTGjXSqtk_bDj8um-2MsqwcGdl)

Council of the Judiciary, are considered by the CJEU. The second resolution applies to holding contests for vacancies in the Poznań court and is an expression of the objection of the judges to the 'course of the procedure for the provision of opinions by the body referred to as the National Council of the Judiciary on candidates for the office of judge of the Regional Court in Poznań' and the fact that candidates are assessed according to non-substantive criteria.

Deputy Disciplinary Commissioner, Judge Przemysław Radzik initiated explanatory proceedings related to misconduct in office. He is demanding to be sent certified photocopies of the resolutions passed by the Poznań judges, a photocopy of the minutes of the Assembly, the list of judges taking part in the Assembly and the names of the judges who prepared the resolutions passed by the Assembly. He also wants to know whether someone ordered the draft of these resolutions to be distributed to the judges via the court's e-mail system.

The Disciplinary Commissioner is demanding the same information from the President of the Court of Appeal in Kraków for similar resolutions issued in October 2018 by the Assembly of the Kraków Appellate Judges in which they criticised the president, the new National Council of the Judiciary and the President of the Regional Court in Kraków, Dagmara Pawełczyk-Woicka<sup>19</sup>.

- Attempt to deprive a judge of his immunity

The District Prosecution Office in Kraków filed a motion with the Disciplinary Court at the Appellate Court in Kraków to remove the immunity of Wojciech Łączewski, Judge of the District Court for Warszawa-Śródmieście.

The prosecution office's interest in Judge Łączewski is the Twitter correspondence between people claiming to be the judge and journalist Tomasz Lis. The prosecution office claims the judge made an untrue statement about his account having been hacked.

The case of depriving the judge of immunity has been deferred. Judge Łączewski's defence attorneys expressed serious doubts about the independence of the disciplinary courts.

The Disciplinary Court will consider these doubts and decide whether to ask the European Court of Justice if the principles of disciplinary proceedings are in line with EU law<sup>20</sup>.

'Soft' repression

- Negative public statements and acts of politicians with respect to the judges

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<sup>19</sup> [https://archiwumosiatynskiego.pl/wpis-w-debacie/nowy-etap-rzecznik-dyscyplinary-chce-hurtowo-scigac-sedziow-poznania-i-krakowa/?preview=true&fbclid=IwAR3vCfCzpsps8X8SawzwwqregaqKsuEJPNt7m\\_uKpdovnyB34flBpkdtOFtI](https://archiwumosiatynskiego.pl/wpis-w-debacie/nowy-etap-rzecznik-dyscyplinary-chce-hurtowo-scigac-sedziow-poznania-i-krakowa/?preview=true&fbclid=IwAR3vCfCzpsps8X8SawzwwqregaqKsuEJPNt7m_uKpdovnyB34flBpkdtOFtI)

<sup>20</sup> <https://wiadomosci.onet.pl/tylko-w-onecie/prokuratura-chce-stawiac-zarzuty-sedziemu-laczewskiemu-dogry-wlaczy-sie-tsue/whjotol.amp?fbclid=IwAR3pyMIEFqZqw3vi8xXVft6PStAwu--AoX4Jtp4uF9xMZniGnT74AZx6UM>

In August 2018, when the Citizens of Poland movement blocked the start of the meeting of the newly elected National Council of the Judiciary (KRS), Stanisław Piotrowicz, MP, who is a part of the KRS, blamed the judges for this event. When explaining his statement, he added that the intentions of the KRS' actions are that 'the judges, who are ordinary thieves, should not adjudicate anymore'. Judges (Professor Małgorzata Gersdorf, the First President of the Supreme Court, and Professor Krzysztof Rączka, Supreme Court Judge) reacted to the statement by filing an action against the politician in protection of their personal rights.

Another example of a negative statement from a politician addressed to a judge is Deputy Minister of Justice Patryk Jaki's reaction to a court decision that was issued. The decision applied to the refusal to set aside an action of one of the MPs against the deputy minister for a breach of personal rights. Deputy Minister Jaki referred to the action of the court as a sign of revenge against him for criticising the courts. He also suggested that Judge Alicja Fronczyk from the Regional Court in Warsaw, who was handling this case, was already known for her political judgments. During and after the hearing, he threatened the judge with the initiation of disciplinary proceedings.

