



POLAND: THE JUDGES WHO DEFEND THE RULE OF LAW

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Cover photo: Banner saying "Free courts". Protest in support of the judges and prosecutors who face disciplinary proceedings in National Council of Judiciary in Poland. Warsaw, 20th September 2018.
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CONTENTS

1. INTRODUCTION	4
2. NATIONAL COUNCIL OF THE JUDICIARY	5
3. THE SUPREME COURT	6
4. DISCIPLINARY PROCEEDINGS AGAINST JUDGES AND PROSECUTORS	7
JUDGES	7
PROSECUTORS	9
5. MEDIA CAMPAIGN AGAINST JUDGES AND ATMOSPHERE OF HATE	11
CONCLUSION	12

1. INTRODUCTION

This briefing provides an update on the state of judicial independence in Poland. It summarizes the developments in the proceedings against Poland that are currently pending at the Court of Justice of the European Union (CJEU), particularly those in relation to the Supreme Court and the National Council of the Judiciary. It also provides information on the proliferation of disciplinary proceedings against judges and prosecutors who have publicly criticised the government's efforts to undermine the independent functioning of the judiciary in Poland.

The information presented in this briefing draws on: interviews with judges; documentation from various proceedings against them; an interview and correspondence with the Disciplinary Prosecutor for Common Courts; publicly available documents in relation to the proceedings against Poland at the CJEU; analysis of relevant legislation and international human rights standards; and media monitoring. The so-called reform of the judiciary in Poland has in fact been used as a pretext by the government to undermine the independence of the judiciary. Judicial independence is an essential requirement of the right to a fair trial, which is of crucial importance to guarantee and ensure the enjoyment of other human rights. To address this serious situation, Amnesty International calls on EU member states to urge the government of Poland to:

- Take immediate and concrete steps to restore and guarantee the independence of the Supreme Court, which has been undermined by the amendment of the Law on the Supreme Court that entered into force in April 2018.
- Review the constitutionality – in particular compliance with the principle of separation of powers – of the establishment and operation of the two new Supreme Court chambers: Extraordinary and Disciplinary. These chambers are composed of new judges elected by the National Council of the Judiciary, the independence of which has been undermined by the “reform” of the judiciary.¹ While both chambers technically are part of the Supreme Court, they have special powers and are effectively above all other chambers, creating a risk that the whole judicial system will be dominated by them.²
- Review the new system of disciplinary proceedings that concentrates power over the system in the hands of the Minister of Justice. Ensure that judges can exercise their judicial functions free from retaliatory action or other forms of pressure, including politically motivated disciplinary proceedings, harassment and intimidation.
- Amend the Law on the National Council of the Judiciary to ensure that members who are judges are elected by their peers and not by the executive and/or the parliament.

¹ Pursuant to the reform, its members are now elected by the Parliament rather than by other judges.

² Opinion 904/2017 CDL(2017)035 of the Venice Commission on the draft act amending the Act on the National Council of the Judiciary, on the draft act amending the Act on the Supreme Court proposed by the President of Poland, and on the Act on the Organization of Ordinary Courts, para 92.

2. NATIONAL COUNCIL OF THE JUDICIARY

Judges from courts in various parts of Poland continued to opine that the new National Council of the Judiciary (NCJ) was appointed in breach of the Constitution.³ The amendment of the Law on NCJ, adopted in 2017, increased the number of NCJ members appointed by parliament. Out of the total 25, 15 members were appointed by the lower chamber of parliament in 2018. These appointments were in breach of the Polish Constitution, which limits the number of members of the NCJ appointed by the parliament to six.⁴ The NCJ as currently comprised has been criticised by many judges, particularly for the process by which the new members of the Supreme Court were elected in 2018.⁵

By the end of December 2018, 3,000 judges, or 90 per cent of those who took part in a survey of the Forum for Cooperation of Judges, believed that the NCJ is not performing its statutory task. As many as 2,880 judges, or 87 per cent of those who participated, believed the NCJ should resign *en masse*.⁶ There are about 10,000 judges in Poland and the survey on the NCJ remains open until April 2019.⁷

On 12 December 2018, the NCJ adopted a resolution interpreting the principles of the professional ethics of judges.⁸ In the resolution, the NCJ stated that public use of infographics or symbols that could be associated with political parties, trade unions or other political organizations can interfere with the independence and impartiality of judges. The resolution raised concerns among some judges that it will be used against those who speak out against reforms that undermine the independence of the judiciary.⁹ Some judges believed this provision specifically might be used against those who have supported the informal campaign for the independence of the judiciary and its associated symbols, including T-shirts with an image of the word “Constitution” in Polish.¹⁰

The Court of Justice of the European Union (CJEU) will soon adjudicate the question of whether the reformed NCJ is a body capable of safeguarding the independence of judiciary in Poland, in compliance with EU law. Poland’s Supreme Court submitted this question to the CJEU on 30 August 2018¹¹ and the first hearing is scheduled for 19 March 2019.¹²

