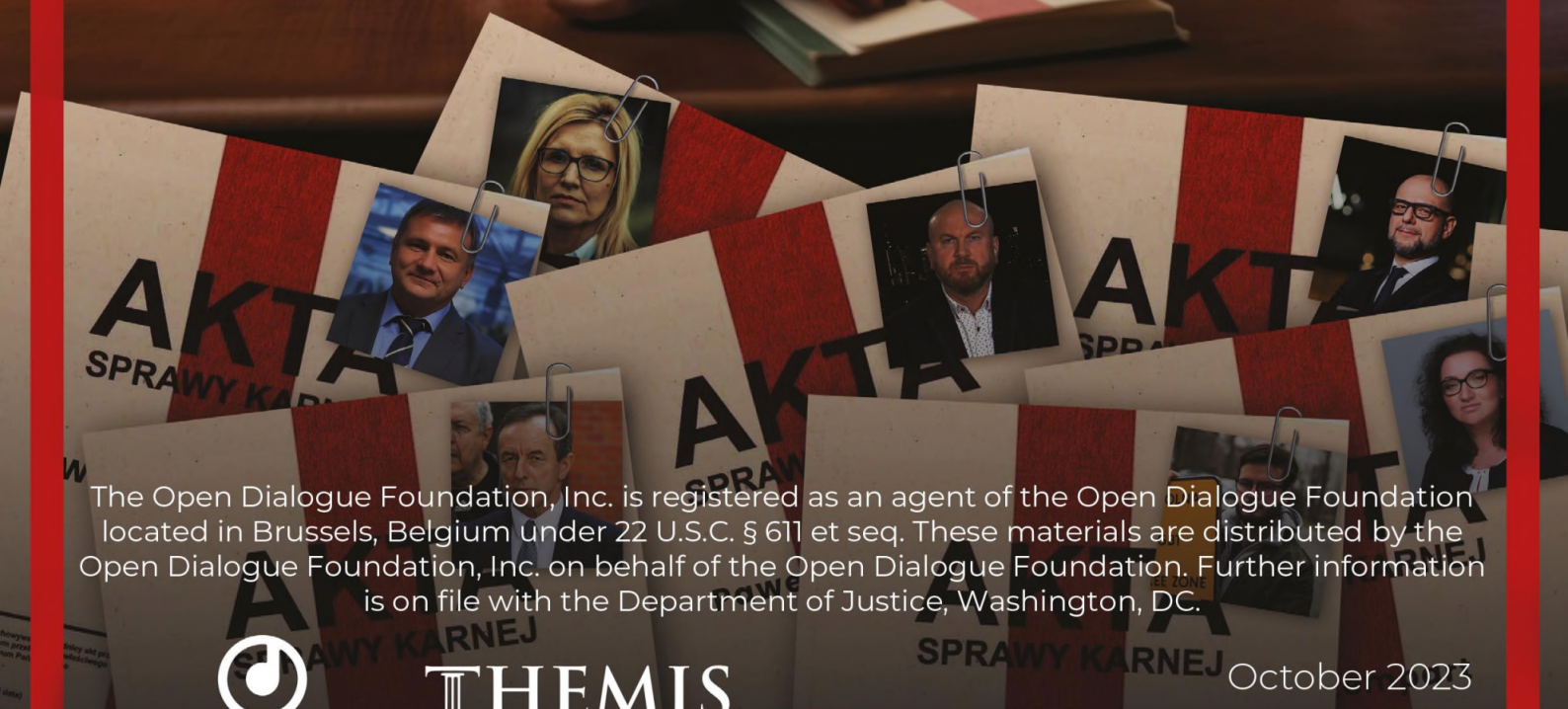


**POLISH PUBLIC
PROSECUTOR'S OFFICE:**

**SELECTED CASES
OF MALICIOUS PROSECUTION
AND DERELICTION OF DUTIES
SINCE 2015**



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OPEN DIALOGUE

THEMIS

STOWARZYSZENIE SĘDZIÓW

October 2023

The Open Dialogue Foundation (ODF) was established in Poland in 2009. It is headquartered in Brussels, with offices in Warsaw, Kyiv and Miami, FL. Since its founding, statutory objectives of the Foundation include the protection of human rights, democracy and the rule of law in the post-Soviet area. ODF initially focused its attention on Ukraine, Kazakhstan, Russia and - since 2016 - Moldova. This area of interest was expanded in 2017 due to the rapidly deteriorating situation in Poland and other EU member states affected by illiberal policies implemented by their populist governments.

ODF pursues its goals through the organisation of observation missions, paying particular attention to individual cases of violation of fundamental rights. It also advocates for international legislation better serving human rights, such as the Magnitsky Act or the adding of conditionality clauses to EU & international financial assistance programmes directed at non-democratic states and hybrid regimes. The Foundation also has extensive experience in the field of protection of the rights of political prisoners and refugees.

Based on its work, ODF publishes analytical reports and distributes them among EU institutions, OSCE, Council of Europe, the UN, other human rights organisations, foreign ministries and parliaments, as well as the media. It is actively engaged in cooperation with members of parliaments involved in foreign affairs, human rights and relations with monitored third countries.

ODF advocates for the reform of international legal cooperation mechanisms, like those of Interpol and - more recently - the Schengen Information System (SIS II), preventing them from being abused by authoritarian and hybrid regimes to persecute their opponents. Most recently, ODF has also been fighting against the practice of financial exclusion of human rights defenders falling victim to the abuse of Anti-Money Laundering & Counter Financing of Terrorism (AML-CFT) regulation, as well as advocating for Bitcoin to serve as a solution.

Since Ukraine's Revolution of Dignity in 2013/14 and Russia's aggression in the Donbass, ODF has been supporting Ukraine in the fight by delivering - as of late 2023 - over €7 million worth of defence equipment and humanitarian aid. ODF has also been among the first NGOs to support refugees fleeing the war-torn country, operating the "Ukrainian World" support centre in central Warsaw from 2014 to 2016, and again supporting refugees via numerous aid programmes from the day of Russia's full-scale invasion in 2022.

In our fight for the rule of law in Poland, ODF is primarily concerned with the diminishing independence of the judiciary and separation of powers, which in turn weaken the protection of civil rights and lead to political persecution, most notably by the state prosecution service and subservient law enforcement agencies. These are the basic values the Foundation has been protecting in post-Soviet states since its inception, hence they are of natural concern also in the country where it was founded.

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POLISH PUBLIC PROSECUTOR'S OFFICE:
SELECTED CASES
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Preface

Since the Law and Justice (PiS)-led United Right Coalition¹ took power in 2015, an unprecedented politicisation of the public prosecution has occurred, which has been transformed into a tool for advancing the personal and political interests of PiS and its members. The result has been a growing number of politically motivated investigations carried out primarily against the opposition.

The continuous changes to the criminal justice system (Criminal Code, Code of Criminal Procedure, Law on the Prosecutor's Service) expand the powers of prosecution (see Annex I), amplifying an *"inequality of arms"* between the sides of criminal proceedings and jeopardising the legal system's responsiveness.

Below, ODF lists some of the most notorious and shocking examples of politically motivated abuses of power by the Public Prosecutor's Office between 2015 and 2023. More information on many of the involved prosecutors is available on www.panstwo-pis.pl run by the *Paragraf-Państwo Association* (currently not updated), as well as in numerous statements and reports² published by the Lex Super Omnia independent prosecutors' association.

This report is divided into two main parts: 1) malicious prosecution and 2) dereliction of duties. The first section covers prosecution cases political in nature, organised into categories of societal groups and professions. The second part covers cases that have either failed to be initiated or were prematurely discontinued by the Prosecutor's Office due to a politically unfavourable dimension perceived by the ruling coalition or its cronies.

This report also lists the most prevalent systemic issues eroding the Prosecutor's Office since the PiS-led United Right coalition came to power and provides a list of recommendations on how to prevent political abuses of public prosecution once the rule of law is restored in Poland. In annex we have included an analysis of the legal changes that expanded the powers of the Prosecutor's Office.

Information for this report has been collected from open sources such as articles, interviews, and reports, and directly from maliciously prosecuted victims, their lawyers, and other parties to the proceedings. The detail and length of each case description depend on its severity and the availability of information.

This edition is an updated and extended version of ODF's previous reports under the same name from 2021 and 2022,³ with numerous new cases, updates and analyses added. The new

1 Composed of PiS and its two junior partners - Solidarna Polska (United Poland, led by the Justice Minister/Prosecutor General Zbigniew Ziobro) and, until August 2021, Porozumienie Jarosława Gowina (Jarosław Gowin's Agreement)

2 <https://lexso.org.pl/category/raporty/>

3 <https://en.odfoundation.eu/a/190999,polish-public-prosecutors-office-selected-cases-of-malicious-prosecution-and-dereliction-of-duties/>

Preface

cases include anti-discrimination initiatives and activists like Atlas of Hate and Bart Staszewski, opposition politicians like Donald Tusk, former intelligence chief Grzegorz Małeck, business association president Maciej Witucki, as well as several journalists, a writer and even a rapper.

In annex, an important legal change has been analysed - a new amendment to the law on the prosecution service, protecting Zbigniew Ziobro's prosecutors from dismissal and repercussions for their actions until at least 2025, in case the former loses power. Similarly, National Prosecutor Bogdan Świączkowski was granted protection from prosecution when he was appointed to the post of justice of the Constitutional Tribunal in February 2022. His replacement, Ziobro's personal friend Dariusz Barski, apart from becoming irremovable, was granted additional powers with the new amendment, which were taken away from the Prosecutor General in case the post fell to the opposition following the 2023 elections.

In the short-term the report aims at raising international awareness of the abuses and the abused, but our main long-term goal is facilitating accountability of the perpetrators. Together with expert reports from Lex Super Omnia, as well as ODF's sister project, the Halls of Shame (*Listy Hańby*, www.ListyHanby.pl), we aim to document the crimes of the prosecution service under Law and Justice, highlighting the individual abusers, and support any government which succeeds it in bringing Ziobro and his politicised prosecutors to justice. In our opinion, most of the prosecutors listed in the report, who carried out the political orders of their superiors, should be charged either under Art 231 kk (abuse of power) or - in some cases - Art 232 to 247 (crime against the justice system).

It is worth noting that the politicisation of public prosecution is not a new phenomenon. During the first PiS government (2005-2007), the public prosecution, headed by Zbigniew Ziobro, became notorious for using political investigations as a tool for propaganda. Examples include the cases of Dr Mirosław Garlicki,⁴ Barbara Blida (former Minister of Construction and Spatial Management),⁵ and allegedly corrupt judges and doctors.⁶ All ended with losses for the prosecution, and often with tragic consequences for the accused (e.g. Barbara Blida's alleged suicide). Some of the targeted judges won large damages for breach of personal rights by the prosecution.⁷

⁴ <https://www.newsweek.pl/polska/ziobro-przeprosil-doktora-garlickiego/5gydbbw>

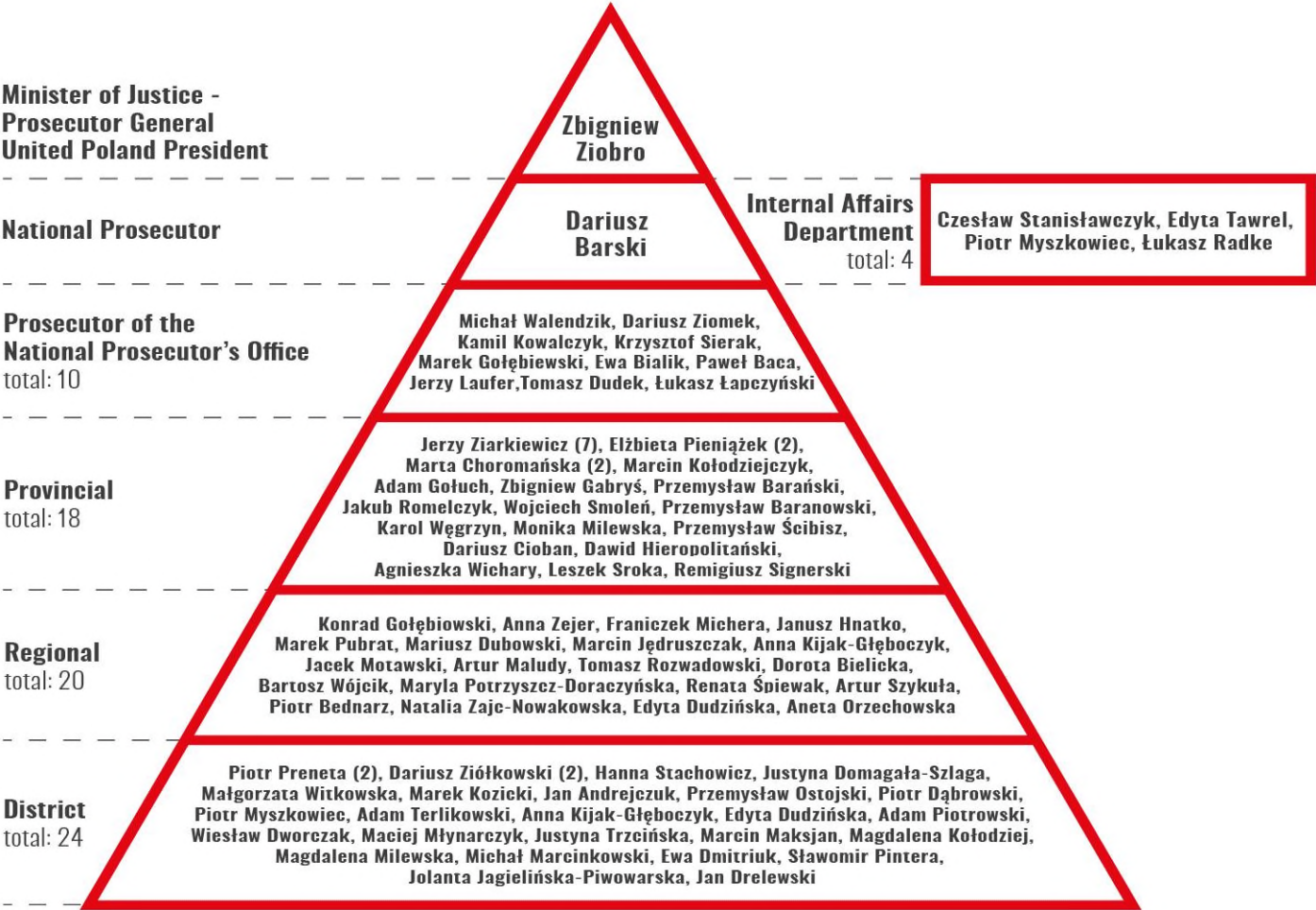
⁵ <https://wiadomosci.onet.pl/warszawa/okazalo-sie-ze-barbara-blida-była-niewinna/5jlyvnb>

⁶ <https://www.polityka.pl/tygodnikpolityka/kraj/1649022,1,ziobro-juz-raz-rzadzil-prokuratura-dwa-samoboj-stwa-kilka-przetracych-karier.read>

⁷ <https://wiadomosci.dziennik.pl/wydarzenia/artykuly/321254,sedziowie-dostana-po-100-tysiecy-zlotych-za-bielska-osmiornice.html>

Preface

Current division and hierarchy of the Public Prosecutor's Office



Current⁸ division and hierarchy⁹ of the public prosecution service in Poland. The diagram includes the names of the prosecutors suspected of political motivations in their actions mentioned in this report (wherever the name of the prosecutor was known). The number next to the name indicates the amount of cases they handle or are involved within this report if there is more than one. The totals refer to the number of prosecutors on the specified level present in this report, not all the prosecutors in the service.

8 Dariusz Barski was appointed to the post of National Prosecutor on March 18, 2022, and was preceded by Bogdan Świączkowski.

9 According to nomenclature applied by i.a. EU institutions or CoE, the "Prokuratura Regionalna" is translated as "Provincial Public Prosecutor's Office", the "Prokuratura Okręgowa" as "Regional Public Prosecutor's Office" and the "Prokuratura Rejonowa" as "District Public Prosecutor's Office". For ease of reading, "Public" is usually omitted within this report. Furthermore, titles of prosecutors in this report are not capitalised when meaning a prosecutor of a specific level (Warsaw regional prosecutor Konrad Gołębiewski = prosecutor of the Warsaw Regional Prosecutor's Office) and capitalised when meaning the head of that office (Lublin Provincial Prosecutor Jerzy Ziarkiewicz).

List of abbreviations used

List of abbreviations used

ABW: Internal Security Agency (Agencja Bezpieczeństwa Wewnętrznego)

AW: Foreign Intelligence Agency (Agencja Wywiadu)

BOR: Government Protection Bureau (Biuro Ochrony Rządu)

CBA: Central Anti-Corruption Bureau (Centralne Biuro Antykorupcyjne)

CJEU: Court of Justice of the European Union

EctHR: European Court of Human Rights

EIO: European Investigation Order

EPPO: European Public Prosecutor's Office

kk: criminal code (kodeks karny)

KPK: Code of Criminal Procedure (Kodeks Postępowania Karnego)

KRS: National Council of the Judiciary (Krajowa Rada Sądownictwa)

LSO: Lex Super Omnia (prosecutors' association)

MEP: Member of the European Parliament

NIK: Supreme Audit Office (Najwyższa Izba Kontroli)

ODF: Open Dialogue Foundation (Fundacja Otwarty Dialog)

PFR: Polish Development Fund (Polski Fundusz Rozwoju)

PG: Prosecutor General (Prokurator Generalny)

PK: National Public Prosecutor's Office (Prokuratura Krajowa)

PiS: Law and Justice (Prawo i Sprawiedliwość, political party)

RPO: Polish Commissioner for Human Rights (Rzecznik Praw Obywatelskich, ombudsman)

SIS: Schengen Information System

SKW: Military Counterintelligence Service (Służba Kontrwywiadu Wojskowego)

WSW: Internal Affairs Department (Wydział Spraw Wewnętrznych) of the National Prosecutor's Office)

ŻW: Military Gendarmerie (Żandarmeria Wojskowa)

1. Cases of malicious prosecution

1. Cases of malicious prosecution

1.1 Civil society

Bartosz Kramek and the Open Dialogue Foundation

Politically motivated charges were brought against Bartosz Kramek,¹⁰ the Chair of the Supervisory Board of the Open Dialogue Foundation (ODF), a human rights watchdog known for its harsh criticism of the ruling coalition and condemnation of government policies that undermine Poland's democratic standards.

Following a series of failed attempts to shut down or silence ODF via legal tools,¹¹ Kramek was detained in June 2021 by the Internal Security Agency (ABW) at the request of the Regional Prosecutor's Office in Lublin. Kramek was presented with dubious criminal charges of "false declarations" when issuing invoices to his company's clients between 2012 and 2016 (Art. 271 in relation to Art. 12 and Art. 65 kk), which allegedly constituted a money laundering scheme designed to finance ODF (Art. 299 in relation to Art. 12 and Art. 65 kk). Kramek spent three weeks in pre-trial detention.

The charges are controversial, considering the absence of injured parties of the alleged crime, the Treasury benefitting from paid taxes, and the investigation directly following Kramek's publication of an article on Facebook suggesting civil disobedience against the increasingly oppressive PiS-led government.¹² Also, Kramek's company fully complied with all legal, accounting, and anti-money laundering regulations without any irregularities noted by supervisory bodies until ODF's conflict with the PiS authorities.