In an interview with *Gazeta Polska*, Prime Minister Mateusz Morawiecki referred to a 'criminal group'; it arose from the context of his statement that this was about the judges from Kraków. The judges filed an action for a correction in the procedure of the press law against *Gazeta Polska*.

However, while defending the Law and Justice party's reforms of the judiciary, the head of Prime Minister Morawiecki's political office, Marek Suski, suggested that judges are corrupt during the visit of the members of the European Parliament. He stated that 'some judges are rich and have gold bars buried in their gardens, but their origin is unknown.'

Krystyna Pawłowicz, MP, prepared a list of judges, who were candidates for promotion, who the MP does not believe deserve to be promoted. It included judges taking part in a meeting in defence of the Constitution and the judiciary, as well as judges who took part in a debate in Brussels on the reform of the judiciary in Poland. The list was provided to the National Council of the Judiciary, which makes decisions on the promotion of judges.

Numerous statements from politicians and state officials undermining the competence of the judges also appeared after the requests for preliminary rulings were submitted to the CJEU by the Supreme Court. The Justice Defence Committee (KOS) commented on these statements in one of its opinions (KOS Opinion 4/2018)<sup>21</sup>. The statements which KOS addressed are:

1. 'This decision regarding the alleged "suspension" of certain provisions of the Act should be considered invalid by law,' said the President of the Republic of Poland, Andrzej Duda (*'Dziennik Gazeta Prawna'*);
2. 'This is a judgment which has no legal grounds. It cannot be the case that something with no legal grounds is to apply in Poland. This is precisely a denial of democracy,' said Andrzej Dera, Secretary of State in the Chancellery of the President of the Republic of Poland (*'Rzeczpospolita'*);

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21 <http://komitetobronysprawiedliwosci.pl/oswiadczenie-komitetu-obrony-sprawiedliwosci-kos/>

3. 'Thursday's decision of the Supreme Court was issued without legal grounds and is not compatible with Polish law,' said Paweł Mucha, Secretary of State in the Chancellery of the President. He declared that the Polish legal system does not have a suspension of the application of the provisions of a statute (TVN24);
4. 'The Supreme Court has placed itself above the Constitution, it has placed itself above the legal order in force in Poland,' stated Deputy Justice Minister Marcin Warchol, (TVN24);
5. 'Something that is an unlawful act cannot be respected,' stated Deputy Justice Minister Lukasz Piebiak, commenting on Thursday's decision of the Supreme Court. He called them an 'excess', 'a seeming resolution', 'a seeming decision (TVN24);
6. 'I would like to believe that the decision of the Supreme Court on the suspension of three provisions of the Act on the Supreme Court is an expression of ignorance of the law and not aggression from prominent representatives of the judicial environment,' – wrote Jan Kanthak, spokesperson of the Ministry of Justice, in the communication;
7. 'When issuing the decision containing the request for a preliminary ruling to the Court of Justice of the EU and suspending the application of certain provisions of the Act on the Supreme Court, the Supreme Court committed a number of breaches of the law' and (the Resolution of the Supreme Court) 'cannot be respected by the state authorities,' wrote Robert Hernand, Deputy Prosecutor General, in his statement.

- Actions and statements of journalists

The 'Sieci' weekly published an article titled 'Rozgrzana Kasta' [Heated Castel], which criticised the activities of the judges. The authors of the article accuse the judges of a lack of independence of politics and politicians, as well as casting doubt over the judgments issued by the courts. The article is promoted on the cover page of the weekly and is furnished with a graphic design presenting one of the judges shooting from a firearm in defence of the opposition political parties and the Constitution.

The 'wPolityce' internet portal posted an article in which the judges were accused of informing on Poland abroad. The article is titled '*Ujawniamy listę sędziów, którzy jutro żalić będą się na Polskę w Brukseli!*' [We are disclosing the list of judges who will complain about Poland tomorrow in Brussels!]. It was about a visit of Polish judges to Brussels where they were to take part in a debate on the reform of the judiciary in Poland.

The judges' visit was also written up by another web portal, 'Niezależna'. The article starts with the words 'A group of judges was complaining about their fate – because it certainly was not the whole of the justice administration – during a trip to Brussels'.