³ See for example: Resolution no 1 of the representatives of the Appeal Court in Katowice from 14 January 2019: <https://www.iustitia.pl/83-komunikaty-i-oswiadczenia/2803-uchwaly-zgromadzenia-przedstawicieli-apelacji-katowickiej-z-14-stycznia-2019r-dotyczace-wstrzymania-sie-od-udzialu-w-procedurze-nominacyjnej-oraz-popierajace-postulaty-placowe-pracownikow-sadownictwa>

⁴ Amnesty International. *The Power of the Street: Protecting the Right to Peaceful Protest in Poland*. June 2018, p. 30.

⁵ See for example: <https://www.iustitia.pl/nowa-krs-nowy-sn/2533-stanowisko-stowarzyszen-sedziowskich-dotyczace-aktualnej-sytuacji-wymiaru-sprawiedliwosci-w-polsce>

⁶ <https://www.iustitia.pl/79-informacje/2773-juz-ponad-3300-sedziow-ze-139-sadow-wzielo-udzial-w-referendum-fws>

⁷ <https://oko.press/3000-polish-judges-want-the-dismissal-of-the-national-council-of-the-judiciary/>

⁸ <http://www.krs.pl/pl/aktualnosci/d.2018.12/5630.uchwala-krajowej-rady-sadownictwa-z-12-grudnia-2018-r-dotyczaca-wykladni-10-zbioru-zasad-etyki-zawodowej-sedziow-i-asesorow-sadowych>

⁹ <https://fakty.tvn24.pl/ogladaj-online,60/gaciowa-uchwala-krs-komentarze-prawnikow,892365.html>

¹⁰ Communication with Judge Mazur, the spokesperson of the Association of Judges, Themis. 1 February 2019.

¹¹ http://www.sn.pl/aktualnosci/SitePages/Komunikaty_o_sprawach.aspx?ItemSID=236-271e0911-7542-42c1-ba34-d1e945caefb2&ListName=Komunikaty_o_sprawach

¹² http://www.sn.pl/aktualnosci/SitePages/Komunikaty_o_sprawach.aspx?ItemSID=253-271e0911-7542-42c1-ba34-d1e945caefb2&ListName=Komunikaty_o_sprawach

3. THE SUPREME COURT

The CJEU is currently considering whether the provision on forced retirement of Supreme Court judges over 65 years is in compliance with EU law.

On 2 August 2018, the Supreme Court of Poland referred questions to the CJEU seeking clarification on whether the provision on the forced retirement of judges over the age of 65 is in compliance with EU law.¹³ Following this referral, the CJEU has received opinions in relation to said forced retirement from several member states (Belgium, Denmark, Latvia, the Netherlands), the European Commission, and Poland's National Prosecutor.¹⁴ The opinions of the member states endorsed concerns that the amendment of the Law on Supreme Court breaches EU law by giving significant power over of the judiciary to the executive. Poland's Agent at the CJEU has stated that the questions submitted by the Supreme Court did not meet the criteria of necessity and were manifestly unfounded.¹⁵

On 2 October 2018, the European Commission also referred the Law on the Supreme Court to the CJEU requesting interim measures and an expedited procedure. The EC considered that Poland has infringed EU law by lowering the retirement age of Supreme Court judges and granting the President of the Republic of Poland the discretion to extend the active judicial service of Supreme Court judges.¹⁶ On 19 October 2018, the Vice President of the Court provisionally granted interim measures.¹⁷ On 17 December 2018, the CJEU ordered Poland immediately suspend the application of the provisions of the law pending judgment of the Court.¹⁸ On 15 November, the CJEU also granted the EC's request for the case to be heard in expedited procedure.¹⁹ The CJEU has scheduled the first hearing in the case for 12 February 2019.²⁰

¹³ <http://www.sn.pl/sites/orzecznictwo/orzeczenia3/iii%20uzp%204-18.pdf>

¹⁴ <http://www.sn.pl/aktualnosci/SitePages/Wydarzenia.aspx?ItemSID=501-292d9931-9fa5-4b04-8516-5c932ff6bdf2&ListName=Wydarzenia>

¹⁵ <https://www.tvn24.pl/wiadomosci-z-kraju,3/uwagi-w-sprawie-pytan-sadu-najwyzszego-wplynely-do-tsue,897390.html>

¹⁶ http://europa.eu/rapid/press-release_IP-18-5830_en.htm

¹⁷ <https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-10/cp180159en.pdf>

¹⁸ <https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-12/cp180204en.pdf>

¹⁹ Case C-619/18. Accessed:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=207961&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=10695272>

²⁰ https://curia.europa.eu/jcms/jcms/Jo1_6581/en/?dateDebut=12/02/2019&dateFin=12/02/2019

