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## **ODF spearheads the review of cases of politically motivated prosecution in Poland**

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## 1) Executive Summary

On 12 February 2024, the **Open Dialogue Foundation (ODF)** initiated and co-organised a public appeal entitled *“Public appeal for review of politically motivated prosecutions from 2015 to 2023 and the rehabilitation of victims”*, addressed to the new Minister of Justice and Prosecutor General Adam Bodnar.

This appeal called for the state prosecution to review an alarming number of politically motivated cases initiated by the politicised National Public Prosecutor's Office under the government of the Law and Justice (PiS). The signatories, including former President and laureate of the Nobel Peace Prize **Lech Wałęsa** along with 44 other noteworthy public figures and 35 NGOs, requested 1) a systematic review of these politically motivated cases and 2) an appointment of a special team of prosecutors to conduct these reviews.

On 15 February 2024, the Ministry of Justice published an open letter from the Justice Minister in reply, acknowledging these issues as a priority and pleading to form and coordinate special teams of prosecutors to review all cases initiated on political motives. ODF took on the role of a civil society hub to gather and sort such cases from around Poland, then periodically provide the lists to a special coordination group within the National Prosecutor's Office. The first such compilation was delivered to the prosecution on 5 April.

On 21 February, **ODF** also initiated and co-organised, together with Democracy Action (Akcja Demokracja), “Defensor Iuris” Bar Association (Stowarzyszenie Adwokackie Defensor Iuris), Skwer Association, and Video-KOD, the first ever public hearing to interview the candidates for the office of National Public Prosecutor by civil society and journalists. The candidates included prosecutor Dariusz Korneluk, who was eventually appointed to the post.

## 2) Background on the rule of law in Poland

As the Law and Justice (PiS) took power in 2015, the National Public Prosecutor's Office became a politicised tool to persecute any and all forms of resistance or criticism, from the opposition and activists, through independent judges and prosecutors, to even entrepreneurs.

Following the October 2023 parliamentary elections, PiS lost the majority in both houses for the first time in eight years. As a result, the political landscape in Poland shifted fundamentally, including the ex Commissioner for Human Rights (Ombudsman) **Adam Bodnar** becoming the Minister of Justice and Prosecutor General.

**ODF** has been at the forefront of defending the rule of law in Poland since 2017. Since 2021, ODF has been monitoring, analysing, and reporting on the politicisation of the Public Prosecutor's Office, embodied by the publication of the annual report<sup>1</sup> intended for European and international institutions.

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<sup>1</sup> <http://odfoundation.eu/report>

### 3) Public appeal to the new Minister of Justice and Prosecutor General

Following the change of power in Poland, ODF co-launched a public appeal to Mr Bodnar entitled *“Public appeal for review of politically motivated prosecutions from 2015 to 2023 and the rehabilitation of victims”*<sup>2</sup>, calling for *“(…) an effective review of a number of politically motivated cases”*.

With concrete cases of politically persecuted opposition politicians and critics (e.g. Roman Giertych, Tomasz Grodzki), independent judges (e.g. Igor Tuleya, Waldemar Żurek) and prosecutors (e.g. Ewa Wrzosek, Katarzyna Kwiatkowska), ex heads and officers of the special services (e.g. Piotr Pytel, Paweł Wojtunik), journalists (e.g. Tomasz Piątek, Jakub Żulczyk), activists (e.g. Justyna Wydrzyńska, Bart Staszewski) and even entrepreneurs (e.g. Leszek Czarnecki, Jakub Karnowski, Piotr Osiecki, Przemysław Krych), ODF shed light on the systemic abuse of the justice system perpetrated by PiS<sup>3</sup>.

Examples of such abuse of power include filing allegations without evidence, biased fact-finding investigations, portrayal of witnesses as suspects and of suspects as defendants, illegal surveillance, artificially prolonged pre-trial detention, extortion, corruption, and many more.

As a result, the signatories requested Mr Bodnar for **1) launching a systemic reexamination by the new public prosecution on a case-by-case basis** and **2) appointing a team of prosecutors to duly analyse these cases and investigations**<sup>4</sup>.

With ex President and laureate of the Nobel Peace Prize Lech Wałęsa as very first signatory, the public appeal enjoyed huge support, from politics, academia, activism, law, media, and many more ; the appeal has also been signed by 35 organisations<sup>5</sup>, including Action Democracy, Committee for the Defence of Democracy, Citizens of the Republic of Poland, Mobile Brigade of the Opposition, and Themis Judges' Association, along with 44 notable public figures.