The media do not just focus on the official aspects of the activities of judges. They frequently also write about private matters of judges, which not only tares the judge's reputation in public and reduces his social position, but can also pose a threat to him and his family. An example of this is **Waldemar Żurek**, judge of the Regional Court in Kraków, about whose property an article was written ('Frona' internet portal). The 'wPolityce' portal wrote about Judge Żurek's relationship with his ex-wife and the disputes arising from this.

Right-wing media also attacked **Weronika Klawonn**, judge of the Regional Court in Gdańsk, who is handling the case regarding the protection of personal rights in an action filed by Jarosław Kaczyński against Lech Wałęsa. The wPolityce portal posted a series of articles devoted to judge Klawonn, citing entries from the social media attacking the judge and accusing her of being biased. See also: KOS Opinion 9/2018<sup>22</sup>.

- Tax audits

Harassment of this type was also applied to **Waldemar Żurek**, Judge of the Regional Court in Kraków. The Central Anticorruption Bureau (CBA) audited his property declarations for one and a half years. During this time, Żurek was repeatedly summoned for questioning. The CBA was also demanding explanations from his wife, who was pregnant at that time.

- Creation of an atmosphere of uncertainty

From the moment of its appointment in 2015 the government started to announce changes in the justice administration, after which it started to implement them, removing successive judges from the offices held and making further institutions dependent on politicians. Meanwhile, the judges started to experience uncertainty.

First, the Constitutional Tribunal was taken over as a result of the Law and Justice party undermining the resolutions of the Sejm of the previous term of office on the appointment of new judges as members of the Tribunal. Next, the Law and Justice party filled these positions with judges supported by it. Next, the ruling party repeatedly amended the provisions of the Act on the Supreme Court, the Act on the National Council of the Judiciary and the Act on the System of Ordinary Courts. The Minister of Justice removed the presidents and vice presidents of the ordinary courts, replacing them with judges of his choice. The Law and Justice MPs also changed the method of choosing judges to the National Council of the Judiciary, where the majority of members are currently judges elected by politicians (Sejm). Furthermore, the Law and Justice party deprived the Supreme Court and the Supreme Administrative Court of the ability to adjudicate after reaching the retirement age that was reduced by statute and ordered them to retire. An equally significant change took place in the system of disciplinary liability of judges, as a result of which the Minister of Justice was awarded numerous key powers. As a result, he has almost unlimited authority over the system of penalising judges for disciplinary reasons.

All these changes took place in just three years. Most of them were accepted by the Sejm at a very fast rate (during Sejm commission meetings held at night and plenary meetings held at night) and were changed equally quickly immediately afterwards. The actions of the politicians in this respect were unforeseeable, which translated into a permanent atmosphere of uncertainty in the judicial environment.

- Campaign targeted against judges

The Polish National Foundation financed by State Treasury companies created a campaign in 2017 named 'Just courts', which had the objective of discrediting judges in the eyes of the citizens. The campaign involved posting bills on billboards in public space, broadcasting a spot on TV and creating a website presenting pathologies among the judges, for instance, in the form of their

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22 <http://komitetobronysprawiedliwosci.pl/opinia-komitetu-obrony-sprawiedliwosci-kos-ws-narastajacych-naciskow-na-sedziow-w-zwiazku-z-ich-dzialalnoscia-publiczna-i-orzecznicza/>

alleged drunkenness and driving under the influence of alcohol or their thefts. The stories thought up for the purpose of the campaign were not real. The campaign coincided with the changes in the justice system being forced through by the Law and Justice party.