4. DISCIPLINARY PROCEEDINGS AGAINST JUDGES AND PROSECUTORS

The Polish government's apparent targeting of certain judges and prosecutors for disciplinary action for their opposition to key reforms is of particular concern. Amnesty International continues to receive information about new and ongoing cases of disciplinary proceedings against judges and prosecutors who have spoken out against the reform of the judiciary or who have simply reiterated the importance of judicial independence. In addition, there are documented cases when disciplinary proceedings have been triggered upon some judges' referral of judicial questions to the CJEU. In a recent example, on 24 January, the Ministry of Justice suggested that the President of the Regional Court in Radom consider the removal of judges Grzegorz Wójtowicz and Maciej Gwiazda from their respective positions as heads of divisions within the court.²¹ The spokesperson of the Court in Radom informed the media that the President of the Court asked the Ministry of Justice to clarify such request as they did not provide any details about the judges' wrongdoing.²² At the beginning of January 2018 Judge Wójtowicz held a speech at an opening of a new building of a Regional Court in Radom, in which he stressed that it is an obligation of a judge to resist pressure regardless of where such pressure is coming from.²³ The Minister of Justice also instructed the Disciplinary Prosecutor for Common Courts to start preliminary proceedings in relation to the "protest action of the staff of the court in December 2018".²⁴ During the protest, administrative staff of the courts went *en masse* on a sick leave. They demanded 10 per cent increase of expenses on wages. In the district of Radom, 80 per cent of the courts' staff participated in the protest.²⁵

While disciplinary proceedings are a legitimate mechanism for accountability of judges and prosecutors, the use of these proceedings by the Disciplinary Prosecutor for Common Courts²⁶ raises concerns that state actors are wielding this mechanism as a weapon to silence those who have criticized the government's project to undermine the independence of the judiciary. As the UN Special Rapporteur on the independence of judges and lawyers noted in his general report in 2007, "[g]overnments often regard judges' and lawyers' efforts to defend human rights and fundamental freedoms as political interference."²⁷ The documented consequences of such perceived interference are pressure, intimidation and threats.²⁸

JUDGES

The cases outlined below augment existing concerns that the Polish authorities use disciplinary proceedings to silence criticism and debate about the critical importance of judicial independence for the enjoyment of human rights. The position of the Disciplinary Prosecutor was established within the "reform" of the judiciary and the prosecutor is directly appointed by the Minister of Justice for a four-year term.²⁹ The Disciplinary Prosecutor for common courts then chooses deputy disciplinary prosecutors for the district and appeal courts.³⁰ The Minister of Justice also selects the judges for the disciplinary panels in first instance disciplinary courts.³¹ In the second instance, the panel consists of two judges from the new Disciplinary Chamber and one lay judge of the Supreme Court.³²

CASE OF JUDGE BRAZEWICZ

On 8 October 2018, the deputy Disciplinary Prosecutor summoned as a witness – in a case of a possible disciplinary offence – a judge of the Appeal Court in Gdańsk, Włodzimierz Brazewicz. In September 2018, during an event organized by European Solidarność Centre in Gdańsk, Judge Brazewicz hosted a public discussion with Judge Igor Tuleya.³³ The deputy Disciplinary Prosecutors alleged that the meeting had "a political character" and that "politicians taking part in the local elections" were present at the event.³⁴ On 6 November 2018, the Disciplinary Prosecutors did not allow Judge Brazewicz's lawyer to be present at the

²¹ The letter of the Minister of Justice to the President of the District Court in Radom is filed with Amnesty International.

²² <http://radom.wyborcza.pl/radom/7,48201,24406118,resort-sprawiedliwosci-do-prezes-so-w-radomiu-prosze-rozwazyc.html>

²³ <http://www.mojradom.pl/otwarcie-nowego-gmachu-sadow-sedzia-wojtowicz-nadszedl-czas-proby/>

²⁴ <http://radom.wyborcza.pl/radom/7,48201,24406118,resort-sprawiedliwosci-do-prezes-so-w-radomiu-prosze-rozwazyc.html>

²⁵ <http://radom.wyborcza.pl/radom/7,48201,24265574,protest-pracownikow-administracyjnych-sadow-ministerstwo-zatrudnijcie.html>

²⁶ A post established within the 2017-2018 "reform of the judiciary"

²⁷ A/HRC/4/25, para 16. <https://undocs.org/A/HRC/4/25>

²⁸ A/HRC/4/25, para 15

²⁹ Art. 112.3 Law on Common Courts. <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20010981070/U/D20011070Lj.pdf>

³⁰ Art. 112.6-13 Law on Common Courts

³¹ Art. 110a.1 Law on Common Courts

³² Art. 110.1.1-2., Law on Common Courts.