The investigation was initiated on the alleged basis of "*urging to commit a fiscal offence*" (Kramek's proposed civil disobedience actions included the refusal to pay taxes to signal disapproval of the government's assault on democracy) and then widened to cover potential financial irregularities and money laundering by ODF and Kramek's company.¹³

As of August 2021, three prosecutors' offices have been involved in the case. A memo issued by the ABW in 2019 found it was impossible to prove that any funds resulting from money laundering were received by ODF.¹⁴ It also revealed that the investigation was heavily reliant on assistance provided by Moldova's former authorities,¹⁵ controlled by the country's most powerful oligarch and

¹⁰ <https://www.polityka.pl/tygodnikpolityka/kraj/2127521,1,spowiedz-puczysty-jak-dobra-zmiana-walczy-z-aktywista.read>

¹¹ <https://wiadomosci.onet.pl/tylko-w-onecie/organizacje-pozarzadowe-na-celowniku-pis-maja-dosc-beda-sie-bronic/6mvi1hk>
<https://en.odfoundation.eu/a/8631,odf-wins-court-dispute-with-polish-mfa-once-again/>
<https://www.gazetaprawna.pl/wiadomosci/artykuly/1418884,sprawa-kozlowskiej-wykreslenie-z-sis.html>

¹² https://m.facebook.com/ht/screen/?params=%7B%22noteid%22%3A10158464088950772%7D&path=%2Fnotes%2Fnote%2F&_rdr

¹³ <https://www.polityka.pl/tygodnikpolityka/kraj/2127521,1,spowiedz-puczysty-jak-dobra-zmiana-walczy-z-aktywista.read>

¹⁴ <https://wiadomosci.onet.pl/tylko-w-onecie/kompromitacja-polski-w-sprawie-wyrzucenia-z-kraju-ludmily-kozlowskiej/93x8bx2>

¹⁵ <https://en.odfoundation.eu/a/37495,gw-kramek-youll-never-walk-alone-why-does-the-arrest-come-now/>

1. Cases of malicious prosecution

then-de facto leader, Vlad Plahotniuc, whose abuses were targeted by ODF's advocacy campaigns. The charges against Kramek, much like those against the leaders of the Women's Strike, also resembled fearmongering against the Polish civil society opposing the government's policies.

The same basis for the allegations was used against Kramek's wife and ODF's President Lyudmyla Kozlovskaya in 2018. Her name was reported to the Schengen Information System (SIS), resulting in her ban from entering Poland and other Member States of the European Union based on an opinion of the ABW, declaring her a *"threat to state security"*.¹⁶ Kozlovskaya became a target of false accusations along with her brother, Petr Kozlovski. The ban was disregarded by four other EU Member States and Switzerland (with Belgium granting her permanent residence, leading to the SIS ban being lifted), then dismissed three times by the Voivodeship Administrative Court in Warsaw, and ultimately by the Supreme Administrative Court (NSA). The courts called the evidence collected by the ABW *"insufficient"*, *"very vague"*,¹⁷ and with *"unreasonable conclusions"* having been drawn, with the NSA concluding that *"The accumulated material, secret and public, does not allow the conclusion that Kozlovskaya poses a threat to state security."*¹⁸

Kramek's case is handled by Lublin Provincial Prosecutor Jerzy Ziarkiewicz, who is known for handling politically sensitive cases¹⁹ and was promoted to the post by Zbigniew Ziobro, and his aide Prosecutor Marcin Kołodziejczyk from the Lublin Provincial Office (both listed in Lex Super Omnia reports covering dubious prosecutorial promotions and awards in recent years).²⁰

On 26 October 2021, the District Court in Lublin reviewed the defence's appeals against the preventive measures imposed on Kramek after leaving arrest and deemed them inadmissible. The Court stated that the prosecution unjustifiably imposed restrictions and that the measures were disproportionate and violated the principle of protection of family life.²¹ As a result, Kramek was free from probation under the police, permitting him to leave the country and return to his wife in Brussels. During the hearing, Prosecutor Kołodziejczyk claimed that the exceptionally intrusive (five times a week) probation was imposed at the personal demand of Prosecutor General Zbigniew Ziobro.²²

As of late 2023, the prosecution still hasn't filed an indictment against Kramek, simultaneously blocking the court from removing the last pre-trial restriction in the form of bail, claiming it is still undertaking procedural steps. The latest ones known concern the allegedly suspicious shipping of bulletproof vests to Ukrainian armed forces by ODF via the Ukrainian embassy in late February 2022. At the same time, witnesses were questioned, but not in relation to Kramek's charges, but

16 <https://en.odfoundation.eu/a/9329,court-finds-entry-ban-on-lyudmyla-kozlovskaya-unjustified/>

17 <https://en.odfoundation.eu/a/37075,30-for-odf-another-victory-in-court-for-the-foundation-against-pis/>

18 <https://en.odfoundation.eu/a/9480,court-secret-services-conclusions-unreasonable-lyudmyla-kozlovskaya-should-have-stayed-in-poland/>

19 https://www.panstwo-pis.pl/index.php/Jerzy_Ziarkiewicz

20 <https://wiadomosci.onet.pl/tylko-w-onecie/bartosz-kramek-o-pobycie-w-areszcie-w-tej-sprawie-wszystko-jest-polityczne/kerpq3s>

21 <https://twitter.com/ODFoundation/status/1452967731586867209?s=20>

22 <https://lublin.wyborcza.pl/lublin/7,48724,27735388,porazka-prokuratury-sgigajacej-bartosza-kramka-sad-uchylil.html> and <https://www.dziennikwschodni.pl/lublin/bartosz-kramek-ponownie-wygrywa-przed-sadem-w-lublinie,n,1000297674.html>

1. Cases of malicious prosecution

on the suspicion of organising an unlawful, public fundraiser for Kramek's bail, with ODF's Martin Mycielski being the alleged perpetrator. In reality, the bail was submitted by over a dozen individuals, including family, civic activists and journalists.

In the meantime, Kramek, his wife Lyudmyla Kozlovska and ODF have won six defamation court cases against Law and Justice officials, their cronies and critics, all relating to the allegations of money laundering, ties to Russia, calling for a bloody coup etc. Among those who have to publicly apologise for their accusations, are state broadcaster TVP, deputy secret services chief Maciej Wąsik, MEPs Dominik Tarczyński and Joachim Brudziński (former interior minister and 2023 PiS electoral campaign chief), blogger Marcin Rey, as well as the pro-government Gazeta Polska editor-in-chief Tomasz Sakiewicz (twice) .

ODF's Martin Mycielski

Martin (Marcin) Mycielski is one of the leaders of the Open Dialogue Foundation as well as the founder of Spontaneous Civic Campaign Headquarters (Spontaniczny Sztab Obywatelski, SSO), a group responsible for installing over 450 anti-government billboards around Poland. Between April and December 2021, Mycielski also headed SokzBuraka (Beetroot Juice), a Polish social media site renowned for its vehement opposition to PiS

In September 2021, Mycielski was called for questioning by the police in Brussels, Belgium (where he resides), following a European Investigation Order (EIO) issued by the Economic Crime Department of the Regional Prosecutor's Office in Warsaw. The EIO, an international criminal cooperation tool developed by the EU to combat "*organised crime, terrorism, drug trafficking, and corruption*", was issued as part of an investigation following a private complaint by PiS Chairman Jarosław Kaczyński. In a two-page statement, Chairman Kaczyński claimed that, with his morality being questioned, "*public trust in him was undermined*" and "*electoral results of him and his party were threatened*", all in a tweet published in January 2021 by SokzBuraka, four months before Mycielski even became its editor-in-chief. The tweet asked why Chairman Kaczyński had been vaccinated for COVID-19 without having to wait his turn, after the press observed Chairman Kaczyński not wearing a mask at the national parliament despite the obligation to wear a mask. The tweets were published from the UK.

The Warsaw Regional Prosecutor Konrad Gołębiowski initiated an ex officio investigation and decided to use European criminal cooperation mechanisms to question the two potential culprits named by Chairman Kaczyński in his complaint, one of whom was Mycielski. However, Chairman Kaczyński's complaint was private under Art. 212 kk (defamation), which would, under normal circumstances, be handled without any involvement of the prosecution. According to LSO Prosecutor Ewa Wrzosek, for the prosecution to take up such a case ex officio, there would normally

1. Cases of malicious prosecution

have to be a strong public interest in supporting the victim, e.g., if the victim was disabled and incapable of defending himself or without the means to do so.²³

Right before Mycielski was questioned, all of his Belgian bank accounts were closed and other financial and insurance services terminated, which also led to the termination of banking contracts of the entire Open Dialogue Foundation and its leadership. This procedure, known as de-risking, is implemented by banks when a potentially “*risky*” client is detected, e.g., following an authority seeking access to their accounts. Prosecutor Gołębiowski claimed in a private correspondence that he had not included orders to access banking records in his EIO.

As of late 2023 no other actions are known to have been taken by the prosecution in the case.

Leaders of the Polish Women’s Strike

In February 2021, politically motivated charges were brought against the leaders of the Polish Women’s Strike (Marta Lempart, Klementyna Suchanow, and Agnieszka Czerederecka). Their country-wide protests were organised in late 2020 and early 2021 in response to the Constitutional Tribunal’s ban on abortion.²⁴

The activists were accused in a July 2021 indictment of causing an epidemiological threat for organising protests during the COVID-19 pandemic (Art. 165 para. 1 kk and Art. 12 para. 1 kk - the introduction of which was widely regarded as violating the constitutionally guaranteed freedom of assembly),²⁵ insulting a police officer (Art. 226 para. 1), and “*praising criminal behavior*” (Art. 255 para. 3 kk) in the form of damaging the facades of church buildings and “*maliciously obstructing the public performance of a religious ceremony*” (Art. 255 para. 3 kk).

Klementyna Suchanow is additionally charged with three offenses: causing a domestic disturbance (Art. 193 kk), destruction of or damage to another’s property (Art. 288 kk), and infringement of an officer’s physical integrity (Art. 222 kk), all in relation to her nailing a poster of the Women’s Strike to the door of the formerly independent Constitutional Tribunal and spilling red paint on a police officer’s uniform.²⁶

The activists’ case is handled by Prosecutor Hanna Stachowicz from the District Prosecutor’s Office in Warsaw, who is well-known for dealing with politically relevant cases and consistently ruling in line with the authorities’ preferences. The accusations do not correspond to reality, and a profoundly distorted version of the events was presented to justify the investigation.

On 6 October 2021, Klementyna Suchanow was indicted for breaking into the grounds of the

²³ <https://oko.press/polska-sciga-po-europie-sok-z-buraka-za-wpis-o-kaczynskim>

²⁴ <https://oko.press/prokuratura-stawia-zarzuty-liderkom-i-pomocnikom-strajku-kobiet/>

²⁵ https://www.euractiv.com/section/politics/short_news/polish-supreme-court-rules-public-gathering-ban-was-illegal/

²⁶ <https://warszawa.wyborcza.pl/warszawa/7,54420,27654266,dwa-akty-oskarzenia-przeciwko-liderce-strajku-kobiet-za-blyskawice.html>

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Constitutional Tribunal on 28 January 2021 and splashing red paint onto the uniform of a police officer. The police officer is represented by attorney Bartosz Lewandowski,²⁷ a lawyer from the Ordo Iuris Institute, a Poland-based, ultra-conservative think tank that Suchanow exposed for its financial involvement with the Kremlin.²⁸

In addition, Marta Lempart was charged with two counts of defamation for commenting on the humanitarian crisis on the Polish-Belarusian border. The proceedings in this case were conducted by the Military Affairs Division of the District Prosecutor's Office in Warsaw. On July 21, 2022, an indictment concerning the events of October 10, 2021, and December 1, 2021, was submitted to the District Court for Warsaw-Central Warsaw.²⁹

The first of these events was a demonstration in Warsaw's Castle Square, during which Marta Lempart gave a speech whose *"content indicates that in the ranks of the Border Guard there are murderers who throw children into the forest, with which she also insulted Border Guard officers on duty at the border in connection with their statutory duties to protect it"*. The activist was accused of committing an act described in Article 212(1) of the Criminal code, i.e. defaming officers in conjunction with Article 226(1) of the Code, concerning insult.

The second of these charges relates to another demonstration, from December 1, 2021, when Lempart called the Polish Border Guard and Polish Army soldiers *"murderers in Polish uniforms"* during a demonstration on Wiejska Street (near the Sejm) in Warsaw. Marta Lempart did not admit to committing the alleged acts.

Soon, allegations unrelated to Marta Lempart's activist activities themselves also appeared. In April 2023. The Regional Prosecutor's Office in Wrocław brought charges against Lempart for, among other things, allegedly failing to submit an annual financial report to a court or other authority keeping a register or record of an entity's business activities. The activist also heard charges saying she was responsible for failing to file for bankruptcy of a commercial company.

In a statement sent to Wirtualna Polska, Lempart said she had become *"the heroine of another high-profile case by prosecutor Justyna Pilarczyk, who is known for having discontinued the case of Justyna Helcyk, head of the Lower Silesian ONR."*³⁰

Justyna Wydrzyńska and the Abortion Dream Team

The Abortion Dream Team is one of the best-known initiatives campaigning for access to abortion in Poland, right after the Polish Women's Strike. Under PiS rule, Poland, apart from Malta and the Vatican, introduced the most restrictive anti-abortion laws in Europe.

²⁷ <https://warszawa.wyborcza.pl/warszawa/7,54420,27654266,dwa-akty-oskarzenia-przeciwko-liderce-strajku-kobiet-za-blyskawice.html>

²⁸ <https://www.polityka.pl/tygodnikpolityka/spoleczenstwo/2137154,1,ordo-iuris-wsparcie-z-kremla.read>

²⁹ <https://tvn24.pl/tvnwarszawa/najnowsze/warszawa-marta-l-liderka-ogolnopolskiego-strajku-kobiet-oskarzona-o-zniewazenie-straznikow-granicznych-i-zolnierzy-5889567>

³⁰ <https://wiadomosci.wp.pl/marta-lempart-z-zarzutami-mamy-komentarz-liderki-strajku-kobiet-6887367377222560a>

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The anti-abortion law was already restrictive - since 1993, abortion was legal only in cases of serious threat to the life or health of the pregnant woman, upon confirmation by two physicians; in cases of illegal acts such as rape or incest, upon confirmation by a prosecutor; and cases in which prenatal tests demonstrated that the fetus was seriously and irreversibly impaired, confirmed by two physicians. However, the far-right government tried to ban abortion completely in 2016, which was stopped by mass protests throughout the country. During the COVID pandemic, in October 2020, the improperly elected Constitutional Tribunal (as confirmed by the ECtHR in *the Xero Flor* judgment) when the improperly elected President of the court Julia Przyłębska banned the possibility of having an abortion due to a defect of the fetus. This premise was responsible for more than 90% of abortions in Poland every year before the ban.³¹

Since the ban's entry into force in January 2021, the Abortion Dream Team, as of January 2022, spent about PLN 1,5 million on providing treatment for Polish women in their second trimester of pregnancy in medical clinics abroad. Overall, the Abortion Dream Team helped 33,000 women to undergo a safe abortion under medical care, 1,500 of which were pharmacological abortions in foreign clinics.

Justyna Wydrzyńska is a leading activist from the Abortion Dream Team. During the COVID lockdown in 2020, Wydrzyńska provided abortion pills to a woman (known as Anna in the media), who was a victim of domestic violence from her husband. However, the above-mentioned husband caught Anna and confiscated the pills. As a result of not having access to the pills, Anna suffered from a miscarriage. In December 2021, the Warsaw - Praga District Prosecutor's Office charged Justyna Wydrzyńska with aiding and abetting an abortion and with marketing a medicinal product without marketing authorisation.³² The prosecutor handling her case is Piotr Preneta.

On 14 March 2023, neo-judge Agnieszka Brygidyr-Dorosz from the Warsaw - Praga District Court found Justyna Wydrzyńska guilty and sentenced her to 30 hours of community service per month for 8 months. During the proceedings, neo-judge Brygidyr-Dorosz approved the presence of Ordo Iuris (a fundamentalist-Catholic lobbying group), whose lawyer tried to demean the defendant by referring to her as a male and by demanding that she be sentenced to 1 year in prison, despite not having the right to request a sentence as a civic observer.³³

Neo-judge Agnieszka Brygidyr-Dorosz was promoted and delegated to the Court of Appeal in Warsaw on 14 March, 2023,³⁴ the same day as Wydrzyńska's verdict, by the Deputy Minister of Justice.

³¹ <https://www.rp.pl/kraj/art10701-raport-ministerstwa-zdrowia-1076-aborcji-w-polsce-w-2020-r-w-tym-legalne-bylyby-23>

³² <https://www.gosc.pl/doc/8128918.Zapadl-wyrok-ws-aktywistki-oskarzonej-o-pomoc-w-dokonaniu>

³³ <https://wyborcza.pl/7,82983,29557280,proces-wydrzynskiej-dzis-mowy-koncowe-polowa-polek.html>

³⁴ <https://oko.press/sedzia-wydrzynska-delegacja>

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Justyna Wydrzyńska's case is the most well-known so far, but it does not constitute an exception to the increasing atmosphere of fear around abortion in Poland. On 9 January 2023, the Central Anti-Corruption Bureau raided a private gynecologist's clinic in Szczecin on orders from the regional prosecutor. The prosecutor claimed having reasons to believe that substances had been provided for conducting medical abortions.³⁵ Medical records since 1996, in addition to the doctor's cellphone and two laptops, were confiscated. Doctor Maria Kubisa filed a complaint with the Court in Szczecin and with the Ombudsman.³⁶

Activist Andrzej Majdan

The prosecution has unsuccessfully attempted to charge the activist Andrzej Majdan for assault and for participating in a brawl, even though the accused was actually the victim of the altercation.

On 24 June 2017, Majdan, a member of the pro-democracy movement Committee for the Defence of Democracy (KOD), was severely beaten by far-right militants from the All-Polish Youth (Młodzież Wszechpolska) during a pro-democracy rally in Radom commemorating the anti-communist protests of 1976. The peaceful gathering was disturbed by a group of nationalist militants who marched in a military-like formation while chanting racist slogans. The rally, as a registered gathering, should have been protected by the police, yet no officers were present.³⁷

Majdan was subsequently accused of assault and taking part in a brawl (Art. 158 kk), with the prosecution claiming that Majdan had *"inflicted blows with his legs"* and *"knocked over to the ground, thus putting the participants of this brawl in immediate danger of losing their lives"*. All photo and video evidence showed that he was severely beaten by four nationalists and could only attempt to mount a self-defence action while lying on the ground.

During one of the hearings, someone cut the fuel lines of Madjan's car, which was parked outside his defence attorney's office. That case was dropped in July 2020 by the prosecution due to the failure to identify the perpetrators.

In February 2021, the District Court in Radom declared Majdan not guilty and categorically the victim of the incident, with the nationalists being the culprits.

Prosecutor Justyna Domagała-Szlaga of the District Prosecutor's Office in Radom, nominated by Prosecutor General Zbigniew Ziobro for the position of deputy District Prosecutor,³⁸ was in

³⁵ https://www.europarl.europa.eu/doceo/document/P-9-2023-000860_EN.html

³⁶ <https://wiadomosci.dziennik.pl/opinie/artykuly/8668186,cba-gabinet-ginekolog-dokumentacja.html>

³⁷ <https://natemat.pl/244075,andrzej-majdan-z-kod-pobity-przez-nacjonalistow-uslyszal-zarzuty>

³⁸ https://www.panstwo-pis.pl/index.php/Justyna_Domaga%C5%82a-Szlaga

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charge of the case as the third person in line.³⁹ Prosecutor Domagała-Szlaga's political motivations became evident when, as a member of the Disciplinary Panel at the Prosecutor General's Office, she punished the retired Prosecutor Beata Mik for publishing columns critical of PiS in Rzeczpospolita. The disciplinary proceedings argued that Prosecutor Mik failed to inform her superiors of her cooperation with the Rzeczpospolita newspaper, even though she had done so for 16 years with permission from the Prosecutor General.

During the court proceedings, Prosecutor Domagała-Szlaga requested that the testimonies of all 30 witnesses submitted by the defence be dismissed due to alleged unreliability, while also claiming that the testimonies from the members of nationalist militia were reliable.