## Part two – prosecution office

### CHANGES IN THE PROSECUTION OFFICE – PROSECUTORS UNDER PRESSURE

- The introduction of **new regulations** forming the system of the prosecution office enacted by the Law on the Public Prosecution Office of 28 January 2016<sup>23</sup> lies at the foundation of the pressure applied by the prosecutors.
- The introducing regulations enabled **the demotion of almost 1/3 of the public prosecutors (113 prosecutors)** from the two highest levels of the prosecution office. An arbitrary procedure was adopted providing that National Prosecutor Bogdan Świączkowski will choose the people who would be appointed to the position of prosecutors of the National Prosecution Office and the regional prosecution offices, whereby the decision to appoint them will be made at his request by Prosecutor General Zbigniew Ziobro<sup>24</sup>. The people who were not encompassed by the request of the National Prosecutor were transferred to other positions in the public prosecution's general organisational units by way of a decision of the Prosecutor General.
- This is a selectively implemented **hidden disciplinary sanction**, without the interested prosecutor being able to respond and without any appeal procedure and without the ability to file an appeal with an independent court. The regulations do not specify any premises for making a transfer or any decision-making procedure. The decisions do not contain any justification.
- The degradation decisions have enabled **dismissals to be made from more than 100 posts** in the prosecution units at the two highest levels **in breach of the principle of equal treatment**. The deputies of the Prosecutor General and the majority of the appellate prosecutors who had not reached the retirement age for public prosecutors were demoted. Prosecutors holding important posts in the past (such as the head of the appellate prosecution office) were also transferred to the regional and district prosecution offices. The prosecutors from the military prosecution office that had been liquidated, who had taken part in the investigation into the air accident in Smolensk were demoted.

### Harassment of prosecutors, members of the Lex Super Omnia Association of Prosecutors

- The Lex Super Omnia (LSO) Association of Prosecutors was established in response to the purging of staff being conducted in the public prosecution office.
- The LSO presents its opinions and speaks up in the public debate. The Association submits official petitions to the authorities. It informs the public of its activities through the traditional and social media (TT and FB).

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<sup>23</sup> Journal of Laws of 2016, item 177 as amended, as well as the Regulations introducing the Law on the Public Prosecution Office of 28 January 2016 (Journal of Laws of 2016, item 178 as amended – RILPRO).

<sup>24</sup> (Article 38 § 1, Article 38 § 1 and Article 40 § 1 RILPRO).



- As a consequence of its activities the members of the LSO Association need to explain almost every public statement or press publication in disciplinary proceedings that are initiated with respect to them.

#### Pre-disciplinary explanatory proceedings

Explanatory proceedings (ending without any further consequences) applied to both publications in the media, statements in the media, the involvement of prosecutors in educational activities and involvement in meetings of the prosecution authorities. For example:

- **Jacek Bilewicz and Jarosław Onyszczyk** – in connection with a publication in the 'Rzeczpospolita' daily newspaper,
- **Dariusz Korneluk and Bogdan Olewiński** – in connection with a statement in a programme in TVN24, 'Czarno na białym',
- **Mariusz Krasoń** – in connection with a statement in 'Gazeta Wyborcza' after a rally in Kraków on 23 July 2017 in defence of the 'free courts',
- **Wojciech Sadrakula** – retired prosecutor of the General Prosecution Office – in connection with his involvement in the 5th edition of Constitution Week,
- **Iwona Palka and Katarzyna Kuklis** – in connection with formal shortcomings in the course of a meeting of the Council of the Regional Prosecution Office in Bielsko Białą years earlier,
- **Krzysztof Parchimowicz** – president of the management board of the LSO, with respect to whom several explanatory proceedings, as described above, are being conducted with respect to him.

#### Disciplinary proceedings against a specific person

The allegations raised on the public prosecutors apply to the breach of the dignity of the office held by the prosecutor, a breach of the prohibition of political involvement, taking up other activities without informing the superiors and giving statements to the media without the consent of the superiors.

- **Jacek Kaucz** – because of a statement of criticism regarding the organisational and legal changes being introduced, which was included in an interview in March 2016 with a journalist from 'Gazeta Prawna'; the proceedings were discontinued twice by the disciplinary commissioners because of the negligible harm of the act; the matter will now be clarified by the disciplinary commissioner for the third time in view of the appeals from the National Prosecutor and the accused.
- **Wojciech Sadrakula** (retired prosecutor of the General Prosecution office) – he was punished with a reprimand by the National Prosecutor for his involvement in a meeting of the Legislative Commission of the Polish Sejm on the bill on the Constitutional Tribunal in 2016, together with representatives of the Committee for the Defence of Democracy; as a result of the objection from Prosecutor Wojciech Sadrakula's proxy, the

Prosecutor General instructed the referral of the matter to the disciplinary court for examination.