³³ <http://trojmiasto.wyborcza.pl/trojmiasto/7,35612,23981510,sedzia-igor-tuleya-w-gdansk-sedziowie-powinni-angazowac.html>

³⁴ Letter of the deputy Disciplinary Prosecutor to Judge Brazeqicz from 8 October 2018 on file with Amnesty International.

questioning of Judge Brazewicz. “They said: ‘We do not work like communists,’ and added that if my lawyer continues to refuse to leave, they would call the security,” Judge Brazewicz told Amnesty International.³⁵

As in other cases where lawyers have been denied such access, the deputy Disciplinary Prosecutors told Judge Brazewicz that his lawyer’s presence was not necessary because the proceedings were not against the Judge himself as he was only called as a witness and the case would not result in a finding of disciplinary offences by him. Judge Brazewicz said that during the hearing, “they asked me if there were any politicians at the meeting; where were they seated; and who sat next to Jarosław Wałęsa, who was the only politician that was at the meeting as far as I know.”³⁶ Shortly after the hearing, Judge Brazewicz received a letter from deputy Disciplinary Prosecutor, Michał Lasota, dated 30 October 2018 requesting a written explanation from Judge Brazewicz about “non-timely delivery of written reasoning of judgments” and a response to allegations that he had given information about the disciplinary proceedings in which he had been summoned as a witness, to third parties and the public.³⁷ On 27 November 2018, Judge Brazewicz sent deputy Disciplinary Prosecutor Lasota a breakdown of his decisions for the period 2014-2018, which included details about written reasoning of judgments for the period 2012-2018. In that period Judge Brazewicz delivered 102 decisions, out of which delays occurred in 11 cases with an average of 7.5 days in advance of the deadline for the vast majority of his cases.³⁸ With regard to the allegations of providing information to third parties, Judge Brazewicz informed the deputy Disciplinary Prosecutor that he had learned about the disciplinary proceedings from a journalist who contacted him two days before he had received the summons to appear as a witness.³⁹ At the time of writing Judge Brazewicz had not received any reply to his letters to the deputy Disciplinary Prosecutors.

In addition to summoning Judge Brazewicz as a witness, in November 2018, deputy Disciplinary Prosecutor Lasota contacted the President of the Appeal Court in Gdańsk, as well as the Disciplinary Prosecutor of the Appeal Court, to request information on Judge Brazewicz. He was interested to know if there had been any disciplinary proceedings against Judge Brazewicz between 2002 and 2007.⁴⁰

CASE OF JUDGE FRĄCKOWIAK

On 10 January 2019, deputy Disciplinary Prosecutor Przemysław W. Radzik discontinued the proceedings against judges Monika Frąckowiak and Arkadiusz Krupa for their participation in a mock trial during the Pol’and’Rock Festival in August 2018.⁴¹ The deputy Disciplinary Prosecutor concluded that although both judges committed an offence against “the dignity of the office of judge”,⁴² they were “not aware” that they had breached “both the law and the standards of professional ethics”.⁴³ Judge Monika Frąckowiak, from the District Court Poznań Nowe Miasto Wilda, however, still faces disciplinary proceedings for “exceeding the deadlines for delivery of written reasoning of judgements”, and “procedural errors”.⁴⁴ In November 2018, the Disciplinary Prosecutor requested the review of the cases of Judge Frąckowiak from January 2015 to the present. In the absence of clear legal grounds for such a request, the President of the District Court in Poznań initially refused to grant it, but eventually provided the requested data even though there was no clear link between the casefiles and any ongoing disciplinary proceeding. Michał Wawrykiewicz, a lawyer who represents Judge Frąckowiak, considers the request to access the case files of a judge outside the scope of any ongoing proceedings to be unlawful. “This is a typical search for any pretext to start disciplinary proceedings along the lines: ‘Let’s find *something* on this judge.’”⁴⁵

CASE OF JUDGE BARAŃSKA-MAŁUSZEK

The Disciplinary Prosecutor also opened proceedings on 17 January against Judge Olimpia Barańska-Małuszek from the District Court in Gorzów Wielkopolski allegedly for exceeding the deadlines for delivery of written reasoning of judgments.⁴⁶ Judge Barańska-Małuszek was previously targeted through disciplinary proceedings in September 2018. She came to the attention of the Disciplinary Prosecutors after her participation in the Pol’and’Rock Festival, where she had spoken about the importance of the independence

³⁵ Phone interview with Amnesty International, 21 January 2019.

³⁶ Phone interview with Amnesty International, 21 January 2019.

³⁷ Judge Brazewicz informed the Human Rights Commissioner about the proceedings.

³⁸ The breakdown of the delayed judgments is on file with Amnesty International.

³⁹ Email communication on 23 January 2019.

⁴⁰ Phone interview with Amnesty International, 21 January 2019.