In April 2021, Prosecutor Domagała-Szlaga appealed the verdict, claiming a lack of objectivity and lack of understanding of the case on the side of the Court. In October 2021, the verdict was upheld by the Regional Court in Radom, with the judge finding all of the Prosecutor's accusations towards the court of first instance "*baseless*". In December 2021, Prosecutor Małgorzata Witkowska from the Radom-East District Prosecutor's Office filed an appeal against the verdict to the Supreme Court. In the appeal, the prosecution claims that Majdan "*provoked*" the nationalists to beat him. On 26 June 2022, the Criminal Chamber of Supreme Court dismissed the prosecutor's motion as "*manifestly unfounded*".⁴⁰

Activist Zbigniew Komosa

Zbigniew Komosa is an activist known for, among others, laying a wreath every month in memory of the victims of the Smolensk air disaster. Komosa does so on the 10th of every month, when the accident is commemorated in a semi-official para-religious ceremony led by Jarosław Kaczyński and other PiS representatives at the Smolensk Memorial in Warsaw. The new tradition has become a crucial component of the so-called "*Smolensk religion*" or "*Smolensk Big Lie*", a theory popularised by Chairman Kaczyński himself. According to Kaczyński, Donald Tusk (the leader of the opposition at the time), in agreement with Vladimir Putin, ordered a hit on Kaczyński's twin brother, Lech (the President of Poland at the time). Lech Kaczyński is commemorated by PiS as a national hero, even though the state commission proved that the crash was a result of bad decisions of pilots who were under pressure to land despite difficult weather conditions.

The wreath, with the text "*In memory of the 95 victims of Lech Kaczyński, who, ignoring all procedures, ordered the pilots to land in Smolensk in extremely difficult conditions. Rest in peace. People of Poland. 'STOP CREATING FALSE HEROES!'*" is laid at the memorial by Komosa, and each time, the wreath is demonstratively removed and destroyed by the representatives of the Polish Armed Forces.⁴¹

³⁹ <https://radom.wyborcza.pl/radom/7,48201,26831582,radom-sad-skazal-narodowcow-za-pobicie-dzialacza-kod-jego.html>

⁴⁰ https://www.facebook.com/permalink.php?story_fbid=3086938321617519&id=100009041459594

⁴¹ <https://oko.press/prawomocny-wyrok-aktywista-moze-skladac-wiece-pod-pomnikiem-smolenskim-a-dalej-znikaja/>

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For the first two years, the wreath was removed by soldiers after Komosa left, but since mid-2020, members of the Warsaw Garrison (regular soldiers of Military Police) tear the wreath out of the activist's hands in front of cameras and often hundreds of witnesses to symbolically destroy it. The soldiers then take its remains to the Garrison. Sometimes, the soldiers even drag activists who are clinging to Komosa's wreath and haul them across the Piłsudski square.

Since February 2020, the District Prosecutor's Office for Warsaw Śródmieście North has initiated an investigation against Komosa every time he places a wreath, accusing him of a crime under Art. 261 kk (defamation of a monument) and seeking the penalty of imprisonment.

Komosa won the case in the court of first instance in July 2021. The District Court in Warsaw ruled that the activist *"realises the rights guaranteed by the Polish Constitution and the European Convention on Human Rights and Fundamental Freedoms to express one's own views (...) as well as the right to seek the truth"*. District Assistant Prosecutor Marek Kozicki, in a multi-page motion, appealed against the verdict, accusing the Court, among others, of *"violation of substantive law, namely Art. 261 kk, through its incorrect interpretation leading to an inaccurate conclusion"*.⁴²

In December 2021, the court of appeals fully supported the verdict of the first instance, with the judge noting that *"it is, on the one hand, the voice of a citizen who presents the truth about the catastrophe, and on the other hand, a form of criticism of the actions of the authorities of the Polish state"*.⁴³ The Courts in both instances consider that Komosa shared no offensive content in the inscription on the wreath and that reliable information in public circulation enables the attribution of moral responsibility for what happened to President Lech Kaczyński. Judge Anna Szymacha-Zwolińska, regarding the prosecution's appeal, added that *"if the law still included the concept of an obviously baseless appeal, this would be it"*.⁴⁴

Following the final judgement, during the next mensiversary, Komosa was permitted to lay his wreath, yet it was removed again as soon as Komosa left the area. Both the Capital Police Headquarters whose members guarded the monument and the Warsaw Garrison, refused to comment on the incident, despite the Court ruling it was legal for Komosa to lay the wreath, meaning that the soldiers committed theft each time.

In February 2022, a press investigation revealed that Prosecutors Andrzej Piaseczny and Bogumiła Knap (Prosecutor Knap was highly experienced and about to retire) refused to file the appeal following the July 2021 verdict, explaining that there was no basis. The Prosecutors subsequently faced threats from their superiors, Department Head Prosecutor Piotr Stasiak and Criminal Department Manager Prosecutor Wiesław Kwiatkowski, of being demoted to district level. Prose-

⁴² <https://www.rp.pl/prawo-karne/art19195481-znikajace-wieniec-pod-pomnikiem-smolenskim-jest-prawomocny-wyrok>

⁴³ <https://oko.press/prawomocny-wyrok-aktywista-moze-skladac-wieniec-pod-pomnikiem-smolenskim-a-dalej-znikaja>

⁴⁴ <https://oko.press/prawomocny-wyrok-aktywista-moze-skladac-wieniec-pod-pomnikiem-smolenskim-a-dalej-znikaja>

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cutor Knap wrote an official resignation letter to Prosecutor General Ziobro, using her right to an early retirement, and pointed to the threats as the reason.⁴⁵

Eventually, Daniel Więckowski, Deputy Head of the Downtown-North District Prosecutor's Office, filed a cassation to the Supreme Court,⁴⁶ describing the wreaths as *"defaming the memory"* of the late President Lech Kaczynski. Deputy Head Więckowski argued that the wreaths *"violate"* Article 261 of the Criminal code (defamation of monument) and constitute an element of *"political agitation"*. On 21 September 2022, the Supreme Court Justice Rafal Malarski dismissed the cassation as *"obviously unfounded"*.⁴⁷

In May 2022, the Warsaw Downtown Regional Court dismissed another case filed against Komosa by the Prosecutor's Office for the same charges. The prosecution also appealed this decision. Judge Magdalena Roszkowska-Matusik from the Warsaw District Court rejected the prosecutor's motion with clear justification that *"the act lacks the characteristic of social harmfulness at all"*.⁴⁸

The 13 activists from the Poland-Belarus border

Since August 2021, as the humanitarian crisis at the border between Poland and Belarus developed and Alexander Lukashenko used migrants to destabilise the EU, the government of Poland ignored its commitments to the Geneva Convention and to the European Charter of Fundamental Rights by denying asylum.⁴⁹

The Polish authorities' behaviour goes against, i.e., Art. 6 of EU Directive 2013/32, Art. 33 about non-refoulement of the Geneva Convention and Art. 3 of the European Convention of Human Rights, Art. 4 of Protocol n. 4 of the Geneva Convention, forbidding collective push-backs, a principle also present in Art. 47 of the Charter of Fundamental Rights of the EU, as well as in Polish law (Constitution, law on foreigners, Criminal Code - obligation to provide help). The Polish authorities' violation of the law was even confirmed by the Polish Courts, e.g., Warsaw Provincial Administrative Court⁵⁰ and Hajnówka Regional Court.⁵¹

Initially, the co-founder of the civic movement Obywatele RP Paweł Kasprzak suggested a civil disobedience action on August 24,⁵² Chair of the Supervisory Board of ODF Bartosz Kramek vehemently opposed the government's inhumane actions and advocated for a human rights-based policy, and published an article in Gazeta Wyborcza calling for bringing down the razor wire fence erected at the border.⁵³

45 <https://wyborcza.pl/7,75398,28082586,prokurorka-odchodzi-z-prokuratury-i-pisze-do-ziobry-o-naciskach.html>

46 <https://wyborcza.pl/7,75398,28297957,znalazl-sie-chetny-na-sporzadzenie-kasacji-w-sprawie-zniewazenia.html>

47 <https://oko.press/blamaz-prokuratury-i-wojska-kolejny-raz-przegraly-z-aktywista>

48 <https://oko.press/blamaz-prokuratury-i-wojska-kolejny-raz-przegraly-z-aktywista>

49 <https://www.theguardian.com/commentisfree/2021/nov/15/the-guardian-view-on-the-eu-and-belarus-vacating-the-moral-high-ground>

50 <https://bip.brpo.gov.pl/pl/content/wsa-rpo-pushbacki-sprzecznosc-prawo-polskie-miedzynarodowe-uzasadnienie>

51 <https://bialystok.wyborcza.pl/bialystok/7,35241,28278358,sad-push-backi-sa-nielegalne-pierwszy-wyrok-w-sprawie-wywozek.html>

52 <https://www.facebook.com/Pawel.Kasprzak.OFF/posts/1922424627919807>

53 <https://wyborcza.pl/7,75968,27488751,obalmy-zasieki-na-granicy-zaprotestujmy-w-duchu-obywatelskie-go.html>

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In late August 2021, a group of refugees who fled the Taliban taking over the power in Afghanistan were trapped on the border in Usnarz Górny and denied entry into Poland by the Polish police and border guards. When reports of at least three deaths surfaced,⁵⁴ 13 civic activists symbolically damaged the fence to send a message about the illegal mistreatment of asylum seekers.⁵⁵ The 13 activists were: Grzegorz Antoszewski, Julia Bednarek, Dominik Berliński, Justyna Butrymowicz, Angelika Domańska, Bernard van der Esch, Julia Gościńska, Leokadia Jung, Anna Kulesza, Bartosz Kramek, Zuzanna Lesiak, Katarzyna Pikulska, and Kajetan Wróblewski.⁵⁶

The activists chose to record and post the act of civil disobedience on social media themselves.

All the activists have faced charges for destroying property as per Art. 288 kk, but the Prosecutor's Office also wanted to arrest the activists as they could "*go into hiding*".⁵⁷ Such an accusation is particularly absurd, as the activists sought publicity and did not shy away from the legal consequences of their actions.

The District Court of Sokółka rejected the local District Prosecutor's Office's request to put the activists on pretrial detention, arguing that there were no grounds for such a pre-emptive measure.⁵⁸ The protest garnered remarkable media coverage and strong condemnation from the national government, which promised that the activists would face dire consequences. The insistence of the Prosecutor's Office to apply such pre-emptive measures may testify to the political nature of the move.⁵⁹

In January 2022, Polish MEP and founder of the Polish Humanitarian Action Janina Ochojska decisively criticised the authorities and the border guard, stating that she hoped that the border guard "*will at some time be punished for breaking the law and torturing innocent people*". Attempting to silence her criticism, Deputy Justice Minister Maciej Wąsik notified the prosecution of a possible crime, claiming that Ochojska had defamed public officers.⁶⁰ Similar actions were taken regarding Władysław Frasyniuk (anti-communist opposition figure), Marta Lempart (Polish Women's Strike leader), Bartosz Kramek (Chairman of the Supervisory Board at ODF), Michał Kobosko (Chairman of the Poland 2050 party), and Piotr Maślak (journalist at TOK FM).⁶¹

The investigation into one of the charges (Art. 276 kk, incitement to the destruction of property) to be filed against Kramek and the publisher of Gazeta Wyborcza was dropped in early January 2022 by the Investigation Department of the Municipal Police in Białystok. The investigation was drop-

54 <https://www.euronews.com/2021/09/20/poland-sends-more-troops-to-belarus-border-after-migrant-deaths>

55 <https://sokolka.naszemiasto.pl/13-osob-ktore-zniszczyly-zasieki-na-granicy-nie-trafi-do-ar/c1-8461773>

56 <https://www.polityka.pl/tygodnikpolityka/kraj/2135482,1,akcja-przecinania-zasiekow-sad-nie-zgodzil-sie-na-areszt-dla-aktywistow.read>

57 <https://www.rp.pl/kraj/art18872031-niszczenie-zasiekow-na-granicy-czyn-chuliganski-czy-nieposluszen-stwo-obywatelskie>

58 <https://www.polityka.pl/tygodnikpolityka/kraj/2135482,1,akcja-przecinania-zasiekow-sad-nie-zgodzil-sie-na-areszt-dla-aktywistow.read>

59 <https://wiadomosci.dziennik.pl/wydarzenia/artykuly/8233418,bialorus-ogrodzenie-granica-mariusz-kaminski-bartosz-kramek-prokuratura-areszt.html>

60 https://www.euractiv.com/section/politics/short_news/mep-sued-for-accusing-polish-border-guard-of-torture/

61 <https://oko.press/policja-przesluchuje-aktywistow-ktorzy-zlozyli-autodonos-w-solidarnosci-z-ochojska/>

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ped because no characteristics of a crime were found,⁶² which was supported by the prosecution. The decision was publicly criticised by far-right leader Krzysztof Bosak as “anti-Polish”⁶³ and two days later, on 9 January Prosecutor General Zbigniew Ziobro intervened, ordering an investigation into the discontinuation.⁶⁴ This was the second documented and direct intervention of the Prosecutor General into an investigation concerning Bartosz Kramek (the other being in the fiscal case described under “*Bartosz Kramek and the Open Dialogue Foundation*”). A preliminary investigation into the destruction of the interrogation report of one of the activists, Dominik Berliński, was dropped. The same happened with the preliminary investigation into aiding of the publisher of *Gazeta Wyborcza* which published Kramek’s article.

The prosecution filed an indictment in December 2022, valuing the destroyed property (bent razor wire) at PLN 1049, much above its actual value as claimed by the defence. The charge of destruction of property (Art. 288 kk) involved six people, which according to the Criminal Code is punishable by up to five years in prison. The prosecutor charged the remaining seven people with active participation in a gathering (Art. 254 kk), which is punishable by three years in prison. Prosecutor Anna Zejer, spokeswoman for the Łomża Regional Prosecutor's Office, stated that all the perpetrators acted on frivolous motives and demonstrated a blatant disregard for the law.⁶⁵

In January 2023, the case was moved from the Sokółka District Court, via the Białystok Regional Court, to the District Court for Warsaw-Śródmieście. There it was assigned (supposedly by the automated lottery system) to neo-judge Katarzyna Olczak, known for closing a case brought by independent prosecutor Ewa Wrzosek against a state TV journalist Samuel Pereira, who compared her to a “*mafioso, drug dealer or terrorist*” when she fell victim to unlawful Pegasus surveillance (see Surveillance of Prosecutor Ewa Wrzosek case). In March 2023, following a motion by Bartosz Kramek’s attorney Jacek Dubois, the neo-judge was removed from the case by judge Krzysztof Ptasiewicz, who argued that “*it is presumed that a court of which such a judge sits does not fulfil the requirement of a court established by law*”, i.e. cannot guarantee impartiality, citing the relevant ECtHR verdict (*Reczkowicz vs Poland*).⁶⁶

The Wrabec couple

On 27 October 2021, husband Paweł Wrabec (journalist and one of the founders of the civic movement Obywatele RP) and wife Justyna Wolniewicz-Wrabec (a graphic designer and human rights defender), were detained by police while transporting 2 Iraqi migrants near the border town of Hajnówka.

The couple decided to take matters into their own hands after seeing the mistreatment of migrants and refugees at the Poland-Belarus border, arguing that they were following Art. 162 kk

⁶² <https://www.salon24.pl/newsroom/1195639,bartosz-kramek-i-gw-bez-konsekwencji-za-teksty-zachecajace-do-zniszczenia-ogrodzenia-na-granicy>

⁶³ <https://twitter.com/krzysztofbosak/status/147946185331873793>

⁶⁴ https://twitter.com/PK_GOV_PL/status/148011521636233217

⁶⁵ <https://bialystok.wyborcza.pl/bialystok/7,35241,29271664,13-gniewnych-ludzi-oskarzonych-za-akt-obywatelskiego-nieposluszenstwa.html>

⁶⁶ <https://www.salon24.pl/newsroom/1195639,bartosz-kramek-i-gw-bez-konsekwencji-za-teksty-zachecajace-do-zniszczenia-ogrodzenia-na-granicy>

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which penalizes “failing to provide aid to a person or persons being threatened by loss of life or severe injury”.

The leader of Obywatele RP Paweł Kasprzak argued that “if a human impulse requires a decent person to break the law, then that law must be broken”. The young Iraqi couple had reportedly already spent 40 days wandering the forest at the border and were likely transported back to Belarus by the border guard after the arrest. At that time, at least 9 people had already died at the border due to the actions of Belarusian authorities and their Polish counterparts (as described in the previous case).⁶⁷ As of late 2023, 51 migrants are confirmed dead⁶⁸ and around 300 are missing.

The police called the couple’s reasoning “frivolous”. An analysis of the Helsinki Foundation for Human Rights⁶⁹ confirmed the legality of providing humanitarian (often lifesaving) assistance to migrants crossing the border illegally, while the Supreme Court found the restrictions placed on activists and the media in the border zone illegal.⁷⁰

The couple spent nearly 24 hours in detention. They were charged with aiding and abetting in the organisation of illegal border crossings by foreigners (Art. 264 kk, punishable by up to eight years’ imprisonment). The case was handled by Prosecutors Jan Andrejczuk and Ewa Dmitriuk of the District Prosecutor’s Office in Hajnówka,⁷¹ then transferred to the Warsaw District Prosecutor’s Office with the cooperation of the Lublin bureau of the ABW. As of 2023 the case is handled by the Department for Organised Crime and Corruption in the Lublin Branch of the National Prosecutor’s Office. Second Lieutenant Dariusz Tkaczyk, the same ABW officer who is handling the investigation against Bartosz Kramek, has been assigned to the Wrabec case.

During the detention, the smartphones of the Wrabec couple were taken and information from the devices was used by the ABW against other activists. The prosecution delegated substantial resources to their investigation of the case: as of late 2023 over a dozen witnesses were questioned over potential complicity in the crime or ties to the couple, including random contacts acquired from their phones. Investigators also walked door-to-door in Hajnówka inquiring about the couple, showing their photo.

Atlas of Hate

The Atlas of Hate is an online interactive map of Poland, prepared by LGBT+ activists Jakub Gawron, Paweł Prenta, Paulina Pająk, and Kamil Maczuga, which highlights parts of Poland where local authorities have adopted or are working to adopt so-called “Anti-LGBT Declaration” to make these areas “zones free of LGBT ideology”.

⁶⁷ This number could be higher due to the media and independent observers being excluded from the border zone

⁶⁸ <https://bialystok.wyborcza.pl/bialystok/7,35241,30224480,kryzys-na-granicy-polsko-bialoruskiej-kolejna-smierc-po-bialoruskiej.html>

⁶⁹ <https://monitorkonstytucyjny.eu/wp-content/uploads/2021/11/opinia-legalnosc-pomocy-humanitarnej17112021-1.pdf>

⁷⁰ <https://oko.press/sad-najwyzszy-zakaz-wjazd-u-dla-dziennikarzy-do-strefy-przy-granicy-jest-nielegalny/>

⁷¹ <https://bialystok.wyborcza.pl/bialystok/7,35241,27743524,polsko-bialoruska-granica-aktywisci-zatrzymani-za-ludzki-odruch.html>

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It led to numerous proceedings stemming from local governments accusing the authors of trespassing and complaints to Voivodeship Administrative Courts by the Polish Ombudsman. The Polish Public Prosecutor's Office joined conservative local authorities and Christian fundamentalists from Ordo Iuris in court proceedings.

Prosecutor Przemysław Ostojki from the Poznań District Prosecutor's Office (delegated to National's Prosecutor Office) submitted a cassation complaint of more than five judgments of various Voivodeship Administrative Courts to the National Administrative Court. Despite submitting numerous cassation complaints, the prosecutor's office has been losing more and more cases.