- **Ewa Wrzosek** – two disciplinary charges were raised on the prosecutor: because of a statement during a public hearing of the ‘court acts’ in the building of the Polish Sejm and because of her appearance at a rally organised in front of the Supreme Court in July 2018 in defence of the ‘free courts’.
- **Piotr Wójtowicz** – because of his involvement in a rally organised by the Committee for the Defence of Democracy in defence of the free courts and a humorous, unauthorised statement given to a journalist from a local internet portal; the disciplinary commissioner cancelled the proceedings because of the negligible harm of the act. The National Prosecutor and the accused filed an appeal with the disciplinary court against the commissioner’s decision.
- **Krzysztof Parchimowicz, Katarzyna Gembalczyk and Dariusz Korneluk** (members of the so-called first management board of the LSO) charges were pressed because of the publication of the position of the LSO criticising Tomasz Janeczek, Prosecutor of the National Prosecution Office, holding the function of District Prosecutor in Katowice, who, in a statement in the unit’s website, named Judge Agnieszka Pilarczyk as the perpetrator of the crime reported by Zbigniew Ziobro’s mother; the matter is pending before the disciplinary commissioner in Łódź.
- **Beata Mik** (retired prosecutor of the General Prosecution Office, who does not belong to LSO) was penalised by the disciplinary court with a reprimand for the publication (without royalties) of an article on law in the ‘Rzeczpospolita’ daily newspaper. The accused filed an appeal with the Disciplinary Chamber of the Supreme Court, which is waiting to be examined.

**Krzysztof Parchimowicz**, who speaks out in the media and comments on the changes in the justice administration most frequently because of his function as President of the LSO; he receives a demand to provide explanations from the disciplinary commissioner after almost every statement made. So far, **a total of 8 charges** of a disciplinary nature were raised against the President of the LSO **in 4 proceedings**.

The first disciplinary proceedings **regarding 3 charges**, ended with a final decision on 8 March 2018. The disciplinary court dismissed the appeals of the Prosecutor General, the accused and his proxies upholding the decision to discontinue the proceedings because of negligible social harm of the acts. Similarly, he acknowledged that the prosecutor cannot speak out publicly in his own name or in the name of the association without the consent of his superiors. Meanwhile, every criticism (even one that is true and not offensive) constitutes a breach of the dignity of the office held.

However, three further proceedings were initiated, including those mentioned above, which applied to all members of the management board. One was a result of the observation of the president’s activities in the social media (TT) and further proceedings because of **criticising the functioning of the prosecution office and the attitudes of the Prosecutor General and the National Prosecutor**. Decisions were made in both cases to press charges.

The proxy of the National Prosecution Office sent a pre-court demand to the President of the Association, the owner of the portal and the journalist because of the article about top level prosecutors collecting allowances (PLN 2700 per month as a housing allowance), which was only payable to prosecutors during official travel. The web portal succumbed to the pressure and removed the article. The journalist and the President of the LSO demanded a court hearing, but no actions were prepared.

#### Criminal proceedings and proceedings on the removal of immunity

- Criminal proceedings have been in progress with respect to **Krzysztof Parchimowicz since the spring of 2017**. In 2009, when he was the head of the organised crime division, he sent his subordinate prosecutors a letter on the interpretation of the provisions of the law. In the letter, he drew attention to the problem of the automatic repetition of the view that enabled (in exceptional cases) the assessment of tax fraud as embezzlement of property. In the letter, he cited a ruling of the Supreme Court, as well as views of the legal doctrine and indicated the negative consequences of such practices. An investigation is ongoing into this matter. He is at risk of a penalty of 10 years imprisonment.

During a press conference held by the Prosecutor General and the first Deputy Prosecutor General on 10 August 2017, it was concluded that prosecutor Krzysztof Parchimowicz **was acting to the benefit of mafia structures**. The president of the LSO was named personally. He was specified (among others) as the one who is responsible for PLN 250 bn not having been received by the State budget. The First Deputy Prosecutor General repeated the same slanderous statements on 3 October 2017 in an interview for internet television.

No formal actions in the investigation have been taken to date with respect to the president of the Lex Super Omnia Association. Proceedings on the taking of evidence are in progress.

- Proceedings are pending in the case of Prosecutor Justyna Brzozowska (a member of LSO) to remove her immunity because she issued a decision several years ago refusing to initiate an investigation into a case of the restitution of a Warsaw property. The grounds of the motion are new findings by the Wrocław prosecution office, which were not known to the full extent at the time that Justyna Brzozowska made her decision. The case is currently being considered for the second time by the disciplinary court.