⁴¹ Decision of the Disciplinary Prosecutor from 10 January 2019 on file with Amnesty International.

⁴² Article 7.1 of the Law on Common Courts

⁴³ Decision of the Disciplinary Prosecutor on file with Amnesty International.

⁴⁴ The proceedings were opened on 17 January 2019: <https://www.iustitia.pl/81-uchwaly/2806-uchwala-zespołu-interwencyjnego-forum-wspolpracy-sedziow-z-dnia-21-stycznia-2019-r-w-sprawie-wszecia-postpowan-dyscyplinarnych-przeciwko-sedziom-monice-frackowiak-i-olimpji-baranskiej-maluszek>; See also: <https://wiadomosci.onet.pl/tylko-w-onecie/dwie-sedzie-z-iustitii-beda-miec-dyscyplinarki/7rdq7g9>

⁴⁵ Communication on 24 January 2019

⁴⁶ <https://oko.press/rzecznik-dyscyplinarny-stawia-zarzuty-sedziom-bo-krytykowaly-wladze-nie-przestrasze-sie-nie-zamilkne/>

of the judiciary for human rights.⁴⁷ Judge Barańska-Małuszek was also quoted by the pro-government media as “one of the initiators” of a resolution of the General Assembly of judges in Gorzow district.⁴⁸ The resolution had called on judges not to give in to pressure and criticized the attempts to harass, through disciplinary proceedings, those judges who had spoken out for the independence of the judiciary.⁴⁹ Shortly after the Pol’and’Rock Festival, on 5 September, the deputy Disciplinary Prosecutor requested that the President of the Court in Gorzow Wielkopolski provide an opinion about the performance of Judge Barańska-Małuszek in the period from January 2015 to 31 August 2018. The deputy Disciplinary Prosecutor also asked a list of questions about “any possible” instances of lengthy proceedings or allegations concerning her non-compliance with the decisions of superiors.⁵⁰ On 20 September, Judge Barańska-Małuszek sent a letter to the deputy Disciplinary Prosecutor requesting information on what grounds he was seeking information about her work.⁵¹ Under the law, the Disciplinary Prosecutor can start proceedings against a judge once the prosecutor can establish that there were circumstances when the judge in question may have committed a disciplinary offence.⁵² Although the deputy Disciplinary Prosecutor replied on 11 October 2018, he failed to provide the legal and factual grounds on which he has started the proceedings against Judge Barańska-Małuszek.⁵³

In response to the proceedings opened by the Disciplinary Prosecutor against judges Barańska-Małuszek and Frąckowiak, the association, Forum for Cooperation of Judges – which monitors information about threats to the independence of the judiciary and courts – adopted a resolution in January 2019 criticising the targeting of certain judges by the Disciplinary Prosecutors. “It has become obvious that collecting information [on judges engaging in activities for the defence of the independence of judiciary] aimed to find anything that would serve as grounds for allegations.”⁵⁴

A common feature of the proceedings initiated by the Disciplinary Prosecutor for Common Courts and his deputies is the lack of clarity about what objective indicators should trigger such proceedings. The judges subjected to the proceedings documented in this briefing received only general requests to provide “explanations” in relation to their public statements or a general allegation of “non-timely delivery of judgements”. “There is an omission in the Law on Common Courts when it comes to definition of disciplinary offences. The law includes only a general reference to ‘professional offences, which include offences against the ‘dignity of the office of judge’. This leaves a great degree of discretion to the disciplinary judges,” Judge Dariusz Mazur, spokesperson of the Association of Judges, Themis, told Amnesty International.⁵⁵ The law, gives the Disciplinary Prosecutor and his deputies power to investigate possible disciplinary offences pursuant to the request of the Minister of Justice, president of an appeal or district court, college of appeal or district court, National Council of Judiciary or *ex officio*.⁵⁶ The requirement for initiating an investigation is “establishing that there were circumstances, which indicate that a disciplinary offence was committed”. In the cases documented above, the Disciplinary Prosecutor seems to focus his investigative gaze selectively, that is, on those judges who have publicly criticized the government’s reform of the judiciary or merely participated in events where such criticism occurred.

PROSECUTORS

The Disciplinary Prosecutor at the office of the National Prosecutor has also commenced a number of proceedings against certain prosecutors – members of “Lex Omnia Superior”.⁵⁷ This association of prosecutors was established in 2017 and its mission statement includes a commitment to the rule of law and independence and autonomy of the work of prosecutors.⁵⁸ The chairperson of the association, Krzysztof Parchimowicz, currently faces three disciplinary proceedings in relation to media statements in which he criticized the Prosecutor General and the National Prosecutor.⁵⁹ In March 2018, the disciplinary court discontinued one of the proceedings against prosecutor Parchimowicz on the grounds of negligible damage. The proceedings involved Parchimowicz’s statements in which he criticized the working conditions at the

⁴⁷ http://gorzow.wyborcza.pl/gorzow/7_36844_23748948_sedziowie-na-pol-and-rock-mamy-nikle-pojecie-o-wartosciach.html

⁴⁸ <https://wiadomosci.wp.pl/sedzia-na-celowniku-rzeczniaka-dyscyplinarnego-ssp-6294880893826689a>

⁴⁹ <https://www.iustitia.pl/2506-uchwala-zgromadzenia-ogolnego-sedziow-okregu-gorzowskiego-z-dnia-10-wrzesnia-2018r>

⁵⁰ Supporting documents on file with Amnesty International.