The level of legal argumentation from Prosecutor Ostojki in all these cases (the most in Gmina Osiek case)⁷² suggests that continuing was a political and ideological decision. Prosecutor Ostojki, in defence of anti-LGBT declarations, invoked "*freedom of the speech*" from Art. 54 of the Polish Constitution, but the National Administrative Court contended that the article is a personal right in the Constitution, not a right of public institution. Moreover, Prosecutor Ostojki argued that Parliament bills can limit the freedoms guaranteed by the Constitution, but these acts were passed by local authorities, not Polish Parliament. As of the date of this report's publication, all charges from Prosecutor Ostojki have been rejected.

Activist Bart Staszewski

Bart Staszewski is the most well-known Polish LGBT+ activist who gained popularity by fighting against the "*LGBT free zones*" introduced by local far-right authorities all over Poland. Staszewski notably took photos of traffic signs placed in towns that have passed such resolutions and declarations, which went viral world-wide. The District Prosecutors's Office in Tarnobrzeg teamed up with Gmina Tuszów Narodowy in the case against Staszewski for infringement of the Gmina's personal rights.

Bart Staszewski was also targeted by the deputy Minister of Justice Marcin Romanowski, who denounced Staszewski's comments in social media regarding the Polish Border Guard's cruelty. Romanowski's direct supervisor in the prosecutor's office is the Minister of Justice.

Staszewski had commented on the illegal pushback of parents of a 4-year-old girl by the Border Guards on the Polish-Belarussian border: "*The disguisers in WOT uniforms and the liars from the Polish Army will pretend that this did not happen. The pathology that gave such orders should end up in court, and the stooges in uniform who endangered the child – behind the bars*".

Even though the preliminary investigation is being conducted by the Prosecutor's Office, Staszewski was actually questioned and accused on behalf of the Military Police a year after the events. The proceeding is confidential, and Staszewski has only declared so far that "*I was charged with*

⁷² <https://blog.atlasnienawisci.pl/index.php/2022/08/24/orzeczenie-nsa-w-sprawie-gminy-osiek/>

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defaming the soldiers and border guards. I admitted to the authorship of the posts, I did not admit to the guilt. I stated that the case was politically motivated and refused to give further testimony".⁷³

1.2 Judges and Prosecutors

Judge Beata Morawiec

Judge Beata Morawiec, former President of the Regional Court in Cracow and President of the Themis Association of Judges, is currently facing prosecution. The Internal Affairs Department (WSW) of the National Prosecutor's Office (established for the sole purpose of pursuing judges and prosecutors and headed by National Prosecutor Bogdan Świączkowski, see Annex II) has been trying to file charges against Judge Morawiec since she won a personal rights case against Minister Ziobro.⁷⁴

According to the judgement, Minister Ziobro committed defamation when notifying Judge Morawiec of her dismissal in 2017 and was obligated to issue a public apology, which he has not done yet, ignoring the verdict.⁷⁵

The prosecution tried to strip away Judge Morawiec's immunity based on allegations of corruption (misappropriation of public funds, acting against public interest to gain a financial advantage, abuse of powers, and acceptance of a financial advantage). The removal of Judge Morawiec's immunity was first approved by the illegal Disciplinary Chamber of the Supreme Court (in an October 2020 decision of a single judge),⁷⁶ but then Morawiec's appeal was revoked by a 3-person jury of the same illegal Disciplinary Chamber in June 2021.⁷⁷

The allegations were highly dubious. The first alleged that Judge Morawiec defrauded public funds when failing to deliver a legal opinion requested by another court in 2013 (an independent expert confirmed she did in fact deliver it).⁷⁸ The second claimed that Morawiec received a bribe in the form of a mobile phone, a claim not supported by any evidence apart from testimonies of Marek B., who was facing many years in prison and whose testimony resulted in a mild approach of the prosecution to his case.

Michał Walendzik, who represented the National Prosecutor's Office in these proceedings, has been listed by OKO.press and LSO as one of the top prosecutors whose careers were advanced by Mr Ziobro⁷⁹ and criticised for his abuse of power when issuing an unlawful decision for the Central

⁷³ <https://warszawa.wyborcza.pl/warszawa/7,54420,29236603,wiceminister-pozwal-barta-staszewskiego-za-waapis-na-twitterze.html>

⁷⁴ <https://oko.press/porazka-prokuratury-ziobry-nie-ma-zgody-na-kanie-sciganie-sedzi-beaty-morawiec/>

⁷⁵ <https://www.rp.pl/sady-i-trybunaly/art8674341-minister-zbigniew-ziobro-nie-chce-przeprosic-sedzi-beaty-morawiec>

⁷⁶ <https://wiadomosci.radiozet.pl/Polska/Polityka/Beata-Morawiec-zawieszona-izba-Dyscyplinarna-SN-uchylila-immunitet-krakowskiej-sedzi>

⁷⁷ <https://serwis.gazetaprawna.pl/orzeczenia/artykuly/8183637,sedzia-beata-morawiec-uchylenie-immunitetu-izba-dyscyplinarna-sn.html>

⁷⁸ <https://wiadomosci.onet.pl/kraj/sprawa-sedzi-morawiec-jest-ekspertyza-bieglego-ktora-moze-obalic-czesc-zarzutow/5ftcsz>

⁷⁹ <https://oko.press/to-oni-scigaja-niezaleznych-sedziow-i-prokuratorow-lista-16-ludzi-ziobry-w-prokuraturze-krajowej/>

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Anticorruption Bureau (CBA) to search the house of Judge Morawiec in 2020 despite her being protected by immunity.⁸⁰

On 28 September 2021, Judge Morawiec was demoted from her post, which was followed by a letter signed by herself along with other judges, in which they refused to adjudicate with judges nominated by the new National Council of the Judiciary. Morawiec justified her decision based on the judgments of the CJEU and the ECtHR of July 2021, in which the legality of the so-called neo-National Council of the Judiciary and its nominations were challenged.⁸¹

On August 9 2022, Judge Katarzyna Król from the Katowice-East District Court refused to submit Marek B. to voluntary punishment, claiming the prosecution's proof in the case was too weak and the defendant's testimony contradictory, and returned the case to the prosecution.⁸² In this situation, the only way to continue the case of Marek B. would be to file an indictment by the prosecution's office. However, since it was not filed, Judge Maciej Czajka—the attorney of Judge Morawiec—suggested that a public court hearing with the participation of Marek B. could reveal the mechanisms behind the framing of Judge Morawiec.⁸³

Judge Igor Tuleya

As with the case of Judge Beata Morawiec, the National Prosecutor's Office is pursuing yet another judge well-known for his vocal opposition to the reforms eroding the independent judiciary: Judge Igor Tuleya from the District Court of Warsaw and former spokesperson for the Court.⁸⁴

In November 2020, Judge Tuleya was stripped of his immunity by the unlawful Disciplinary Chamber of the Supreme Court and suspended. The case is currently handled by Prosecutor Czesław Stanisławczyk of the new Internal Affairs Department (WSW) of the National Prosecutor's Office, who has only been working in prosecution since 2018.⁸⁵ The prosecution charged Judge Tuleya with abuse of power through a criminal breach of secrecy of the investigation (under Art. 231 kk).⁸⁶

The alleged breach happened when Judge Tuleya allowed the press to hear the justification of the verdict he gave in Court regarding the case on the circumstances under which, on 16 December 2016, the proceedings of the Sejm were moved from the Sala Posiedzeń (Plenary Hall) to the Sala Kolumnowa (Column Hall), which is smaller. During the proceedings, the MPs from the opposition were not allowed to vote, which he believed was of vital importance to the public. The judge did not disclose any classified material, and the prosecutor present in court did not object. In this situation, under criminal procedure law, Judge Tuleya was fully entitled to allow the

80 <https://oko.press/sad-przeszukanie-domu-sedzi-morawiec-nielegalne-prokuratura-krajowa-naruszyła-jej-immunitet/>

81 <https://tvn24.pl/polska/krakow-sedziowie-beata-morawiec-maciej-czajka-i-katarzyna-wierzbička-przenie-sieni-do-innych-wydzialow-wczesniej-odmowili-orzekania-z-powolanymi-przez-nowa-krajowa-rade-sadownictwa-5431605>

82 <https://oko.press/kleska-prokuratury-ziobry-ws-sedzi-morawiec>

83 <https://wiadomosci.wp.pl/mial-skorumpowac-sedzie-grozi-mu-10-lat-prokuratura-ma-twarde-dowody-ale-odpuszcza-6830054370192032a>

84 <https://oko.press/igor-tuleya-zgoda-na-zatrzymanie/>

85 <https://www.polityka.pl/tygodnikpolityka/kraj/2142314,1,pis-owi-nie-spada-na-czym-polega-ten-mecha-nizm.read>

86 <https://wyborcza.pl/7,75398,26529318,to-on-sciga-sedziego-tuleye-prokurator-ziobry-do-zadan-specjalnych.html>

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hearing to take place in public. The justification for Judge Tuleya's ruling, which overturned an earlier discontinuance of the investigation by the public prosecution, revealed, however, embarrassing statements made by leading PiS representatives in connection with pushing through illegal proceedings in the Sejm.⁸⁷

By discontinuing the proceedings, the prosecution tried to conceal numerous irregularities that occurred during the vote on the 2017 budget. Moreover, the judge notified the Prosecutor's Office of suspected false testimony on the part of 230 PiS deputies, including Prime Minister Morawiecki.⁸⁸

Judge Tuleya consequently ignored the judgments of the illegal Disciplinary Chamber and did not confess to the Prosecutor's Office (which was possible only by admitting that he lost his immunity). For this reason, the Prosecutor's Office submitted a file to the Disciplinary Chamber to detain him. In April 2021, the Disciplinary Chamber rejected this motion due to social protests and pressure from abroad. However, Judge Tuleya was still suspended.

The newly created Chamber of Professional Liability was designed to replace the abolished Disciplinary Chamber, as the Polish government desperately wanted to unblock the funds from the Next Generation EU funds. This Chamber not only upheld the decision which did not approve the detention of Judge Tuleya, but also reinstated him to the Warsaw District Court after more than 2 years of being illegally suspended. The attorney of Mr Tuleya, Jacek Dubois, stated: *"We knew all along that the entire case is simply an attempt to get back at an independent judge. Our thesis was finally confirmed"*.⁸⁹

Stanisławczyk is the fifth prosecutor involved in the prosecution of Judge Tuleya. Previously, the Tuleya case in the National Prosecutor's Office was handled by Dariusz Ziomek from the District Prosecutor's Office in Gdańsk (delegated to the National Prosecutor's Office), Piotr Dąbrowski from the District Prosecutor's Office in Gdynia (also delegated), Franiczek Michera from Regional Prosecutor's Office in Mińsk Mazowiecki (also delegated), and Piotr Myszkowicz from District Prosecutor's Office in Poznań (also delegated).⁹⁰

Judge Waldemar Żurek

The prosecution has played a major role in the ongoing persecution of Judge Waldemar Żurek, a former member and spokesperson of the National Judiciary Council who openly opposed the ruling coalition's assaults on the rule of law in Poland, including the unconstitutional dissolution of the National Judiciary Council. Since 2016, Judge Żurek has faced an ongoing investigation (beginning with an audit of his asset statements), handled by the Regional Prosecutor's Office in

⁸⁷ <https://serwis.gazetaprawna.pl/orzeczenia/artykuly/8147581,o-co-chodzi-w-sprawie-igora-tuleyi-wyjasnia-my.html>

⁸⁸ <https://wiadomosci.onet.pl/kraj/sedzia-igor-tuleya-230-poslow-moglo-skladac-falszywe-zeznania/x7wbty4>

⁸⁹ Dissident Judge...

⁹⁰ <https://www.polityka.pl/tygodnikpolityka/kraj/2142314,1,pis-owi-nie-spada-na-czym-polega-ten-mechanizm.read>

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Cracow, represented by Prosecutor Janusz Hnatko, and initiated at the notification by the Deputy Disciplinary Commissioner of the Common Courts and Zbigniew Ziobro's loyal henchman Michał Lasota. Another investigation was initiated in January 2017 by the Regional Prosecutor's Office in Warsaw.⁹¹

The seven-year-long investigation included a spectacular and unlawful raid by CBA agents on the judge's office, the unnecessary declassification of the Judge's assets declaration by Ziobro, a leak of his divorce case to the pro-government press, and even a questioning of his wife when she was dealing with an endangered pregnancy.⁹² CBA agents were also dispatched by the prosecution to the Bieszczady Mountains to interrogate the lumberjack who purchased a tractor from Judge Żurek, as well as the latter's neighbours. The fiscal authorities audited the lumberjack's accounts. The investigation, conducted jointly by the prosecution, the CBA, the police, and the fiscal authorities, failed to find any crimes or irregularities (as was admitted by Prosecutor Hnatko himself).

Instead, the disciplinary commissioner initiated proceedings against Judge Żurek based on a 170-page case file, detailing the lack of payment of PLN 820 (EUR 180) for an allegedly-due civil law transaction tax (PCC), following the sale of a 37 years-old tractor. As it was quickly revealed, following the fiscal authorities failing to claim the tax despite the notification from the Cracow Prosecutor's Office, the tax was not due at all, as the transaction was exempted.

This fact led to Commissioner Lasota filing dubious charges of "*undermining the dignity of the judge*" (Art. 107 para. 1 Law on Common Courts) with the Disciplinary Court in Rzeszów in January 2021, then failing to appear in court in May despite it being his obligation as the acting prosecutor in this case.

On Tuesday 14 September 2021, Judge Żurek submitted to the President of his Court, Dagmara Pawełczyk-Woicka, a declaration that he did not want to adjudicate with the new, illegally appointed judges in his civil division, following the CJEU's opinion. The President of the District Court in Cracow replied that "*the refusal to take the oath is tantamount to resigning from the judge's position*", effectively threatening to fire Judge Żurek (which is opposite to the constitutional principle of irremovability of judges).

Judge Żurek also faces removal from a civil case at the request of the Regional Prosecutor's Office in Cracow for merely asking the CJEU for an opinion. Judge Żurek was following a case concerning the annulment of a contract, when one of the parties appealed against his decision. The appeal was heard by one judge from the illegally appointed National Council of the Judiciary, which led Żurek to ask the CJEU for an opinion on whether the judge was properly appointed for this position. Against all previously established practices, the Prosecutor's Office, led by Rafał Babiński, demanded the removal of Judge Żurek from the case with the following justification: "*while*

⁹¹ <https://wyborcza.pl/7,75398,26906781,bedzie-proces-za-tractor-jak-wladza-szukala-haka-na-sedziego.html>

⁹² https://www.rmfm24.pl/raporty/raport-batalia-o-sady/fakty/news-sedzia-zurek-nachodzily-mnie-wszelkie-mozliwe-sluzby-zastras,nld,4294687#crp_state=1

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*upholding the rule of law, [the prosecutor's office] has a duty to react in the event of attempts to disorganize the Polish democratic justice system".*⁹³

In May 2022, while Judge Zurek was in the hospital, the disciplinary commissioners of common court judges Piotr Schab and his deputy Michał Lasota, accused the judge at a press conference of falsifying rulings and announced that the case would be referred to the Prosecutor's Office⁹⁴ (which has yet to happen). Making false accusations constitutes a crime under Art. 234 kk.

In at least 64 cases, according to their findings, the judge committed falsification of the rulings that he signed, and—in the majority of cases—giving a false date of issuing of these rulings. The proof consisted of the fact that Judge Żurek was working in the Cracow Court on the same days. He replied that he travelled between Warsaw and Cracow during that period.

Even the Extraordinary Control Chamber dismissed the complaint of the Prosecutor General's deputy Robert Hernand against the final judgement of the Court of Appeal in Wrocław. The dismissal was done for the protection of personal rights in favour of Judge Waldemar Żurek in February 2023 during a closed session. The dispute resulted from the judge's alleged slander of his ex-wife because he did not pay the alimony for his children.⁹⁵ The ex-wife had published her false claims in the pro-government newspaper Gazeta Polska, among other publications. The Prosecutor General's interference was an extraordinary, even if unsuccessful, example of the Prosecutor General's interference in civil and family matters of an independent judge.

Mariusz Krasoń and the Lex Super Omnia prosecutors

Prosecutor Mariusz Krasoń (member of the Lex Super Omnia association, LSO), who initiated the 15 May 2019 resolution of Cracow prosecutors criticising the politicization of the prosecution service,⁹⁶ has faced prosecution since 2019. As of 2021, he has faced more than a dozen cases, as have his colleagues from the LSO.

A special team of disciplinary commissioners set up under Poland's new disciplinary regime for judges⁹⁷ investigated Krasoń's comments for Gazeta Wyborcza after the 2017 rally in defence of free courts in Cracow, and his comments for TVN24, in which he warned that prosecutors are not sufficiently protected against COVID-19. In 2019, Prosecutor Krasoń was also questioned in connection to initiating the resolution which admonished the government's actions "*aimed at further political subordination of the judiciary*". He also had to explain why he was wearing a prosecutor's robe during the January 2020 protest nicknamed the "*1,000 Robes March*".⁹⁸

⁹³ <https://oko.press/waldemar-zurek-odmawia-sadzenia-z-neo-sedziarni-to-kolejny-sedzia-ktory-wykonuje-prawo-ue/>

⁹⁴ <https://www.tvp.info/60474768/waldemar-zurek-z-zarzutami-sfalszowal-kilkadziesiat-orzeczen>

⁹⁵ <https://www.prawo.pl/prawnicy-sady/skarga-nadzwyczajna-pg-niekorzystna-dla-zurka-oddalona,519595.html>

⁹⁶ <https://en.odfoundation.eu/a/35396,a-breach-too-far-call-to-the-ec-on-the-assault-on-judges-adjudicating-on-prosecutor-krasons-case/>

⁹⁷ <https://ruleoflaw.pl/half-a-million-for-prosecuting-defiant-judges/>

⁹⁸ <https://oko.press/lista-sciganych-i-nekanych-dyscyplinarkami-prokuratorow/>

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National Prosecutor Bogdan Świączkowski established all decisions regarding punitive transfers.⁹⁹

Other independent prosecutors face similar arbitrary proceedings, and even criminal prosecution. Most notably, Prosecutor Ewa Wrzosek is being harassed for initiating an investigation into the presidential elections that the government sought to organise during the Covid-19 pandemic despite the blatant breach of the Polish Constitution, originally scheduled for 10 May 2020 (and postponed only 4 days before the scheduled date). First, Prosecutor Wrzosek learned from the media that the disciplinary proceedings were initiated against her. In September 2021, despite the announcement of disciplinary proceedings, criminal proceedings were initiated against Ms Wrzosek instead. She now faces charges of abuse of power (Article 231 kk), punishable by imprisonment of up to 3 years.¹⁰⁰ The prosecutor managing the case is Edyta Tawrel from the Internal Affairs Department of the National Prosecutor's Office.

Prosecutor Tawrel is also known from the case of Judge Paweł Juszczyszyn. Suspended in 2020 by the illegal Disciplinary Chamber of the Supreme Court for implementing a CJEU judgement to ensure the legality of the new National Judiciary Council, Judge Juszczyszyn was the first independent judge to be returned to work following a court interim measure in 2021. Prosecutor Tawrel, in her request to access the court file, suggested that the National Prosecutor's Office might instigate criminal proceedings against the judges from Bydgoszcz who ruled in Judge Juszczyszyn's favour.