#### Other forms of pressure

- Posting without the prosecutor's consent

Defiant prosecutors were and are **posted to other units without their consent, of a lower level as a rule**, including to towns that are distant from their place of residence. The improvement in the organisation of work is just an excuse for such harassment. In several cases, the posting applied to prosecutors (including members of the LSO) whose relatives required constant care.

In the middle of 2016, two prosecutors from Poznań – **Magdalena Feist and Hanna Grzeszczyk** – were defending their decisions regarding untrue property declarations by the mayor of Gdańsk, Paweł Adamowicz. They requested the conditional discontinuation of the proceedings and the court issued such a judgment. The National Prosecution Office instructed the submission of an appeal against the judgment in Paweł Adamowicz's case, to which the prosecutors objected. As a result, they were dismissed from the posting to the Poznań branch of the National Prosecution Office. Shortly afterwards, they were posted for several months to the Poznań district and regional prosecution offices without their consent.

Two prosecutors posted to the Szczecin branch of the National Prosecution Office were dismissed in 2018 because of a decision to apply bail instead of a long-term arrest.

In 2016, **Andrzej Piaseczny**, Prosecutor of the Regional Prosecution Office in Warsaw, received a recommendation from the National Council of the Judiciary on his appointment to the office of regional court judge. The President's Chancellery requested the First Deputy of the Prosecutor General for an opinion on this prosecutor, even though the provisions of the law did not provide for such a procedure. Prosecutor Bogdan Świączkowski critically assessed the prosecutor. The assessment was limited to on procedure regarding an act, the potential perpetrator of which could have been precisely Bogdan Świączkowski himself. The President did not appoint the prosecutor to the office of judge. However, Bogdan Świączkowski personally posted the prosecutor to a district prosecution office in Warsaw without his consent for six months. Two years of the uninterrupted posting of this prosecutor passed in June 2018. The law allows for the posting of a prosecutor without his consent for a maximum of 12 months in a year. The management of the prosecution office believes this guaranteeing regulation enables a prosecutor to be posted for good.

Prosecutors **Waldemar Osowiecki** and **Zbigniew Szpiczko** (members of the LSO) were posted to distant district prosecution offices, despite a very difficult family situation, which required the provision of care to relatives.

*The last example applies to prosecutors* **Piotr Skiba** (a member of LSO). After initiating an investigation into a TVP journalist insulting the First President of the Supreme Court, Małgorzata Gersdorf, he was posted 'for staffing reasons' from the District Prosecution Office for Warszawa-Śródmieście Północ to the District Prosecution Office in Grodzisk Mazowiecki.

- Prohibition to conduct educational activities

Prosecutors who retired for fear of being demoted **were not permitted to take up paid educational work at universities** by the First Deputy Prosecutor General. Two such cases were recorded.

- Refusal to allow retirement

Since 2017, the Prosecutor General **has been refusing to allow** prosecutors who have been sick since March/April 2016 **to retire for health reasons** without a detailed analysis of every case. In three known cases (including regarding a member of LSO), the Supreme Court accepted the appeals of the prosecutors and ordered the Prosecutor General to reconsider their cases, after which the Prosecutor General repeated his original decisions. In the case of Prosecutor Andrzej Tańcula, the decision of the Prosecutor General of 15 November 2018 indicates that the

acceptance of the request would be detrimental because the prosecutor would be unable to return to active service. This position is grossly in conflict with the applicable Act on the Prosecution Service.

- Activities to confirm the incapacity to work

At the turn of November/December 2018, the Regional Prosecutor in Warsaw referred Prosecutor Krzysztof Parchimowicz to a **medical examination by a medical expert from the Social Insurance Institution to confirm his permanent incapacity to work**. The excuse for the request was a medical certificate from 2016 which contained clear contraindications to Prosecutor Parchimowicz working at night. The medical judgment does not confirm the permanent incapacity of the president of the LSO to work as a prosecutor.

- Excessive burdening of prosecutors with work

Additionally, there are other forms of harassment related to the **disproportionate burdening of prosecutors from the Association with tasks, giving them duties that require immediate action, changing their job specifications** etc.

- Favouring subservient prosecutors

A completely different, general problem is the extent of supervision of the supervisors over the prosecutors handling proceedings, which rules out independence and extends beyond the approval of decisions which was lifted in 1990.