⁵¹ Letter from 12 September 2018 on file with Amnesty International.

⁵² Article 114.1 of the Law on Common Courts.

⁵³ Online communication on 29 January 2019.

⁵⁴ <https://www.iustitia.pl/81-uchwaly/2806-uchwala-zespołu-interwencyjnego-forum-wspolpracy-sedziow-z-dnia-21-stycznia-2019-r-w-sprawie-wszecia-postpowan-dyscyplinarnych-przeciwko-sedziom-monice-frackowiak-i-olimpil-baranskiej-maluszek>

⁵⁵ Online communication on 28 January 2019.

⁵⁶ Article 114.1 and 2 of the Law on Common Courts, emphasis added

⁵⁷ Report of Lex Omnia Superior for its extraordinary General Assembly, January 2019 on file with Amnesty International.

⁵⁸ <http://lexso.org.pl/statut/>

⁵⁹ Details about the proceedings on file with Amnesty International.

District Prosecution in Warsaw.⁶⁰ In January, the Disciplinary Prosecutor summoned Parchimowicz to provide explanations for his participation at a conference about witness protection organized by Poland's Human Rights Commissioner.⁶¹

At least seven members of the association faced disciplinary proceedings at the time of writing, including:

- Jacek Kaucz, prosecutor from Wrocław, faces two disciplinary proceedings related to media statements in which he criticized the large-scale personal changes in the prosecution service. The Disciplinary Prosecutor has discontinued the proceedings twice due to insignificant damage caused. However, the National Prosecutor appealed these decisions and the disciplinary court subsequently ordered a new investigation.⁶² The case is pending.
- Wojciech Sadrańska, a retired prosecutor from the office of the Prosecutor General, was given a disciplinary warning from the National Prosecutor for his participation in the 2016 session of the Legislative Commission of the Parliament, during which MPs and opposition activists discussed the act on the Constitutional Tribunal. Sadrańska appealed the decision and the General Prosecutor referred the case to the disciplinary court.

The other five cases involve prosecutors who have participated in the protests in the defence of free courts in July 2017 and 2018 (Ewa Wrzosek, Piotr Wójtowicz)⁶³ and three prosecutors who criticized a decision of a prosecutor in Katowice to publish the name of a judge who is facing disciplinary proceedings (Krzysztof Parchimowicz, Katarzyna Gembalczyk, Dariusz Korneluk).⁶⁴

Proceedings against prosecutors have been commenced against those who have publicly criticised the government's reform of the judicial system and the large-scale personnel changes in the prosecution service that was carried out in 2016. The amendment of the Law on Prosecution adopted in January 2016 strengthened the position of the Prosecutor General, which was merged with the role of the Minister of Justice as of March 2016. The Prosecutor General on the proposal of the National Prosecutor appoints and dismisses the heads of district, county and regional prosecution offices.⁶⁵ Pursuant to the amendment of the Law on Prosecution, the Prosecutor General replaced the chiefs of all 11 regional prosecutors; 44 out of 45 chiefs of county prosecutors and their deputies; and 307 out of 342 chiefs of district prosecutors.⁶⁶ In addition to these changes, by the end of 2016, as many as 500 out of the total 6,000 prosecutors in Poland were either demoted to a lower position, transferred to another location or forced to retire.⁶⁷

Amnesty International interviewed two of the affected prosecutors, both of whom considered these changes politically motivated. "Anybody who was critical to the [current Minister of Justice] or who was vocal in expressing opinions was 'transferred'."⁶⁸ Several international bodies have expressed concerns over the increased powers of the Prosecutor General, as a result of the amendment adopted in 2016, including the Commissioner for Human Rights of the Council of Europe. The Commissioner noted in June 2016 that, under the new regulation, the increased powers are not balanced by "clear and solid safeguards against abuse... The Prosecutor General/Minister of Justice now has the power to intervene at each stage of legal proceedings led by any prosecutor by issuing instructions, guidelines and orders on specific measures relating to individual cases. The PG/Minister of Justice can also revoke or modify decisions taken by prosecutors... [He] has also been empowered to appoint and dismiss prosecutors on the basis of a discretionary decision..."⁶⁹

⁶⁰ The disciplinary court decision is on file with Amnesty International.