Prosecutor Wrzosek also faces 3 disciplinary proceedings for her public support of a Supreme Court devoid of political influence and pressure consisting of free courts and an independent prosecutor's office. In May 2020, the proceedings were sent from the Disciplinary Commissioners of the Judges of the Ordinary Courts to the Disciplinary Court.¹⁰¹ In November 2021, Judge Wrzosek also informed the public that Apple provided her with evidence that her phone was exposed to the notorious Pegasus spyware.¹⁰²

In December 2022, the Regional Prosecutor's Office in Szczecin submitted motions to the Supreme Court to waive the immunity of Ewa Wrzosek, who they tried to link to the Mayor of Warsaw, a candidate in the 2020 presidential election. According to the motion, Ms Wrzosek allegedly encouraged her colleague to inform Trzaskowski's subordinate about the urine test results of the bus driver in Warsaw, who was responsible for an accident.¹⁰³

Prosecutor Wrzosek points out that her phone was spied on with Pegasus software, which means

⁹⁹ <https://www.rp.pl/zawody-prawnicze/art320151-niepokorni-prokuratorzy-jada-za-kare-w-polske>

¹⁰⁰ <https://www.rp.pl/prawnicy/art18931111-chca-poslac-prokurator-wrzosek-do-wiezienia-za-sledztwo-ws-wyborow-kopertowych>

¹⁰¹ <https://tvn24.pl/polska/sprawy-dyscyplinarne-ewy-wrzosek-prokurator-ktora-wszczela-sledztwo-dotyczace-wyborow-prezydenckich-4574232>

¹⁰² <https://tvn24.pl/polska/pegasus-prokurator-ewa-wrzosek-przekazano-mi-ze-bylam-poddana-dzialaniu-pegasusa-zawiadomienie-o-przestepstwie-5502315>

¹⁰³ <https://www.gov.pl/web/pr-szczecin/wnioski-o-uchylenie-immunitetow-dwom-warszawskim-prokuratorom>

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entries on her phone could have been made by people who hacked into it.¹⁰⁴ Prosecutor Ewa Wrzosek's office in the Warsaw Mokotow District Prosecutor's Office building was searched in November 2022 in her absence and without her knowledge. The Provincial Prosecutor's Office in Szczecin secured two official computers and a pen-drive. Monika Laskowska, who heads the Mokotow District Prosecutor's Office, did not participate in the search, despite the fact that it is required by law. As Prosecutor Wrzosek herself stated, *"This was the first time in history that the office of an active prosecutor, while remaining on duty, was searched"*.¹⁰⁵

Krasoń, Wrzosek, and five other independent prosecutors from LSO (Katarzyna Kwiatkowska, Jarosław Onyszczyk, Katarzyna Szeska, Dariusz Drapała, Artur Małkowski)¹⁰⁶ were also subjected to punitive transfers. In January 2021, they were transferred from their previous posts and places of residence, having to move up to 411 km with less than 2 days of notice in the midst of the COVID pandemic.¹⁰⁷

Such modus operandi constitutes an abuse of Article 106 of the Public Prosecutor's Office Act, which provides for two possibilities to move prosecutors to other offices without their agreement: either for up to 6 months a year to a different city (para. 2) or for up to 12 months within the same city, for substantiated reasons and due to staffing needs (para. 3). As the action is completely discretionary and non-appealable, two of the prosecutors (LSO President Katarzyna Kwiatkowska and board member Jarosław Onyszczyk) already contested them before the Labour Court, with others aiming to do the same.¹⁰⁸

The Commissioner for Human Rights (RPO), Adam Bodnar, intervened within 2 days of the decision, requesting an explanation of the perceived discriminatory actions. In response, National Prosecutor Święczkowski argued that the delegations were due to staffing needs (despite none of the distant offices reporting any) and did not explain as to why LSO prosecutors were targeted specifically.¹⁰⁹

The Regional Court in Cracow ruled in June 2021 that the delegations ordered by the National Prosecutor Bogdan Święczkowski were unlawful and unsubstantiated. With this judgement, Krasoń, together with 6 other prosecutors persecuted in the same way, can claim protection of their labour rights and try to hold the National Prosecutor to account.¹¹⁰

The Deputy Disciplinary Commissioner of the National Prosecutor's Office is investigating whether Krasoń committed disciplinary misconduct. The issue stems from Krasoń's prosecutor's desire to

¹⁰⁴ <https://oko.press/prokuratura-wrzosek-pegasus>

¹⁰⁵ <https://www.rp.pl/zawody-prawnicze/art37530651-media-przeszukanie-w-gabinecie-prokurator-ewy-wrzosek>

¹⁰⁶ Małkowski joined LSO after being subjected to the punitive transfer.

¹⁰⁷ <https://lexso.org.pl/2021/01/20/wsparcie-dla-delegowanych-prokuratorow-od-prawniczych-organizacji-po-zarzadowych/>

¹⁰⁸ <https://oko.press/prokurator-krason-wygral-z-prokuratura-ziobry-sad-karne-delegacje-w-polske-bezprawne/>

¹⁰⁹ <https://wiadomosci.wp.pl/adam-bodnar-zajal-sie-sprawa-prokuratora-krasonia-metoda-szykanowania-6400771260843649a>

¹¹⁰ <https://fakty.tvn24.pl/fakty-po-poludniu,96/mariusz-krason-delegowany-bezprawnie-orzeczenie-sadu,1066111.html>

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participate in professional training. The prosecutor applied for the training, but such a request must be supported by the principal's approval. The principal consented, but only verbally, as he happened not to be present at the headquarters of the prosecutor's office.

On the basis of the verbal consent, Krasoń submitted the request, and the principal, at the first possible moment, confirmed his consent in writing. This, however, was enough for the regional prosecutor to request the Deputy Disciplinary Commissioner to initiate proceedings and punish Krasoń.

Recent media reports indicate that the case is at the investigation stage, after which disciplinary proceedings may be initiated.¹¹¹ A dangerous precedent has been set in the case of Justyna Brzozowska, a prosecutor from Lex Super Omnia.

Prosecutor Kamil Kowalczyk, who brought the indictment against Brzozowska, who was delegated to the National Prosecutor's Office and previously worked at the Malbork Provincial Prosecutor's Office, demanded the exclusion of judges Grzegorz Fidrysiak, Piotr Kluz and Monika Popielarska.

The reason was that they had signed an appeal for the full implementation of the EU Court of Justice's rulings on the disciplinary system for judges, including the liquidation of the then-existing Supreme Court Disciplinary Chamber from July 2021. More than 4,000 judges and prosecutors signed on to that appeal. Prosecutor Kowalczyk called it a *"political declaration"*. Prosecutor Brzozowska called the action *"procedural obstruction."*¹¹²

The reason for the reprisals against Prosecutor Brzozowska may be the fact that she refused to open an investigation into the alleged diplomatic treason of former Prime Minister Donald Tusk.

Cracow judges who ruled in the Krasoń case

In late 2020, investigations were launched into seven judges from Cracow. Three of the investigations came from the Court of Appeals and four from the Regional Court, after the judges ruled favourably in the Krasoń case in labour code-based disputes, referring to Art. 106 of the Public Prosecutor's Office Act. The judges were summoned by the National Public Prosecutor's Office to be interrogated by its Internal Affairs Department (WSW), after demanding that Judge Krasoń receive compensation from the State and be reinstated in his position.¹¹³

In January 2021, it was revealed that the WSW, headed by Piotr Myszkowiec, had initiated criminal proceedings concerning 13 judges who had dealt with Krasoń's case: Judge Marzena Henrych, Judge Sabina Czech-Śmiałkowska, Judge Katarzyna Rozwoda, assessor Sławomir Folusz from the

¹¹¹ <https://wiadomosci.wp.pl/dyscyplinarka-w-niepokornego-prokuratora-nieprawidlowo-zglosil-sie-na-szkolenie-6775838219348640a>

¹¹² <https://wyborcza.pl/7,75398,29947058,desperacja-prokuratury-krajowej-sciga-niezalezna-sledcza-i.html#S.TD-KC-B.1-L.1.duzy>

¹¹³ <https://oko.press/szalenstwo-prokuratury-krajowej-sciga-7-sedziow-za-korzystne-dla-gnebionego-prokuratora-orzeczenia/>

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District Court for Cracow-Śródmieście in Cracow; Judge Agata Pyjas-Luty, Judge Monika Kowalska and Judge Iwona Łuka-Kliszcz (retired) from the Court of Appeal in Cracow; Judge Jarosław Łukasik, Judge Grażyna Baran, Judge Urszula Pałkowska-Różycka and Judge Dominika Augustyn of the District Court in Cracow, and Judge Aneta Tomasiak-Żukowska of the Cracow-Nowa Huta District Court (delegated to the District Court in Cracow).

All of them were summoned for questioning by the prosecution regarding an alleged abuse of power (Art. 231 kk), a move widely viewed as an attempt by the prosecution to intimidate independent judges, as it had done two years earlier against dozens of Cracow judges who passed a resolution in protest against the degrading and inhuman treatment of a former court of appeal president who was imprisoned. The Polish Ombudsman also intervened in the matter, expressing deep concern that these actions may interfere with the independence of judges.¹¹⁴

The investigation was finally discontinued on 3 November 2021.¹¹⁵

Judge Wojciech Łączewski

Wojciech Łączewski is a former Judge of the District Court for Warsaw-Śródmieście. Łączewski gained the attention of the authorities by delivering rulings inconvenient to the government. Most notably, in March 2015, in a non-final judgement, Judge Łączewski sentenced the former heads of the CBA and members of the top echelons of the ruling party, Mariusz Kamiński (and Maciej Wąsik and Maciej Wąsik (currently the Minister of the Interior and Administration & Special Services Coordinator and one of his deputies, respectively), to three years in prison and a 10-year ban on holding public administration positions for abuse of power.¹¹⁶ After the PiS-controlled ruling coalition came to power, Judge Łączewski was presented with a series of criminal charges.

In early 2016, pro-government media disclosed screenshots of an alleged correspondence on Twitter between Łączewski and a person impersonating Tomasz Lis, the editor-in-chief of the Polish Newsweek. The correspondence allegedly shows Łączewski persuading the influential journalist to develop a new strategy towards the PiS government that could hurt its standing. Łączewski denied his involvement, and in February 2016, notified the Prosecutor's Office that someone may have hacked his Twitter accounts and, without his knowledge, corresponded on his behalf.

The case was picked up by Prosecutor Marek Pubrat, of the Regional Prosecutor's Office in Cracow. Two proceedings were conducted in parallel. The first concerned the impersonation of a judge and was discounted, with the final decision made by Deputy Prosecutor General Krzysztof Sierak. Sierak is associated with the government-friendly, ultra-Catholic association of prosecutors *Ad Vocem* and a trusted ally of former National Prosecutor Bogdan Świączkowski. Importantly, Sierak

¹¹⁴ <https://bip.brpo.gov.pl/pl/content/rpo-ws-13-sedziow-wzywanych-przez-prokurature-sprawa-prok-Krasonia-PK>

¹¹⁵ Ibidem.

¹¹⁶ He has also ordered to re-open a discontinued investigation into the responsibility of some state officials for the organisation of the twin brother of the PiS leader, Jarosław Kaczyński, late president Lech Kaczyński's visit to Katyn that resulted in the Smoleńsk air crash.

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had overseen the investigation during its earlier stages, thus seriously breaching procedural rules, and putting in question the legitimacy of the impartiality of the Prosecutor's Office.

The second investigation was initiated against Łączewski himself. Cracow Prosecutor Marek Pubrat found that, if there was no hacking attack against the former judge's Twitter accounts, Łączewski was guilty of submitting a fake notice of crime and providing false testimony, actions punishable by up to three years in prison. To present Łączewski with the charges, the Prosecutor's Office made an unsuccessful attempt to waive his immunity. With Łączewski's resignation from his position in November 2019, he was no longer protected by judicial immunity and the Cracow prosecutor's office was able to refer the case to court without any obstacles. In October 2020, the indictment against the former judge was submitted to the Warsaw-Mokotów District Court. The case is pending, with no court hearing scheduled so far.

In a separate case, former Judge Łączewski faces charges of an alleged disclosure of classified information (an offence under Art. 265 para. 1 kk) regarding two police officers in the justification attached to one of his judgements.¹¹⁷ In April 2016, Head of the Central Anticorruption Bureau Ernest Bejda reported to the Prosecutor's Office that the justification of the sentence against former Heads of the CBA Mariusz Kamiński and Maciej Wąsik disclosed top-secret information about the identity of undercover police officers. As a part of the investigation, the Internal Security Agency (ABW) secured the hard drives of Łączewski's computers, which contained, inter alia, Łączewski's notes from the Kamiński and Wąsik case and from many other cases conducted by the judge, constituting a serious breach of professional secrecy and secrecy of the deliberation of judges.¹¹⁸

Łączewski assures that he did not disclose any confidential data, explaining that *"the judgment contains charges prescribed from the public indictment. Similarly, no personal data was disclosed in the justification, which mentions only the names of the CBA officers that were given by Maciej Wąsik himself at an open court hearing."*¹¹⁹ The investigation is led by Prosecutor Jacek Mikłuszka of the District Prosecutor's Office in Opole.

Former Judge Łączewski sentenced Mariusz Kamiński and Maciej Wąsik, former heads of CBA, to three years of imprisonment for abuse of power. At the time, Kamiński was especially close to the PiS leader Jarosław Kaczyński. However, in November 2015, President Andrzej Duda granted pardon to Kamiński and three other individuals.¹²⁰ The decision caused controversy over the legal permissibility of such action.

Although no one has denied the President's right to grant pardons to convicted criminals, this

¹¹⁷ <https://wiadomosci.wp.pl/skaza-mariusza-kaminskiego-teraz-jest-oskarzany-o-ujawnienie-tajnych-informacji-6242766436710017a>

¹¹⁸ <https://wyborcza.pl/7,75398,24069342,krs-umywa-rece-w-sprawie-dzialan-cba-dotyczacych-sedziego-laczewskiego.html>

¹¹⁹ <https://natemat.pl/236077,sedzia-laczewski-skaza-mariusza-kaminskiego-cba-przyglada-mu-si>

¹²⁰ <https://www.reuters.com/article/uk-poland-president-pardon-idUkkCN0T62H620151117>

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was the first case in the post-1989 history of Poland of a pardon being granted, even though the judgement of the court of the first instance was not final and valid (which meant that the criminal responsibility of the given persons was not definitively settled).¹²¹ Moreover, the pardon decision was issued without following the Code of Criminal Procedure and without the President becoming acquainted with the case files, and was therefore completely arbitrary. The President furthermore stated *"(...) I decided, in a way, to free the justice system from this case, where someone would always say that the courts acted on political orders, and to cut through this problem."*

It is nonetheless much easier to suspect political motivation in the actions of the President, who is an appointee of the ruling party, than of the courts equipped with the attribute of independence. Notably, directly after being pardoned, Kamiński was appointed to the post of Minister-Coordinator of the Secret Services.¹²²

Łączewski also points out that the authorities' attacks against him have intensified after his filing of a civil lawsuit against Minister of Justice/Prosecutor General Zbigniew Ziobro in the autumn of 2019 for infringement of personal rights.¹²³ The case is still pending.

Iustitia president Judge Krystian Markiewicz

The Internal Affairs Department (WSW) of the National Prosecutor's Office has reportedly initiated proceedings against Prof. Krystian Markiewicz, a judge of the Regional Court in Katowice and President of the Iustitia Judges' Association. Judge Markiewicz, as well as the member of the Themis Association, Judge Maciej Czajka from the Regional Court in Cracow, are facing criminal charges¹²⁴ for commenting in an OKO.press article¹²⁵ about how Poland should implement CJEU orders regarding the illegal Disciplinary Chamber of the Supreme Court (interim measure of 14 July 2021 and judgement of 15 July 2021).

The investigation is led by Prosecutor Łukasz Radke, appointed to the WSW from the District Prosecutor's Office in Koło, outside of the standard competition procedure. As with all prosecutors delegated to the WSW, he can be recalled by his superiors for simply issuing a decision that they perceive to be contrary to their interests.

It is unknown whether the National Prosecutor's Office's proceedings are at the stage of preliminary examination or proper investigation, or what charges could be filed and if the investigation is carried out ex officio or following a notification. The possible charges that could be brought against the judges are Art. 190 para. 1 kk (threatening another person), which would stem from a notification

¹²¹ One should point out now that a very general regulation, Article 139 of Constitution, does not settle when granting a pardon can be introduced; however, the only implementing rules of statutory rank are included in the KPK, in Chapter XII, entitled "Procedure after the verdict is valid and final".

¹²² <https://oko.press/czy-sad-najwyzszy-zdazy-rozpatrzec-sprawe-bylego-szefa-cba-mariusza-kaminskiego/>, accessed on 07/03/2019.

¹²³ <https://oko.press/sedzia-laczewski-ma-dosyc-obleg-pozwal-do-sadu-ministra-zbigniewa-ziobre/>

¹²⁴ <https://oko.press/prokuratura-uderzy-w-prezesa-iustitii-markiewicza-groza-mu-zarzuty-za-apele-o-wykonanie-wyroku-tsue/>

¹²⁵ <https://oko.press/po-wyroku-tsue-koniec-nielegalnej-izby-dyscyplinarnej/>

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by one of the persons mentioned in the article (e.g., so-called judges of the Disciplinary Chamber and other unlawfully appointed Supreme Court justices); Art. 191 para. 1 kk (violence or unlawful threat); or Art. 225 kk (influencing official acts), the latter two prosecuted ex officio. As of 2023, the proceedings are still ongoing. As Prof. Krystian Markiewicz himself commented on the case, *“it means that in reality these proceedings are being conducted only to have a chilling effect among judges and keep them in a state of uncertainty, not to lead to their punishment.”*¹²⁶

Prosecutor Radke has requested information from OKO.press on the judge's involvement in the development of the article. OKO.press refused the request, as the information is protected under journalistic confidentiality and revealing it would breach Art. 12 para. 2 point 2 of the press law.

Judge Markiewicz is the target of the Prosecutor's Office even in ordinary civil cases he adjudicates, such as the credit card debt case of a resident of the city of Dabrowa Gornicza. After Judge Markiewicz asked a controversial question to the authorities about the status of a fellow judge to the Court of Justice of the EU, Prosecutor Adam Terlikowski of the District Prosecutor's Office in Katowice unexpectedly joined the civil case. He justified his action on the grounds that the prosecutor's office gets involved *“in every case of disorganization of the Polish democratic justice system”*, as well as, allegedly, the asking of preliminary questions to the CJEU in the cases of neo-judges.¹²⁷

1.3 Opposition politicians, lawyers, and local government leaders

Former transport minister Sławomir Nowak

An investigation conducted since July 2020 concerns former Civic Platform Minister of Transport Sławomir Nowak,¹²⁸ who is suspected of 17 crimes (including creating an organised crime group, bribery, and money laundering)^{129,130} and is used as a symbol of the general corruption of the political opposition. The case is linked to the investigation conducted by the National Anti-Corruption Bureau of Ukraine while Nowak was Head of Ukraine's Ukravtodor (Ukraine's State Road Service) and a close aide to the current opposition leader and former Prime Minister Donald Tusk.