Prosecution management uses various tools to form the desired subservient attitudes of the prosecutors. The First Deputy Prosecutor General admitted that he uses the 'carrot and stick' method to manage the prosecution service.

Inexperienced prosecutors are posted to higher units where they receive a higher remuneration, as well as being posted to managerial positions. The system of posting disorganises the work of the lowest level of the prosecution service. In mid-2017, approximately 1200 prosecutors (of a total number of 5800) worked in postings to higher order units. The young age and lesser experience of temporarily posted prosecutors are conducive to their subservience and simultaneously to entrusting them with matters of a political context.

Prosecutors who are chosen by their superiors according to unclear criteria **receive financial awards and are promoted as a reward to higher positions.**<sup>25</sup> Trusted prosecutors are often promoted twice a year. Only appointments to the first position in the prosecution service are publicised. Further promotions and awards are not disclosed. Special allowances are awarded in the National Prosecution Office for the performance of routine, ordinary tasks. Independent prosecutors are dismissed from even the lowest functions they perform.

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<sup>25</sup> Examples of people who received awards and promotions are discussed in the report 'Prokuratura pod specjalnym nadzorem' [Prosecution service under special supervision], [https://www.dropbox.com/s/jnti8p6jbsocst6/Raport\\_Prokuratura\\_pod\\_specjalnym\\_nadzorem\\_20181126.pdf?dl=0](https://www.dropbox.com/s/jnti8p6jbsocst6/Raport_Prokuratura_pod_specjalnym_nadzorem_20181126.pdf?dl=0)

### List of judges mentioned in the report:

Marra Kożuchowska –Warywoda <i>District Court Judge</i>	Arkadiusz Krupa <i>District Court Judge</i>
Ewa Maciejewska <i>Regional Court Judge</i>	Włodzimierz Brazewicz <i>Appellate Court Judge</i>
Igor Tuleya <i>Regional Court Judge</i>	Bartłomiej Przymusiński <i>District Court Judge</i>
Dominik Czeszkiewicz <i>District Court Judge</i>	Dariusz Mazur <i>Regional Court Judge</i>
Sławomir Jęksa <i>Regional Court Judge</i>	Monika Smaga-Leśniewska <i>District Court Judge</i>
Agnieszka Pilarczyk <i>District Court Judge</i>	Anna Romańska <i>Regional Court Judge</i>
<i>Supreme Court Judges</i>	Alicja Fronczyk <i>Regional Court Judge</i>
Waldemar Żurek <i>Regional Court Judge</i>	Weronika Klawonn <i>Regional Court Judge</i>
Monika Frąckowiak <i>District Court Judge</i>	Wojciech Łączewski <i>Regional Court Judge</i>
Olimpia Barańska-Maluszek <i>District Court Judge</i>	

### The judges are represented by:

Jacek Dubois, <i>Attorney-at-Law</i>	Mikołaj Pietrzak, <i>Attorney-at-Law</i>
Sylvia Gregorczyk-Abram, <i>Attorney-at-Law</i>	Jacek Różycki, <i>Attorney-at-Law</i>
Joanna Jakubowska-Siwko, <i>Attorney-at-Law</i>	Radosław Skiba, <i>Attorney-at-Law</i>
Grzegorz Kasieki, <i>Judge</i>	Krzysztof Stępiński, <i>Attorney-at-Law</i>
Małgorzata Kluziak, <i>Judge</i>	Michał Wawrykiewicz, <i>Attorney-at-Law</i>
Anna Korwin-Piotrowska, <i>Judge</i>	Jakub Wende, <i>Attorney-at-Law</i>
Ewa Leszczyńska-Furtak, <i>Judge</i>	Tomasz Zalański, <i>Legal Counsel</i>
Ewa Malinowska, <i>Judge</i>	

**The Justice Defence Committee (KOS) is 12 partner organisations:**

The Professor Zbigniew Hołda Association

The Association of Polish Judges 'Iustitia'

The Association of Judges "THEMIS"

The Association of Prosecutors 'LEX Super Omnia'

The 'Free Courts' Civic Initiative

The Helsinki Foundation for Human Rights

The Institute for Law and Society, INPRIS

The Osiatyński Archive

Amnesty International

Civil Development Forum Foundation (FOR)

The Polish Association of Administrative Court Judges

The Judges Cooperation Forum

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