⁶¹ The summons, dated 21 January 2019, is on file with Amnesty International. Details about the conference are available in Polish:

<https://www.rpo.gov.pl/pl/content/konferencja-instytucja-malego-swiadka-koronnego>

⁶² <https://gazetawroclawska.pl/wroclawski-prokurator-z-dyscyplinarka-za-krytykowanie-zbigniewa-ziobry/ar/12555570>

⁶³ <http://lexso.org.pl/2018/12/12/stanowisko-komitetu-obrony-sprawiedliwosci-kos-dotyczace-dzialan-dyscyplinarne-podejmowane-wobec-prokuratorow/>

⁶⁴ <http://lexso.org.pl/2018/12/11/prawdziwa-cnota-krytyk-sie-nie-boi/>

⁶⁵ Article 15.1 of the Law on Prosecution. In Polish: rejonowa, okręgowa, regionalna.

<http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20160000177/U/D20160177Li.pdf>

⁶⁶ In Polish: *Raport: Prokuratura pod specjalnym nadzorem*. November 2018, p. 7, <https://for.org.pl/pl/a/6413.raport-prokuratura-pod-specjalnym-nadzorem-kadry-i-postepowanie-dobrej-zmiany>

⁶⁷ Amnesty International, *Rule of Law and Human Rights Concerns in Poland*, Update. May 2017. p. 7

<https://www.amnesty.org/download/Documents/EUR3762272017ENGLISH.pdf>

⁶⁸ Interview with Amnesty International, Warsaw, 23 March 2017.

⁶⁹ Report by Nils Muižnieks following his visit to Poland from 9 to 12 February 2016, p. 21, <https://rm.coe.int/16806db712>

5. MEDIA CAMPAIGN AGAINST JUDGES AND ATMOSPHERE OF HATE

The changes to Poland's judiciary and targeting of judges and prosecutors have occurred in a general environment of hostility toward judges that has been generated and sustained by the government.

In September 2017 the Polish National Foundation⁷⁰ started a publicly funded campaign called "Fair Courts".⁷¹ The goal of the campaign claimed to be the promotion of the government's "reform of the judiciary".⁷² Its billboards, however, mainly fostered a negative image of judges by labelling them "a special cast", quoting from "unfair" judicial decisions, and portraying judges as wrongdoers who enjoy impunity.⁷³ In response to the campaign, Poland's Supreme Court published infographics that aimed to debunk the statements on the billboards.⁷⁴ Judges – as a group – have also become targets of a negative campaign in the pro-government media that continues portraying them as those who "damage the interests of Poland" and are "above the law".⁷⁵

In January 2019, after the killing of Gdańsk Mayor Paweł Adamowicz, a judge in the district court in Gdynia,⁷⁶ Piotr Jędrzejewski, informed the prosecutor that journalists of the weekly *Sieci* may have committed an offence of an unlawful threat.⁷⁷ The judge requested protection for himself and other judges, arguing the article in *Sieci* specifically targeted judges whose names appeared on the "list of judges for freedom".⁷⁸ The list was put together by a journalist of a weekly *Polityka* and includes the names of judges who report that they have experienced pressure from the government, were active in judicial organizations defending the independence of judiciary or who adjudicated "against the wishes of the government". By December 2018, there were 297 judges on the list.⁷⁹ The most high profile of these judges has reported being targeted over the long-term by various threats through online media, text messages and post.

Judge Waldemar Żurek, a well-known and outspoken critic of the government's reform of the judiciary, has been receiving hate messages since 2016. Judge Żurek, from the Regional Court in Krakow, has reported that he receives threatening messages regularly from the same individuals. One of them used to send him as many as 50 texts per day throughout 2017.⁸⁰

"There were several but the worst one read: 'When you will go with your family to a shopping mall, you will get two shots...' When I read 'shots', I felt the shivers down my spine..."⁸¹ In January 2017, the District Prosecutor in Warsaw started an investigation into cases of hate messages received by Judge Żurek.⁸² The case was still pending in January 2019.

Judge Igor Tuleya, from the Regional Court in Warsaw and another well-known judge who has openly voiced criticism of the government's reform of the judiciary, told Amnesty International:

"Threats and insults are my daily reality... this has become bread and butter and I got used to it... I am concerned that if I start reporting them, I would practically not be able to leave the court... I convey the correspondence [with threats] addressed to me to the President of my court... About once a week I get [verbally] insulted on the street."⁸³

Reports of threats to and security concerns for publicly known judges and other members of the judiciary in Poland are not surprising when considered in the context of the ongoing negative media campaign, and campaigns spearheaded by pro-government groups, against judges. Such campaigns create and sustain an environment of outright hostility toward the branch of government tasked with upholding the rule of law. In