The government conducted a large-scale smear campaign against Nowak, and Prosecutor Mariusz Dubowski of the Regional Prosecutor's Office in Warsaw set a bail of PLN 1 million (circa EUR 220,000). When Nowak's daughter paid the bail, Dubowski refused to accept it since the

¹²⁶ <https://serwis.gazetaprawna.pl/orzeczenia/artykuly/8728987,sedziowie-sprawy-dyscyplinarne-zarzuty-sprawy-nie-ruszaja.html>

¹²⁷ <https://katowice.wyborcza.pl/katowice/7,35063,28446060,sedzia-z-katowic-zadal-niewygodne-dla-wladzy-pytanie-prokuratura.html>

¹²⁸ <https://trojmiasto.wyborcza.pl/trojmiasto/7,35612,27290940,prokuratura-o-slawomirze-nowaku-zalozyl-i-kierowal-grupa-przestepcza.html>

¹²⁹ <https://www.polskieradio.pl/395/7784/Artykul/2768228,Polish-exgov-t-minister-charged-with-taking-bribes-money-laundering>

¹³⁰ <https://wiadomosci.onet.pl/kraj/sprawa-slawomira-nowaka-prokuratura-kierowal-grupa-przestepcza/3dyx9b8>

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prosecution only received (with the changes to Art. 266, 281 and 156 of the KPK) the money after the bail was posted, utilising a controversial provision.¹³¹ Simultaneously, Minister Ziobro threatened that he would disclose evidence, blackmailing the court and providing a one-sided point of view to discredit Nowak before the final sentence, demonstrating the growing disproportion between the prosecution's powers and the rights of suspects.¹³²

In August 2018, the Court of Appeal in Warsaw supported the complaint from Nowak's defence, repealing the pre-trial detention and ordering the return of the PLN 1 million bail. The decision is final.¹³³

Still, there is no judgment against Mr Nowak. Nowak's attorney requested to change the judge conducting the case, as Judge Iwona Szymańska is the wife of former PiS Minister for European Affairs Konrad Szymański.¹³⁴

Opposition attorney Roman Giertych

The Prosecutor's Office launched an investigation into opposition attorney Roman Giertych and former Vice Prime Minister in the first PiS government, which has continued since 2017 and is based on questionable charges of financial crimes (aiding in two cases of alleged fraud) regarding Polnord, a company represented by Giertych's law firm and previously controlled by Leszek Czarnecki.¹³⁵ The case was accompanied by numerous abuses of power by the prosecution (incl. an illegal arrest, unlawful use of the CBA and charging Giertych while he was in hospital in a life-threatening condition), as ruled by the Poznań Courts five times already, most recently the District Court Poznań - Stare Miasto in January 2021. The same court verdict did not confirm the likelihood of fraud in the two cases and refused detention for Giertych.¹³⁶

The case is also being used to paint a negative picture of the opposition (Giertych is, among others, an attorney to the leader of the main opposition party, former Prime Minister Donald Tusk).¹³⁷ Giertych is being directly targeted by National Prosecutor Bogdan Świączkowski, who has moved his case between various prosecutor's offices in Warsaw, Wrocław, Poznań, and Lublin, where the Provincial Prosecutor's Office is headed by Świączkowski's close associate, Jerzy Ziarkiewicz. The prosecutor is actively seeking courts that might believe the weak evidence provided for irregularities in two transactions between private companies involving his law firm. At the prosecutor's request, the CBA was involved to investigate the matter, despite the charges not being part of its responsibilities (no corruption nor state economic interests infringed).¹³⁸

¹³¹ <https://wiadomosci.radiozet.pl/Polska/Polityka/Slawomir-Nowak-wplacil-1-milion-zlotych-kaucji.-Prokurator-odmowil-sporzadzenia-protokolu>

¹³² <https://trojmiasto.wyborcza.pl/trojmiasto/7,35612,27290940,prokuratura-o-slawomirze-nowaku-zalozyl-i-kierowal-grupa-przestepcza.html>

¹³³ <https://wiadomosci.gazeta.pl/wiadomosci/7,114884,27442609,slawomir-nowak-pozostanie-na-wolnosci-od-zyska-tez-milion-zlotych.html>

¹³⁴ <https://wiadomosci.onet.pl/kraj/sprawa-slawomira-nowaka-jego-adwokat-zajrzala-w-akta-to-niewiarygodne/mmn189w>

¹³⁵ <https://oko.press/objazdowe-sledztwo-ws-giertycha/>

¹³⁶ Ibidem

¹³⁷ <https://www.wprost.pl/kraj/10377109/tusk-skomentowal-zatrzymanie-giertycha-za-dobrze-ich-znam.html>

¹³⁸ <https://natemat.pl/336445,prokuratura-cba-nadal-bedzie-prowadzilo-sledztwo-ws-giertycha-i-polnordu>

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Following numerous irregularities and judgments in support of Giertych's complaints, Judge Sławomir Szymański from Poznań-Old Town Regional Court sent a letter to Prime Minister Mateusz Morawiecki stating that the detention of Roman Giertych was unlawful, and that the services subordinate to the Prime Minister acted illegally.¹³⁹ The Ombudsman took a similar position.¹⁴⁰ No reaction came from the Prime Minister.

In November 2021, the Prosecutor's Office lost another complaint to Giertych and was forced to give back the car of one of the suspects, which had been previously seized, to its owner. According to the competent Poznań District Court, the prosecutor's office was unable to find any significant evidence against the suspect. Lublin Provincial Prosecutor Ziarkiewicz sought to have the complaint moved to Lublin (where the court is managed by Ziobro's appointee, who was previously employed at the Ministry of Justice and is seen as loyal to the justice minister), although the decision about the seizure was still made by the prosecutor's office in Poznań.¹⁴¹

The Lublin-West District Court did not grant the request of the Regional Prosecutor's Office in Lublin for the application of temporary arrest against attorney Roman Giertych in March 2022.¹⁴²

In April, the decision was upheld by the Regional Court in Lublin. The Prosecutor's Office officially accused Judge Dorota Dobrzanska of bias due to her membership in the Association of Polish Judges Iustitia, which, like Giertych, opposed Ziobro's changes to the judiciary system.¹⁴³

Roman Giertych filed a complaint against the actions of the prosecution in 2020, which was not taken into account by the Prosecutor's Office. It concerned, among other things, the attempt to read charges to the former Deputy Prime Minister even though he was lying unconscious on a hospital bed. Prosecutors who abused power were: Marcin Jędruszcak, Anna Kijak-Głęboczyk and Jacek Motawski from the prosecution in Poznań, Jerzy Ziarkiewicz from Lublin Provincial Prosecutor's Office and Marek Gołębiewski from the National Prosecutor's Office.¹⁴⁴ *"The prosecutors were aware that the actions they were taking were unlawful, and their intention was to gain access to information covered by secrecy"* - assessed Judge Marcin Krakowiak.

In September 2023, the Lublin provincial prosecution announced it would file three new charges against Giertych in connection with the investigation into the diversion and misappropriation of approx. PLN 92 million from Polnord.¹⁴⁵

¹³⁹ <https://poznan.wyborcza.pl/poznan/7,36001,26859981,wydarzenie-bez-precedensu-sedzia-zawiadamia-premiera-ze-w.html>

¹⁴⁰ <https://wyborcza.pl/7,75398,26496295,rpo-ostro-o-zatrzymaniu-giertycha-przypuszczenie-pozaproceso-wych.html>

¹⁴¹ <https://poznan.wyborcza.pl/poznan/7,36001,27834764,30-porazek-prokuratury-w-sprawie-romana-giertycha-sad-bezlitosny.html>

¹⁴² <https://www.gazetaprawna.pl/wiadomosci/kraj/artykuly/8390149,aresztowanie-romana-giertycha-sad-prokuratura.html>

¹⁴³ <https://www.pap.pl/aktualnosci/news%2C1186574%2C%2Csad-nie-zgodzil-sie-na-tymczasowe-aresztowanie-romana-giertycha>

¹⁴⁴ <https://wiadomosci.wp.pl/prokuratura-przekroczyła-uprawnienia-ws-romana-giertycha-jest-sledztwo-6786855145114176a>

¹⁴⁵ <https://www.gazetaprawna.pl/wiadomosci/kraj/artykuly/9291551,prokuratura-zamierza-przedstawic-nowe-zarzuty-romanowi-giertychowi-ja.html>

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Niepołomice Mayor Roman Ptak

Mayor Roman Ptak of Niepołomice and his deputy Adam Twardowski, both aligned with the opposition Civic Platform, have been targets of the prosecution since 2019. PiS wanted to install a figure linked to the party as the head of the wealthy town led by Ptak at the time, which would thus entail the administration of a considerable amount of EU funds that flows into the municipality every year.

In late 2019, Ptak and Twardowski were detained by CBA with vague allegations of dereliction of duties (Art. 231 para 2 kk) and making a false statement about the law on public procurement (Art. 233 para 1 & 6 kk). Ptak and Twardowski denied the allegations, and the prosecution has not presented any proof. Ptak was replaced by a commissioner nominated by PiS PM Mateusz Morawiecki, Krystian Zieliński, with no form of electoral mandate. After 10 months, in September 2020, the District Court of Katowice-East reinstated both, lifting the preventive measures of a ban on holding official posts and cash bail, finding the reasoning for them “*redundant*.”¹⁴⁶

Nevertheless, in January 2021 the National Prosecutor’s Office stated an indictment was filed with the District Court in Wieliczka by a prosecutor of the Silesian Regional Department of the Department for Organised Crime and Corruption of the National Prosecutor’s Office in Katowice. Ptak and Twardowski face up to 10 years of imprisonment.¹⁴⁷

Speaker of the Senate Tomasz Grodzki

During its first term (2015-2019), PiS took control of both chambers of the Parliament. In the elections of 2019, PiS lost its majority in the Senate, and on the exact day Prof. Tomasz Grodzki was elected Speaker of the Senate, Polish public media started to make claims about Grodzki potentially soliciting bribes when he was a doctor, without any evidence.

On 22 March 2021, the Senate received a motion from the Regional Prosecutor in Szczecin demanding to waive immunity for Speaker Grodzki so that he could be prosecuted.¹⁴⁸ According to the investigators, between 2006 and 2012, Grodzki, the Head and Director of the Clinical Department of Thoracic Surgery at the hospital in Szczecin-Zdunowo at the time, took money from patients he was supposed to operate on.

Importantly, the alleged corruption scandal was first brought to light by the pro-government media in autumn of 2019, shortly after the parliamentary elections. Simultaneously, Grodzki became the face of the only institution capable of halting the law and the appropriation of the state by PiS with the Senate’s vetoes. Previously, in over 30 years of medical practice, Grodzki had

¹⁴⁶ <https://krakow.wyborcza.pl/krakow/7,44425,26366488,prokuratura-chce-oskarzyc-burmistrza-niepolomic-ktory-wrocil.html>

¹⁴⁷ <https://www.polskieradio24.pl/5/1222/Artykuł/2652254,Przekroczenie-uprawnien-Burmistrz-Niepolomic-os-karzony-ws-przetargu-na-budowe-szkoly>

¹⁴⁸ <https://pk.gov.pl/aktualnosci/aktualnosci-prokuratury-krajowej/prokuratura-skierowala-wniosek-o-uchylenie-immunitetu-marszalkowi-senatu/>

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never been accused of abuse. On the contrary, Grodzki—the President of the European Society of Thoracic Surgeons and the Polish Society of Cardio-Thoracic Surgeons, a national consultant in the field of thoracic surgery, a court expert, a local councillor of the city of Szczecin, and finally a Senator (2015-2019)—had an impeccable reputation.

The investigation officially began on 4 December 2019, according to a report submitted by a PiS councillor of the regional council of Pomeranian Voivodeship, Karol Guzikiewicz. Per Guzikiewicz, witnesses of the corruption, which allegedly took place several years before, reported the crimes to him. The Prosecutor's Office did not explain, however, why the victims did not submit their reports earlier. Additionally, Guzikiewicz himself later apologized to Grodzki on Twitter *"for [his] false claims that the Speaker of the Senate Tomasz Grodzki took bribes."*¹⁴⁹ He also later claimed that it was just *"satire."*¹⁵⁰

Grodzki became a target of vicious smear campaigns by the pro-government state media which bombarded viewers with sensational materials about his alleged corruption, based mainly on anonymous statements. An especially heated smear campaign ensued in autumn

of 2020 after Professor Agnieszka Popiela, a researcher at the University of Szczecin and a supporter of PiS, posted on social media that she had to pay approximately EUR 450 for a surgery on her dying mother. Soon afterwards, she reversed her story. She also had to apologise to Grodzki for defamation, as ruled by a court in a civil lawsuit case initiated against Popiela by Grodzki.¹⁵¹

The authorities' determination to prosecute one of the opposition leaders is perhaps best demonstrated by the CBA issuing an unprecedented announcement in January 2021 that anyone who bribed Grodzki would avoid punishment if they reported the crime. CBA's *"appeal"* was widely interpreted as a politically motivated attempt to find evidence against Grodzki. Furthermore, CBA agents called patients of Grodzki for interrogations. Despite the pandemic, they had to appear in person to answer CBA's questions or be punished by a fine or even arrest. In total, out of 180 people interrogated, two individuals (including only one patient) testified that they had personally handled bribes to Grodzki.

According to the media reports, even though the Prosecutor's Office handling the case was not satisfied with the materials it had gathered, on 22 March 2021, the National Prosecutor's Office pressured it to file a motion to strip Grodzki of immunity.¹⁵² It has been speculated that the authorities were hoping to divert the public's attention from revelations of cronyism and graft by Daniel Obajtek, the PiS-appointed president of Orlen. Orlen is the largest state-owned company, and Obajtek had appeared in speculations about who the next Prime Minister might be. The Prosecutor's Office's motion was signed by Prosecutor Artur Maludy, Head of the Szczecin Regional

¹⁴⁹ <https://twitter.com/guzikiewicz/status/1202843522946289664?s=20>

¹⁵⁰ <https://wyborcza.pl/7,75398,26934718,ujawniamy-szczegoly-wniosku-o-odebranie-immunitetu-marszalko-wi.html>

¹⁵¹ <https://wyborcza.pl/7,75398,26924519,sad-grodzki-zostal-znieslawiony-oskarzeniami-o-korupcje.html>

¹⁵² <https://wyborcza.pl/7,75398,26934718,ujawniamy-szczegoly-wniosku-o-odebranie-immunitetu-marszalkowi.html>

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Prosecutor's Office (appointed by the Minister of Justice and Prosecutor General Z. Ziobro).

During a press conference on 23 March 2021, Grodzki stated, *"The Senate is a redoubt of democracy, a bastion of free thought and a hope for the return of the rule of law in Poland. Therefore, if the ruling party, which has been hunting me for a year and a half, wants to regain the majority in the Senate this way, I say: No."* Earlier, when the case began, he emphasised that he had never accepted benefits from patients or demanded money from them for treatment. He also presented the account of his former patient, Tadeusz Staszczyk, according to which in December 2019, Staszczyk was offered PLN 5,000 (roughly EUR 1,100) in exchange for stating that Grodzki had demanded money from him and that he was only admitted to the hospital after handing it to the doctor. Although Staszczyk notified the prosecutor's office about this attempt of extortion of testimony, the perpetrator was not identified. Meanwhile, the PiS-controlled state broadcaster started attacking Staszczyk for his alleged cooperation with the communist security services before 1989. In addition, a few dozen patients treated in the period indicated by the prosecutor's office confirmed in writing that Prof. Grodzki never asked for or accepted any money for their treatment.

As in many other cases, Grodzki's case shows the dangerous collusion between the Prosecutor's Office, special services, and pro-government media to eliminate an opponent of the authorities—in this case, the country's third most senior official after the President and Speaker of the Lower House (the Sejm). Following 15 months of investigation and even the involvement of the state apparatus, there is no hard evidence to suggest that Grodzki is complicit in any crimes.

Due to formal shortcomings, the Senate called on the Prosecutor's Office to retract its motion, which the Prosecutor's Office did not do, resending it practically unchanged. Therefore, in October 2021, in accordance with the provisions described in the Law on the Exercise of the Mandate of Members of Parliament and of the Senate, the Senate refused to consider the motion to waive Grodzki's immunity, ending the course of the case.¹⁵³

At the end of March 2022, the National Prosecutor's Office announced that the Regional Prosecutor's Office in Szczecin had sent a request to the Senate for consent to prosecute Senate Speaker Tomasz Grodzki. On 18 May 2022, the Senate majority decided not to lift the politician's immunity so investigators cannot charge him.¹⁵⁴

The smear campaign against Prof. Grodzki continues in the pro-government media.

Wilanów district officials and Profeto church foundation

In April 2023, the District Prosecutor's Office in Warsaw became involved in a dispute between

¹⁵³ <https://www.rp.pl/polityka/art19032561-immunitet-marszalka-grodzkiego-senat-nie-zajmie-sie-wnioskiem-prokuratury>

¹⁵⁴ <https://www.wprost.pl/polityka/10777468/prokuratura-chcialaby-postawic-zarzuty-korupcyjne-grodzkiemu-jest-jeden-problem.html>

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the authorities of Warsaw's Wilanów district and a government-funded Catholic Church foundation, Profeto. The prosecution is investigating whether officials committed a crime of abuse of power by refusing to grant permits to Profeto to raise a large building, which would go against the parcel's zoning plan.

The investigation was launched under Art. 231 KK,¹⁵⁵ which deals with a public official exceeding powers or failing to fulfill duties in such a way that acts to the detriment of public or private interests.

The issuer of the decision was an official of the Wilanów district who acted under the mandate of Warsaw Mayor Rafał Trzaskowski, one of the leaders of the opposition party Civic Platform. The officials therefore felt that the initiation of the investigation was supposed to cause a chilling effect on them and Mayor Trzaskowski.

Profeto was founded by the Priests of the Sacred Heart and is headed by the controversial priest Michał Olszewski, a personal acquaintance of Justice Minister Zbigniew Ziobro. So is Michał Olszewski's brother, Grzegorz Olszewski, who thanks to Ziobro's political influence, has headed the Alior Bank board since 2021. Priest Olszewski has gained common notoriety as an exorcist who recommends scaring demons with salceson (a type of meat in Polish cuisine).

Former PM Donald Tusk and businessman Marek Falenta

Businessman and convicted criminal Marek Falenta was No 67 on the list of 100 richest Poles in 2013.¹⁵⁶ In 2014, Falenta bought a 40% stake in a company called Składy Węgla ("Coal Storage"), which imported and sold coal from Russia and Kazakhstan. The well-thriving business collapsed when the prosecutor's office, still during the Civic Platform government, entered the company, bringing charges including money laundering, VAT extortion, and fraud. Falenta had already been sentenced for fraud in 2009.

Immediately after Składy Węgla's legal troubles began in 2014, right-wing media (*"Wprost"*, *"Do Rzeczy"*) began publishing records of wiretaps of Civic Platform politicians, which waiters paid by Falenta had set up in restaurants in Warsaw. Falenta was sentenced to two and a half years in prison for wiretapping politicians in 2014. He admitted his crime in a letter to Law and Justice leaders, claiming it was done with the knowledge and acceptance of Law and Justice on the condition he would be protected and given a reward for *"helping to take Poland back from the hands of criminals"*.¹⁵⁷

After his release in the autumn of 2022, Falenta denounced Prime Minister Donald Tusk for his

¹⁵⁵ <https://tvn24.pl/polska/prokuratura-wkracza-do-wilanowa-uwazamy-ze-wszczecie-sledztwa-ma-wywolac-efekt-mrozacy-6894024>

¹⁵⁶ <https://tvn24.pl/polska/afera-podsluchowa-marek-falenta-kim-jest-czlowiek-odpowiedzialny-za-afera-tasmowa-sylwetka-6170319>

¹⁵⁷ <https://wyborcza.pl/7,75398,24889138,pomoglem-odbic-polske-listy-marka-falenty-do-prezesa-kaczynskiego.html>

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actions from 2014,¹⁵⁸ claiming that broke the law by blocking - as Prime Minister at the time - imports of coal from Russia, which happened to be the foundation of Falenta's company Składy Węgla. Falenta accuses Tusk of exceeding his powers. The Warsaw District Prosecutor's Office opened an investigation against Tusk, upon Falenta's notification in April 2023.¹⁵⁹

Donald Tusk summarised the situation: *"PiS is prosecuting me for my government's fight against Russian coal imports. The prosecutor's office is acting at the request of Marek Falenta, the importer of this coal, who was convicted of illegal wiretapping. He used his tapes, in agreement with PiS, to bring down the government. A script written in Cyrillic"*.