### 4) Open letter of the new Minister of Justice and Prosecutor General

On 15 February, just 3 days after the appeal was published, the Ministry of Justice published an open letter authored by Minister Bodnar<sup>6</sup>, replying that *“The issue (...) is hugely important and is one of the priorities*

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<sup>2</sup> <https://en.odfoundation.eu/a/725140.public-appeal-to-review-political-investigations-from-2015-2023/>

<sup>3</sup> <https://en.odfoundation.eu/content/uploads/2023/10/2023.10-odf-malicious-prosecution-report-v02-web-1.pdf>

<sup>4</sup> <https://en.odfoundation.eu/a/725243.ngos-bodnar-look-into-political-prosecutions/>

<sup>5</sup> <https://en.odfoundation.eu/a/725221.more-than-30-organisations-appeal-to-review-and-close-political-investigations/>

<sup>6</sup> <https://wiadomosci.onet.pl/kraj/adam-bodnar-odpowiada-na-apel-nalezy-dokonac-przegladu-spraw/30xtqbl>



*of my mission as Prosecutor General (...). I fully share the conviction regarding the need for an effective review and analysis of cases where there is any suspicion of political motivation”<sup>7</sup>.*

Bodnar acknowledged that as a result of 8 years of PiS abusing the judiciary branch, such a review will require not only time, but also the involvement of prosecutors at various levels ; he moreover explained that the review would have to be dispersed as result of the diversity of jurisdictions and subjects and that “(...) *the model commonly associated with the previous government of centrally controlling the work of investigators will not be practised*”.

As next step, the Prosecutor General pledged to form teams of prosecutors to review the cases on the local level and a team to review specifically the cases of abuse against civil society activists ; he also announced the forming of a coordinating team of prosecutors within the National Public Prosecutor’s Office.

The National Public Prosecutor’s Office is now headed by Dariusz Korneluk, who had participated in the public hearing organised by ODF to interview the candidates for the National Public Prosecutor by the civil society<sup>8</sup>. ODF has also taken the task of collecting case numbers from various victims and supplying them periodically to the prosecutorial coordination team.

## 5) Key takeaways

“Public appeal for review of politically motivated prosecutions from 2015 to 2023 and the rehabilitation of victims”<sup>9</sup>, and the reply from Minister of Justice and Public Prosecutor General Adam Bodnar are internationally relevant because of 3 fundamental reasons:

- Returning the rule of law back in Poland

Even though PiS lost the parliamentary majority in both houses held for almost a decade, PiS still obtained the best result of all political parties with 35.4%. Moreover, President Andrzej Duda who is notoriously loyal to PiS and vetoes any laws aimed at repairing the rule of law, is set to remain in office until the 2025 presidential election, which complicates the likelihood of systemic changes. Therefore, this appeal and Minister Bodnar’s reply mark a significant step towards the comeback of an independent justice system and justice for the previous government’s victims, although the road ahead is long<sup>10</sup>.

- Poland as a blueprint on reconstructing the rule of law

The case of Poland sets the stage for interesting insight into democratic backsliding - on the one hand, of a country transitioning from a democracy into an autocracy, and on the other hand, rebuilding from an autocracy back into a democracy. Therefore, Poland has the potential of constituting a blueprint for countries where the rule of law is assaulted and abused.

<sup>7</sup> <https://tvn24.pl/polska/minister-sprawiedliwosci-adam-bodnar-popiera-przeglad-politycznie-motywowanych-postepowan-prokuratorskich-st7775480>

<sup>8</sup> <https://twitter.com/ODFoundation/status/1762183191924818287?s=20>

<sup>9</sup> [https://en.odfoundation.eu/a/725140\\_public-appeal-to-review-political-investigations-from-2015-2023/](https://en.odfoundation.eu/a/725140_public-appeal-to-review-political-investigations-from-2015-2023/)

<sup>10</sup> <https://euobserver.com/opinion/158072>

- Polish civil society as a leading force for transparency and accountability of state institutions

Via their proactive role, ODF and its partners have created a new standard for transparency in the appointment process of highest non-elected state officials, in a way returning the state prosecution service back to the people. By pressuring the Justice Minister to reexamine all cases of political prosecution from the last 8 years and taking a central role in the process, ODF is showcasing a previously unseen model of participation of civic actors in the justice process, ensuring accountability of the justice system to citizens. This model can easily be implemented in other democracies, both to bolster checks and balances, safeguarding the system from abuse, or to help repair it after an authoritarian-leaning rule.