⁷⁰ Polską Fundację Narodową

⁷¹ <https://www.tvn24.pl/wiadomosci-z-kraju.3/polska-fundacja-narodowa-i-kampania-w-sprawie-reformy-sadownictwa,770832.html>

⁷² <http://www.tokfm.pl/Tokfm/7,102433,23258351,polska-fundacja-narodowa-kosztuje-nas-ponad-600-tys-zl-dziennie.html>

⁷³ <http://www.polsatnews.pl/wiadomosc/2017-10-11/koniec-kampanii-sprawiedliwe-sady-polska-fundacja-narodowa-zamknela-ja-bo-odniosla-sukces/>

⁷⁴ See: <https://www.facebook.com/Sad.Najwyzszy/photos/a.1812858672087744/1840434512663493/?type=3&theater> and <http://wyborcza.pl/7,75398,22418289,sad-najwyzszy-walczy-z-kampania-sprawiedliwe-sady.html>

⁷⁵ For example: <https://wpolityce.pl/polityka/328941-ujawniamy-tak-wyglada-bezkarnosc-sedziow-w-ciagu-ostatnich-5-lat-tylko-11-stracilo-urzed-za-przestepstwa-i-przewinienia> or <https://www.tvp.info/18663197/niesiolowski-sedziowie-sa-bezkarni>

⁷⁶ A town neighbouring Gdańsk

⁷⁷ <https://dziennikbaltycki.pl/sedzia-z-gdyni-zlozyl-zawiadomienie-do-prokuratury-po-publicacji-tygodnika-sieci-chce-takze-ochrony-dla-siebie-i-innych-sedziow/ar/13813446>

⁷⁸ In Polish: lista sędziów wolności

⁷⁹ <https://oko.press/sedziow-wolnosc-lista-siedleckiej/>

⁸⁰ "Sędzia Waldemar Żurek: Jak sądy upadną, nic już obywatela nie obroni", Interview with Gazeta Wyborcza, 1 March 2017.

<http://wyborcza.pl/7,75398,21435277,atak-na-sedziow-jak-sady-upadna-nic-juz-obywatela-nie-obroni.html>

⁸¹ Email communication, 18 January 2019

⁸² Interview with Gazeta Wyborcza, 1 March 2017

⁸³ Email communication, 17 January 2019

2007, the UN Special Rapporteur on the independence of judges and lawyers emphasized that judges are particularly at risk of threats and attacks if they are prominent defenders of human rights.⁸⁴ “Many judges are also subjected to pressure, intimidation, death threats or actual assassination attempts because of their role in investigating the involvement of politicians or other well-connected figures in assassinations or other serious human rights violations. Confronted with such risks arising from their beliefs or activities, those who work in the judicial system are quite often forced to resign, move to another town, or go underground or into exile, and the threats may extend to family members.”⁸⁵ It is the responsibility of the states, including Poland, to ensure the safety and security of judges as a necessary requirement for the impartiality and independence of the judiciary.⁸⁶

CONCLUSION

Since 2016, the government of Poland has systematically chipped away at judicial independence. The changes in legislation have concentrated control over the judicial system in the hands of the executive through the Minister of Justice. The new mechanism for disciplinary proceedings has been weaponized for use against those judges who are critical of the government’s reform of the judiciary. The assault on the independent judiciary in Poland puts the right to fair trial and all human rights at risk. Threats and negative media campaign targeting the members of the judiciary in Poland contribute to a toxic climate in which individual judges might be at risk. There is also a notable absence of a clear commitment of the state to adequately protect those who experience security threats. The government of Poland must reset the course of judicial reform and ensure that any such project ensures respect for the rule of law, the promotion and protection of human rights, and the right of individual judges to fair treatment and process.

⁸⁴ A/HRC/4/25, para 15. Accessed at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/103/18/PDF/G0710318.pdf?OpenElement>

⁸⁵ A/HRC/4/25, para 15

⁸⁶ The Basic Principles on the Independence of the Judiciary:
<https://www.ohchr.org/en/professionalinterest/pages/independencejudiciary.aspx>

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POLAND: THE JUDGES WHO DEFEND THE RULE OF LAW

This briefing provides an update on the state of judicial independence in Poland. It summarizes the developments in the proceedings against Poland that are currently pending at the Court of Justice of the European Union (CJEU), particularly those in relation to the Supreme Court and the National Council of the Judiciary since November 2018. It also provides information on proliferation of cases of disciplinary proceedings against judges and prosecutors who publicly criticise the aberrations from the rule of law in Poland

Since 2016, the government of Poland has been systematically undermining judicial independence in the country. The changes in legislation have concentrated control over the judicial system in the hands of the Minister of Justice. The new mechanism for disciplinary proceedings appears to have been instrumentalized against those judges who are critical of the government's reform of the judiciary. With undermined judicial independence, the right to fair trial as well as other human rights are at risk in Poland.