1.4 Former allies

Former PiS politician Przemysław Marchlewicz

The Prosecutor's Office launched a failed investigation into the former prominent local PiS politician and Vice President of the Lotos oil company, Przemysław Marchlewicz.¹⁶⁰ Marchlewicz was a city councillor and regional board member of PiS in Gdańsk, but he was twice detained on the orders of the Provincial Prosecutor's Office in Gdańsk (in July 2018)¹⁶¹ and in Lublin (in May 2020)¹⁶² on the allegation of fiscal crimes (VAT fraud). The court of appeal in Gdańsk ordered pre-trial detention with a PLN 200,000 bail and, if delivered, a ban on leaving the country and police custody. The case was handled by Prosecutor Jerzy Ziarkiewicz, serving as Head of the Provincial Prosecutor's Office in Lublin.¹⁶³

Marchlewicz claimed the prosecution's actions were political, stemming from him becoming too independent from PiS. This seemed to culminate in a leaked recording of a private conversation from 2016 in which he called out the Head of the secret services as *"an alcoholic and a closeted homosexual"*,¹⁶⁴ which according to him could be used to blackmail them and thus compromise the institution.¹⁶⁵

In November 2020, the Court of Appeal in Gdańsk revoked the prosecution's motion for detention, ruling it was unnecessary even though it was previously approved by another judge of the same court. Since his first detention in July 2018, no indictment against Marchlewicz has been filed by the prosecution.¹⁶⁶

¹⁵⁸ <https://wyborcza.pl/7,75398,29697353,pis-chwyta-sie-falenty-by-dopasc-tuska.html#S.TD-K.C-B.1-L.2.duzy>

¹⁵⁹ <https://oko.press/falenta-tusk-wegiel-z-rosji>

¹⁶⁰ <https://trojmiasto.wyborcza.pl/trojmiasto/7,35612,26560366,porazka-prokuratury-w-sprawie-przemyslaw-marchlewicza.html>

¹⁶¹ <https://wiadomosci.onet.pl/kraj/byly-wiceprezes-lotosu-zatrzymany-przez-cba-zostal-wyrzucony-z-pis/5rtqt2x>

¹⁶² <https://www.sluzbyspecjalne.com/cba-zatrzymalo-pomorskiego-barona-pis-oto-co-mowil-przed-zatrzymaniem-o-sluzbach-i-skok-ach-audio/>

¹⁶³ <https://warszawa.wyborcza.pl/warszawa/7,54420,26670025,prokurator-od-zadan-specjalnych-bedzie-bronil-polskiego-godla.html>

¹⁶⁴ <https://www.sluzbyspecjalne.com/cba-zatrzymalo-pomorskiego-barona-pis-oto-co-mowil-przed-zatrzymaniem-o-sluzbach-i-skok-ach-audio/>

¹⁶⁵ <https://trojmiasto.wyborcza.pl/trojmiasto/7,35612,26549871,byla-gwiazda-pis-u-na-pomorzu.html>

¹⁶⁶ <https://trojmiasto.wyborcza.pl/trojmiasto/7,35612,26560366,porazka-prokuratury-w-sprawie-przemyslaw-marchlewicza.html>

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Supreme Audit Office President Marian Banaś

There is an ongoing battle between the ruling camp and the current President of NIK, and former PiS Minister of Finance Marian Banaś.¹⁶⁷ Banaś fell out with the government after he was revealed in 2019 to have allegedly committed fraud. Since then, Banaś's institution has issued a series of reports revealing serious irregularities in the government's actions (following formal audits initiated by the NIK).¹⁶⁸ In response, the National Prosecutor's Office has targeted Banaś, officials loyal to him, and even his family.

Currently, Banaś faces over a dozen charges, including filing false asset and fiscal declarations (Art. 271 kk - false declaration). His son, Jakub Banaś, and daughter-in-law also face seven charges each, including using false VAT invoices to extort PLN 120,000 (EUR 26,000) in state funds and PLN 80,000 (EUR 17,500) in VAT tax.¹⁶⁹ The prosecution's actions against Banaś are showcased by state media on a daily basis.

The detention of Banaś's son and daughter-in-law was conducted in a spectacular fashion (similar to that of Bartosz Kramiec) by a team of 13 armed CBA officers who treated them as dangerous criminals. The team acted on the request of the Provincial Prosecutor's Office in Białystok.¹⁷⁰ The head of the investigation, former CBA agent and now prosecutor Elżbieta Pieniążek, is often involved in political cases on the side of the authorities.¹⁷¹ Earlier, Jakub Banaś's home had been searched by the CBA numerous times. Banaś reported fake letters of suicide attempts being received by the NIK offices.^{172,173} The timing of the prosecution and CBA's actions coincided with the NIK's subsequent presentation of audit reports and successive initiation of audits.

In 2023 Jakub Banaś became a candidate of the far-right Konfederacja party. His father announced publicly that *"in the near future - either before or after the march organised by Civic Platform on October 1 - there is a plan being prepared to arrest my son or also my daughter-in-law, as well as some NIK employees, in order to intimidate me"*.¹⁷⁴

Since August 2021, the Parliament has been deciding if Marian Banaś should be stripped of his immunity, following a request by Prosecutor General Ziobro. The latest audit report published by the NIK highlighted the systemic misuse of the Justice Fund (Fundusz Sprawiedliwości) managed by Ziobro as the Minister of Justice, renowned for supporting his party's goals instead of serving the needs of crime victims.^{175,176} Parliament still has not voted on Banaś's immunity.

¹⁶⁷ <https://www.rmfm24.pl/raporty/raport-afery-mariana-banasia/fakty/news-prokuratura-bierze-na-celownik-mariana-banasia,nld,5376230>

¹⁶⁸ <https://notesfrompoland.com/2019/12/11/serious-irregularities-in-prison-service-programme-finds-supreme-audit-office/>

¹⁶⁹ <https://gospodarka.dziennik.pl/news/artykuly/8214732,marian-banas-cba-jakub-banas-zatrzymanie.html>

¹⁷⁰ <https://www.rp.pl/inne-slugby/art18460261-syn-banasia-zatrzymany-jest-wniosek-ws-samego-banasia>

¹⁷¹ <https://wiadomosci.onet.pl/tylko-w-onecie/prokurator-od-zadan-specjalnych-kim-jest-sledcza-elzbieta-pieniazek-ktora-tropi/3vvevm1>

¹⁷² <https://www.polsatnews.pl/wiadomosc/2021-05-26/falszywy-mail-o-probie-samobojczej-syn-mariana-banasia-sadzi-ze-stoja-za-tym-slugby/>

¹⁷³ <https://wiadomosci.wp.pl/cba-u-syna-mariana-banasia-slugby-sie-tlumacza-6633986287127264a>

¹⁷⁴ <https://wiadomosci.wp.pl/chca-mnie-zastraszyt-banas-boi-sie-o-syna-6941523664423520a>

¹⁷⁵ <https://www.nik.gov.pl/aktualnosci/realizacja-zadan-funduszu-sprawiedliwosci.html>

¹⁷⁶ https://www.rmfm24.pl/fakty/polska/news-miażdżące-wyniki-kontroli-nik-dot-funduszu-sprawiedliwosci,nld,5552745#crp_state=1

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Executives of the Financial Supervisory Authority

This case concerns the late-2018 detention of Andrzej Jakubiak and Wojciech Kwaśniak, the former president of the Polish Financial Supervision Authority (KNF) and his deputy, by agents of the CBA. Under their supervision, the KNF revealed financial irregularities in the PiS-linked SKOK financial institution, created by PiS Senator Grzegorz Bierecki.¹⁷⁷ Their detention was also viewed as an attempt to redirect attention from the 2018 corruption attempts by KNF head Marek Chrzanowski, nominated to the post by PiS-aligned National Bank of Poland president Adam Glapiński,¹⁷⁸ which were revealed via wiretaps by businessman Leszek Czarnecki (see case Leszek Czarnecki and GetBack).¹⁷⁹

Kwaśniak, the deputy head of the KNF in 2014, barely survived a physical attack ordered by the management of SKOK Wołomin, which Prosecutor General Zbigniew Ziobro later blamed on the KNF being too slow in their work.¹⁸⁰

Prosecutor Adam Gołuch of the Provincial Public Prosecutor's Office in Szczecin charged Jakubiak and Kwaśniak, among others, with negligence, not completing certain administrative proceedings, and acting to the detriment of public and private interests (Art. 231 kk), allegedly allowing the loss of PLN 1.5 billion (EUR 300 million) in 2013-2014 through the SKOK institution the KNF supervised.

In February 2019, the District Court in Szczecin ruled that the detention of the two was groundless and the prosecution's charges were unfounded.

Finally, in February 2023, an organisational hearing was held in the Regional Court in Warsaw regarding the case of KNF officials, including Jakubiak and Kwaśniak.¹⁸¹ The Warsaw Court of Appeal decided in June 2023 to pay PLN 20,000 in compensation for the obviously unjustified detention of Wojciech Kwaśniak by the Ziobro Prosecutor's Office in December 2018.¹⁸²

1.5 Former security services chiefs

Heads of the Military Counterintelligence Service

Brigadier General Piotr Pytel, a highly decorated officer, served as the head of SKW from January 2014 until his dismissal in November 2015 when the United Right coalition took power. In December 2017, he was detained by ŻW on the orders of the Military Affairs Division of the District

¹⁷⁷ <https://forsal.pl/artykuly/1382766,byli-prezysi-nbp-zatrzymanie-jakubiaka-i-kwasniaka-to-razace-naruszenie-sprawiedliwosci.html>

¹⁷⁸ <https://www.parkiet.com/finanse/art20244131-sad-zatrzymanie-kwasniaka-i-jakubiaka-bezpodstawne>

¹⁷⁹ <https://www.tokfm.pl/Tokfm/7,103085,24588602,afiera-knf-chrzanowski-mial-szukac-tasm-z-nagraniami-czarneckiego.html>

¹⁸⁰ <https://www.newsweek.pl/polska/polityka/zarzuty-dla-bylych-szefow-knf-jakubiaka-i-kwasniaka-okazaly-sie-wyssane-z-palca/p6nejbx>

¹⁸¹ <https://serwis.gazetaprawna.pl/orzeczenia/artykuly/8667417,knf-umorzenie-skok-wołomin.html>

¹⁸² <https://tvn24.pl/polska/wojciech-kwasniak-sad-podwyzszyl-zadoscuczynienie-dla-bylego-wiceszefa-knf-7156530>

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Prosecutor's Office in Warsaw (since April 2016, the military prosecution is part of the common prosecution service and not a separate military structure).

Pytel, his predecessor Janusz Nosek, and Colonel Krzysztof Dusza - all leading the SKW - were charged in December 2017 with espionage, exceeding powers, and failing to fulfil their duties by cooperating with the Russian Federal Security Service (FSB). Col. Dusza was also charged with dereliction of duties following the 2010 Smoleńsk air disaster. The other allegations relate to an agreement signed by the SKW with the Russian service in view of the need to withdraw the Polish contingent from Afghanistan.¹⁸³

The first charges were brought against Gen. Nosek¹⁸⁴ in 2016, but no indictment was ever issued. Nosek was charged under articles 231 kk (abuse of powers by a public official) and 130 para. 2 kk (espionage for foreign intelligence, disclosure of state secrets). The basis for the latter charge consisted in the alleged disclosure of personal data of an officer (Nosek appointed the director of an inspectorate, Marek Szelągowski, to be the contact point for Russian intelligence, and for this he was charged under 130 para. 2). However, such data is only protected in the case of officers acting undercover, and Szelągowski acted under his own name. The Art. 231 charge referred to the alleged cooperation with Russia, but according to Nosek there was no such cooperation, only contact, and no permission for such contact was required. He believed the authorities wanted to use him to get to then-Prime Minister Donald Tusk.

No preventive measures were taken against Nosek but he was denied access to files (which was motivated by alleged national interest). The prosecution's attempts to close the preliminary investigation were profoundly worrying. In February 2021, Nosek received a letter that *"the prosecutor has issued a decision to close the investigation"* regarding all charges. The letter contained no reasoning and was once again signed by an officer rather than a prosecutor. Furthermore, in violation of the KPK, Nosek was not given access to the file, which constitutes a restriction of his rights of defence. Normally, when a preliminary investigation has not given rise to an indictment, it is discontinued. Even if it is closed, the Code states that *"the decision is announced to the parties"*, where announcing means not only informing about the decision, but also delivering the decision and its justification to the interested party. The current status of the case (if any) is unknown.

Gen. Pytel was detained by the military police on the orders of Lt. Col. Jan Zarosa, who was promoted to the Warsaw prosecution from Lublin by former Minister of Defence Antoni Macierewicz. Lt. Col. Zarosa managed the investigation under the head of the military division of the Warsaw district prosecution, Lt. Col. Grzegorz Borys. Both are notorious for conducting the most high-profile, political cases regarding the military. Lt. Col. Zarosa gained recognition after his April 2017

¹⁸³ <https://www.polityka.pl/tygodnikpolityka/kraj/1767356,1,wojskowy-prokurator-naduzyl-uprawnien-sad-mia-zdzy-zatrzymanie-gen-pytla.read>

¹⁸⁴ For a detailed description of Gen. Nosek's case see a 2020 book by Robert Zieliński: "Ścigani. Jak dobra zmiana niszczyła polskie służby specjalne" (available only in Polish).

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interrogation of former Prime Minister Donald Tusk in relation to the FSB agreement, which he conducted for nearly nine hours hoping—and failing—to charge Tusk with dereliction of duty (Art. 231 kk).¹⁸⁵

As part of the investigation conducted by Lt. Col. Zarosa and Lt. Col. Borys, a team of the ŻW forcefully entered and searched the NATO Counter Intelligence Centre of Excellence (NATO CI COE) in December 2015. The team was led by then 25-year-old defence ministry spokesperson Bartłomiej Misiewicz (currently facing i.a. 10 years imprisonment for corruption), who was Minister Macierewicz's right-hand man and a rising PiS star. For his role, Misiewicz was awarded a gold medal *"for services to the defence"* by Minister Macierewicz.

In October 2018, the District Court in Warsaw ruled that the December 2017 detention of Gen. Pytel was baseless and therefore unlawful.

In April 2019, the District Court in Warsaw ruled that the raid was unlawful, as the NATO CI COE constituted an international institution and therefore did not fall under the jurisdiction of Polish authorities. Generals Pytel and Dusza, who tried to prevent the search, were cleared of all charges. Their subsequent dismissal was also ruled unlawful.¹⁸⁶

In June 2020, the Supreme Administrative Court upheld an October 2018 decision of the Voivodeship Administrative Court, appealed by the Prime Minister's Chancellery, ruling that the proceedings against Col. Dusza as Head of the NATO CI COE - including stripping him of security certificates - were unlawful.¹⁸⁷

No evidence supporting any of the allegations was ever presented by the prosecution, nor were any damages as a result of the suspects' actions. None of the suspects were placed under pre-trial detention or even police supervision, both of which are standard practice in espionage cases.

Another investigation into Tusk's agreement to cooperate with FSB regarding the withdrawal from Afghanistan—upon a notification by PiS MP Tomasz Kaczmarek—was dismissed as meritless by the independent prosecution, as of 2013.¹⁸⁸

An unrelated notification to the District Prosecutor's Office in Poznań was filed against Lt. Col. Zarosa for causing additional trauma to a female corporal, mobbing, and sexual harassment. Zarosa interrogated her for 11 hours following surgery and refused her food, drink, or even the toilet. After three months, the Poznań prosecution refused to initiate an investigation.¹⁸⁹

¹⁸⁵ <https://www.polityka.pl/tygodnikpolityka/kraj/1755558,1,pplk-jan-zarosa-symbol-prokuratury-pod-rzadami-pis.read>

¹⁸⁶ <https://wyborcza.pl/7,75398,24713508,wlamanie-do-siedziby-nato-sad-ocenil-nocne-wejscie-macierewicza.html>

¹⁸⁷ <https://www.polityka.pl/tygodnikpolityka/kraj/1962788,1,byly-oficer-kontrwywiadu-potraktowano-mnie-jak-zbrodniarza.read>

¹⁸⁸ <https://www.rp.pl/kraj/art5692041-prokuratura-umorzyla-sledztwo-w-sprawie-michala-tuska>

¹⁸⁹ <https://wiadomosci.onet.pl/tylko-w-onecie/prokurator-zarosa-naruszyl-prawo-wobec-ofiary-molestowania-w-zandarmerii-kary-nie/h50tj9c>

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On 22 September 2021, the Regional Prosecutor's Office in Warsaw brought an indictment against Gen. Pytel, accusing him of *"exceeding his powers and failing to fulfil his obligations, as well as the disclosure of classified information classified as secret and top secret"*. The indictment has not been made public. According to RMF24, the purpose was to provide an unauthorised person with data on the Military Counterintelligence Service and the methods of its work. This is the main result of six years of investigation so far.¹⁹⁰

Central Anti-Corruption Bureau head Paweł Wojtunik

Paweł Wojtunik¹⁹¹ was the Head of the CBA from 2009 until 2015.

In 2013, the CBA conducted arrests as part of the so-called *"info-affair"*, where many officials from various institutions were suspected of fraud by fixing tenders for IT services with businesses during the 2011 Polish EU Council presidency. Wojtunik was suspected of exceeding his powers by disclosing the secret of the investigation to Radosław Sikorski, the Minister of Foreign Affairs at the time, by warning him of the upcoming arrests, which included a mid-level official from Sikorski's ministry.

Following a three-year investigation—which included interrogations of Wojtunik, Sikorski, and others—the Regional Prosecutor's Office in Gliwice discontinued the investigation in early 2017, finding no reasonable suspicion of Wojtunik's abuse.

In February 2017, the Provincial Prosecutor's Office in Katowice called the decision to close the investigation *"premature"* and ordered the Gliwice office to continue. In December 2017, the Regional Prosecutor's Office in Gliwice closed it again, still finding no proof of any wrongdoing by Wojtunik.

A separate investigation has been conducted into Wojtunik since December 2015 by the Provincial Prosecutor's Office in Cracow. The investigation is managed by Prosecutor Zbigniew Gabryś (included in the *"Państwo PiS"* database for expedited promotions, vocal support of hand-steered investigations and violating prosecutorial independence, and openly supporting minister Ziobro in the case of his father's death).¹⁹²

Wojtunik is suspected of two offences: failure to fulfil his obligations to prevent and detect offences in connection with alleged fraud by his subordinate, the Warsaw CBA office director, and destroying evidence in connection to this case.

In July 2018, Wojtunik was interrogated by the Cracow prosecution despite having EU diplomatic

¹⁹⁰ https://www.rmfm24.pl/fakty/polska/news-byly-szef-skw-przekroczyl-swoje-uprawnienia-jest-tajny-akt-o,nld,5550348#crp_state=1

¹⁹¹ For a detailed description of Mr Wojtunik's case see a 2020 book by Robert Zieliński: *"Ścigani. Jak dobra zmiana niszczyła polskie służby specjalne"* (available only in Polish).

¹⁹² https://www.panstwo-pis.pl/index.php/Zbigniew_Gabry%C5%9B

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immunity (since 2016 he has served as the EU High-Level Adviser on Anti-corruption in Moldova). The prosecution waived his immunity despite, according to his defendants, not having the authority to do so.¹⁹³

Wojtunik calls the accusations “*missed and absurd*”, claiming the entire case against him is a politically motivated “*witch hunt*” serving as revenge for Wojtunik exposing the former heads of the secret services under the first PiS government, Mariusz Kamiński and Maciej Wąsik. Both were sentenced by the court for abuse of powers in March 2015 and quickly pardoned by President Duda (who did not have the authority to do so as the sentence was not yet final at that point), just so that they could be reinstated in their former positions.¹⁹⁴

After a nearly six-year legal battle, in March 2021 the Supreme Administrative Court ruled that the 2016 actions against Wojtunik by the secret services and decision of then-Prime Minister Beata Szydło, who revoked Wojtunik’s security certificates after he left the office, were groundless.¹⁹⁵

In October 2021, Prosecutor Jerzy Ziarkiewicz decided to file new charges against Wojtunik, which were presented by Prosecutor Tomasz Rozwadowski. He is now charged with tax fraud, allegedly having defrauded PLN 11,700 (EUR 2,500) in due VAT tax, obtaining a tax reimbursement for travellers from outside the EU. The prosecution based its charges on a claim that he was not entitled to the tax benefit, assuming he was only on a temporary foreign mission, failing to notice that he had been living in Moldova since May 2016 and as a non-EU resident is fully entitled to “*Tax Free*” VAT reimbursements.¹⁹⁶

Internal Security Agency head Krzysztof Bondaryk

Krzysztof Bondaryk¹⁹⁷ was the Head of the Internal Security Agency (ABW) between 2008 and 2013. Starting in 2018, he has faced controversial charges regarding his conduct as the Head of the Agency. According to the investigators, on 20 December 2007, Bondaryk issued a personnel order under which a civilian employee of the ABW was admitted to service in the agency and appointed as an advisor to the Head of the Agency.

According to the investigators, the hire took place even though in the course of the pre-employment screening, it was established that the candidate had obtained and used a forged document (a postgraduate diploma). Allegedly, despite knowing about the forgery, Bondaryk did not notify law enforcement authorities about this offence.

The proceedings were previously discontinued by the Prosecutor’s Office in Ostrołęka. The case

¹⁹³ <https://www.gazetaprawna.pl/wiadomosci/artykuly/1107484,prokuratura-w-gliwicach-umorzyla-sledztwo-ws-przekroczenia-uprawnien-przez-b-szefa-cba-pawla-wojtunika.html>

¹⁹⁴ <https://www.money.pl/gospodarka/wiadomosci/artykul/afera-gruntowa-mariusz-kaminski-skazany-na,46,0,1748526.html>

¹⁹⁵ <https://www.infosecurity24.pl/decyzja-o-pozbawieniu-bylego-szefa-cba-certyfikatow-bezpieczenstwa-u-chylona>

¹⁹⁶ <https://www.rp.pl/polityka/art19059721-byly-szef-cba-znow-scigany>

¹⁹⁷ For a detailed description of Mr Bondaryk’s case see a 2020 book by Robert Zieliński: „Ścigani. Jak dobra zmiana niszczyła polskie służby specjalne” (available only in Polish).

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was resumed on the initiative of the National Prosecutor's Office headed by Zbigniew Ziobro and transferred to the Białystok Prosecutor's Office. Both proceedings are run by the same prosecutor: Dorota Bielicka,¹⁹⁸ who in the meantime, was promoted from Ostrołęka to Białystok. Other prosecutors involved in his case are Elżbieta Pieniążek and Ewa Bialik.^{199,200}

In January 2023, the Warsaw-Mokotow District Court issued a verdict acquitting the general of both charges. It is likely that Prosecutor's Office is going to appeal the decision.

Bondaryk could be facing the revenge of the current National Prosecutor, Bogdan Świączkowski, who was the head of the ABW during the first PiS rule in 2006-2007. After his departure, Bondaryk conducted an audit at the ABW and sent seven notifications to the prosecutor's office. Six cases were discontinued, and in one, the prosecutor wanted to waive Świączkowski's immunity but the disciplinary court at the Prosecutor's Office did not agree to it. The case concerned the surveillance of Wojciech Brochwicz, a former intelligence officer associated with the opposition party Civic Platform.²⁰¹

Foreign Intelligence Agency head Grzegorz Małecki

Not only the heads of the Internal Security Agency (Agencja Bezpieczeństwa Wewnętrznego, ABW), but also the Head of the Foreign Intelligence Agency (Agencja Wywiadu, AW) have been targeted by the Prosecutor's Office. In August 2021, charges were brought against Grzegorz Małecki, Head of the Foreign Intelligence Agency between 2015 and 2016.

The charges fit under Article 231 par. 1 and 2 of the Criminal Code, referring to a public official exceeding his or her powers or failing to fulfill his or her duties in order to achieve a financial or personal benefit. In consequence, Małecki, along with 4 other suspects, face up to 10 years in prison.²⁰²

Prosecutor and Spokesperson for the National Prosecutor's Office Łukasz Łapczyński explained in January 2022 that *"The case is at the final stage. Due to the classified nature of the materials, it is not possible to provide information about the details of the charges"*.²⁰³ Łapczyński did not even answer whether Małecki had confessed to the charges.

In the media, Grzegorz Małecki described the prosecution's allegations as *"absurd and baseless"*²⁰⁴ and announced that he *"will prove it in court proceedings and is completely calm about the outcome of this case"*.²⁰⁵ According to Małecki, *"the Prosecutor's Office is being used by the*

¹⁹⁸ https://www.panstwo-pis.pl/index.php/Dorota_Bielicka

¹⁹⁹ https://www.panstwo-pis.pl/index.php/EI%C5%BCbieta_Pieni%C4%85%C5%BCek and https://www.panstwo-pis.pl/index.php/Ewa_Bialik

²⁰⁰ <https://oko.press/general-bondaryk-uslyszy-zarzuty-prokuratura-sciga-bylego-szefa-abw-w-rzadzie-po-psl/>

²⁰¹ <https://wyborcza.pl/7,75398,8603384,co-zrobila-z-bylym-szefem-abw.html>

²⁰² <https://wiadomosci.gazeta.pl/wiadomosci/7,114883,27984362,zarzuty-dla-bylego-szefa-agencji-wywiadu-grzegorz-malecki.html>

²⁰³ <https://wiadomosci.onet.pl/kraj/byly-szef-agencji-wywiadu-grzegorz-malecki-z-zarzutami/et2lzrc>

²⁰⁴ <https://wiadomosci.onet.pl/kraj/byly-szef-agencji-wywiadu-grzegorz-malecki-z-zarzutami/et2lzrc>

²⁰⁵ <https://wiadomosci.onet.pl/kraj/byly-szef-agencji-wywiadu-grzegorz-malecki-z-zarzutami/et2lzrc>

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government to fight those who are critical of the government”,²⁰⁶ considering Małeckie is a vocal critic of the various failures of the security services under PiS. The former Head of the AW could not disclose more details about the case to the media as the Prosecutor's Office had imposed a confidentiality clause on it.

1.6 Entrepreneurs and executives

Leszek Czarnecki and GetBack

The billionaire Leszek Czarnecki's case is linked to the “GetBack affair”, which led to the loss of PLN 2.7 billion (EUR 590 million) by investors, who bought fraudulent bonds of GetBack, a debt collection company.²⁰⁷ GetBack was connected to the PiS party, financially supporting pro-government media. This could explain how its pyramid-like scheme was allowed to operate until mid-2018 despite a whistle-blower's report delivered to the authorities back in 2017.²⁰⁸

In order to redirect attention and blame from the government and its allies, the Prosecutor's Office pursued the company's founder, Czarnecki, even though he sold the company before its fraudulent activities and ties to the government had begun. The prosecution began to target Czarnecki in late 2018 after he revealed a corruption offer he received in March of that year from then-President of the Financial Supervision Authority Marek Chrzanowski.

Chrzanowski had promised to drop the investigation into Czarnecki in return for a job paying PLN 40 million per year (EUR 8.7 million) for his colleague.²⁰⁹

The investigation is handled by a special team of prosecutors, including Przemysław Barański from the Warsaw Provincial Office and Marta Choromańska, delegated from the District Office. Choromańska is included in the “Państwo PiS” database for her potential political and unlawful actions.²¹⁰ General Prosecutor Ziobro publicly represents the prosecution in this case.

Ziobro announced in September 2020 that Czarnecki would be charged with “*acting against the interest of the clients of his Idea Bank*” (Art. 286 kk - fraud).²¹¹ This decision was based on the advisors supporting the sale of GetBack bonds, despite having no hard evidence of Czarnecki's knowledge of the criminal events and that Czarnecki himself had informed the authorities about the potential irregularities.

²⁰⁶ <https://wiadomosci.onet.pl/kraj/byly-szef-agencji-wywiadu-grzegorz-malecki-z-zarzutami/et2lzrc>

²⁰⁷ <https://wyborcza.pl/7,75398,26403095,ujawniamy-co-prokuratura-ma-na-leszka-czarneckiego-to-jego.html>

²⁰⁸ <https://businessinsider.com.pl/poradnik-finansowy/inwestowanie/dgp-ostrzezenie-o-getbacku-trafilo-do-urzedow-juz-pod-koniec-2017-roku/khtzksw>

²⁰⁹ <https://wyborcza.pl/7,75398,24161195,spokoj-za-40-milionow-bankier-leszek-czarnecki-oskarza-komisje.html>

²¹⁰ https://www.panstwo-pis.pl/index.php/Marta_Choromańska

²¹¹ <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/polish-prosecutors-seek-arrest-warrant-for-idea-and-getin-noble-banks-owner-60413297>

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The investigation is ongoing despite the court of appeals in Warsaw's ruling in April 2021 of the absence of likelihood that Czarnecki committed any crime.²¹² At the same time, in January 2021, Idea Bank was forcefully taken over by state-controlled Bank Pekao S.A. as part of a *"mandatory restructuring"* by the Office of the Financial Supervision Authority. This led to the speculation that the persecution of Czarnecki was also a means for the state to take control of his assets, although many banking industry leaders supported the move as justified by the poor condition of Idea Bank.²¹³

In November 2021, the Warsaw District Court overruled the decision to seize Czarnecki's assets. The Court found that there was no serious evidence Czarnecki had committed the crime he was accused of and that he was not hiding his assets.²¹⁴ The Prosecutor's Office, however, ignored the court decision and seized Czarnecki's assets again in December 2021.²¹⁵ The investigators also supplemented the allegation of fraudulent activities, as well as adding to the original accusations.²¹⁶ According to Czarnecki's attorney, *"adding accusations of acting to the detriment of GetBack bondholders in a situation where the court in two final judgments decided that commission of a crime to the detriment of these bondholders by Dr. Leszek Czarnecki is not plausible, is an illegal act and in practice aims to undermine the court rulings"*.²¹⁷

The Prosecutor's Office demanded the detention of Leszek Czarnecki twice. The first filing was rejected by the Warsaw District Court in April 2021. However, the Prosecutor's Office renewed its filing in February 2023.²¹⁸ Roman Giertych, one of Leszek Czarnecki's attorneys, commented on Twitter that another motion in the same case is *"inadmissible under the law, since the previous motion was dismissed by the court for lack of probability."*²¹⁹

In April 2023, attorney Roman Giertych, on behalf of L. Czarnecki, sued VeloBank S.A. and the Treasury for almost one and a half billion zlotys, demanding an apology for the implementation of the so-called Zdzisław Plan (taking over the bank for 1 zloty), which Marek Ch., head of the KNF, blackmailed Czarnecki with, demanding a bribe of 10 million Euros.

As conveyed by Giertych, *"in fact, the lawsuit is an attempt to draw civil consequences from the crime of Marek Ch. and the group behind it."*²²⁰

On June 23, 2023, the Warsaw District Court rejected a request for a European arrest warrant for

²¹² <https://wyborcza.pl/7,75398,26968630,dlaczego-sad-nie-zgodzil-sie-na-aresztowanie-leszka-czarneckiego-go.html>

²¹³ <https://businessinsider.com.pl/firmy/strategie/bank-pekao-przejmuje-idea-bank-decyzja-bankowego-fun-duszu-gwarancyjnego-ws-leszka/cjlec9v>

²¹⁴ <https://wyborcza.pl/7,75398,27820693,kolejna-kleska-prokuratury-ziobry-czarnecki-odzyskuje-majatek.html>

²¹⁵ <https://wyborcza.pl/7,75398,27882391,prokuratura-kontratakuje-i-zajmuje-czesc-majatku-leszka-czarneckiego.html>

²¹⁶ <https://www.money.pl/gospodarka/nowe-zarzuty-dla-leszka-czarneckiego-w-sledztwie-dot-afery-getback-6712462581119680a.html>

²¹⁷ <https://businessinsider.com.pl/wiadomosci/roman-giertych-komentuje-nowe-zarzuty-dla-leszka-czarneckiego/q8m80pq>

²¹⁸ <https://wyborcza.biz/biznes/7,177151,29430121,jest-wniosek-o-areszt-leszka-czarneckiego-juz-drugi.html?disableRedirects=true>

²¹⁹ Ibidem.

²²⁰ <https://next.gazeta.pl/next/7,151003,29652827,leszek-czarnecki-pozywa-skarb-panstwa-na-1-5-mlrd-zl-za-plan.html>

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Leszek Czarnecki, as requested by the Warsaw Regional Prosecutor's Office.²²¹ Its premise was that *"Czarnecki, as the head of Idea Bank's supervisory board, 'knew' or 'must have known' about his bank selling GetBack bonds without permission in 2017."*²²²

This is significant because the banker has been living abroad since 2019, justifying it also on the grounds that his attorney Roman Giertych was also detained before one of his arrest hearings. The court noted that the prosecution had manipulated the investigation. Most of the witnesses who testified in favour of the banker were omitted. Only those testimonies that could serve the thesis that had already been put forward were selected for the charges. As the court noted, *"this evidence does not allow for the identification and reconstruction of the agreement linking Leszek Czarnecki with the co-suspects."* What's more, all the persons giving such testimony, gave it while in custody.

The court stressed that: *"there is no evidence whatsoever that L. Czarnecki was aware of the fraudulent sales practice, i.e. misleading customers about the features of the product offered."*²²³

Jakub Karnowski and PKP Cargo

The Provincial Prosecutor's Office in Lublin has been prosecuting five members of the management board and eight members of the supervisory board of the state-owned PKP Cargo, a Polish railway freight carrier, following the company's 2015 purchase of Czech rail freight operator AWT, which provided Polish railways the licence to operate in southern European markets and in Germany, linking the Baltic with the Mediterranean.

Economist Jakub Karnowski, the company's former Chair of the Supervisory Board and President of its largest shareholder, PKP SA, nominated to the post by the former government of the Civic Platform-Polish faced charges in March 2019 of mismanagement that led to the supposed loss of up to PLN 250 million (EUR 54 million). These charges, claiming that the acquisition of AWT had been overpriced, were brought despite no reliable expertise proving the loss. Two official evaluations ordered by PKP Cargo, including one prepared by the consortium of PKO BP Brokerage House, EY, and the Weil Gotshal & Manges law firm, served as the basis for the transaction. These evaluations prove the transaction was conducted properly.²²⁴

Curiously, according to Karnowski, the formal wording of the charges stated that the mismanagement stemmed from the "undervaluation" of the AWT assets suggesting that the company had been purchased by PKP Cargo at too low a price (contrary to the very nature of the charges). This appeared to be a prosecutorial error though, noted by Karnowski who inquired the prosecutor about it and received the answer that he could not change the wording because *"it had come*

²²¹ <https://wyborcza.pl/7,75398,29938162,sad-zalozyciel-getin-banku-nie-tworzyl-grupy-przestepczej.html>

²²² <https://wyborcza.pl/7,75398,29859167,polowanie-na-leszka-czarneckiego.html>

²²³ <https://wyborcza.pl/7,75398,29897810,sad-trzeci-raz-odrzuca-wniosek-o-areszt-dla-leszka-czarneckiego.html>

²²⁴ <https://wyborcza.pl/7,75968,26771638,prokurator-ziobro-trzyma-premiera-morawieckiego-na-grillu-czyli.html>

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from the National Prosecutor's Office".

In February 2023, Prosecutor Bartosz Wójcik, under the supervision of Lublin prosecution chief Jerzy Ziarkiewicz, changed the charges against Jakub Karnowski, withdrawing the charge of overpricing the transaction due to a newly-acquired evaluation of the transaction that confirmed the previous valuation on the basis of which AWT had been acquired.

Instead, new allegations were added, claiming that PKO BP Brokerage House received too much compensation from PKP Cargo for its services, and there was "overinsurance" of the transaction, referring to unnecessary spending of funds. However, PKP Cargo has not made any claims against PKO BP on the matter since 2016.²²⁵

In spite of the investigation - which was initiated on the request of the company's first PiS-nominated board in 2016 - being nearly dropped as meritless twice over the years, in mid-2017 and autumn 2018. It was initiated at the Regional Prosecutor's Office in Warsaw, then in mid-2017 transferred to Lublin (where Karnowski was questioned as a witness in November 2017). In December 2018 Ziarkiewicz became its head, filing charges in February 2019 against 13 suspects without the prosecution having taken any investigative actions.

The investigation is currently headed by Lublin provincial office prosecutor Bartosz Wójcik, included in the "Państwo PiS" database for an expedited promotion and politically-motivated investigations.²²⁶ The investigation is overseen by the aforementioned Prosecutor Jerzy Ziarkiewicz, the Ziobro nominee responsible for top political cases, such as of Roman Giertych or Bartosz Kramiec (both discussed in this report), and cases that would otherwise never be treated seriously, like that of a piece of art supposedly "insulting the Polish emblem".²²⁷

Ziobro's interest in keeping the investigation alive may stem from the fact that the purchase of AWT was completed on the basis of an evaluation by the PKO BP state bank. The evaluation was headed by a loyalist of Prime Minister Morawiecki, and the ongoing investigation may serve Ziobro as a weapon against Morawiecki, his political rival in the ruling United Right coalition.²²⁸

Karnowski himself indicates he is targeted due to his successful attempts to reform and rid the state-controlled PKP Cargo company of corruption interests between 2012 and 2015, as well as his perceived connection with a renowned PiS critic, former deputy prime minister and finance minister Prof. Leszek Balcerowicz.

Jakub Karnowski remains a lecturer and head of the Liberal Economics Department at the Warsaw School of Economics, as well as a vocal critic of PiS's economic policies and the current manage-

²²⁵ <https://wiadomosci.radiozet.pl/Biznes/prokuratura-chce-postawic-nowe-zarzuty-bylym-menedzerom-pkp-w-tym-jakubowi-karnowskiemu>

²²⁶ https://www.panstwo-pis.pl/index.php/Bartosz_Wojcik

²²⁷ <https://warszawa.wyborcza.pl/warszawa/7,54420,26670025,prokurator-od-zadan-specjalnych-bedzie-bronil-polskiego-godla.html>

²²⁸ <https://wyborcza.pl/7,75968,26771638,prokurator-ziobro-trzyma-premiera-morawieckiego-na-grillu-czyli.html>

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ment of PKP Group. Among other proof of the group's mismanagement under PiS, he points out that the valuation of PKP Cargo has dropped from PLN 4,5 billion after the purchase of AWT in 2015 to PLN 500 million in 2023 (not accounting for inflation). 10 years after the company's IPO in October 2013, when the share price was PLN 80.5 (and over PLN 95 following the acquisition of AWT), PKP Cargo's share price in 2023 is only PLN 15.

Piotr Osiecki and Altus TFI²²⁹

Piotr Osiecki's case constitutes an offshoot of PiS' largest financial scandal to date, the GetBack scandal (see Leszek Czarnecki and GetBack). GetBack was a top player in Poland's debt collection market. The scandal led to the loss of PLN 2,7 billion (approx. EUR 590 million) by thousands of individual investors who bought GetBack's fraudulent bonds.²³⁰

GetBack was linked to the PiS party, financially supporting pro-government media. As discussed above, this may have contributed to its continued corrupt operations until mid-2018 despite a whistle-blower's report delivered to the authorities in 2017, as well as a lack of any supervision from Polish Financial Supervision Authority (KNF) despite the KNF licence having been granted in 2012.²³¹ GetBack also sought support from the government when it found itself at risk of insolvency.²³²

Piotr Osiecki was the founder, largest shareholder, and CEO of Altus TFI until 2018. Altus TFI was an independent asset management company responsible for about PLN 18 billion (EUR 4 billion) in assets at the time. As the largest private investment fund in Poland and a competitor of the state-owned PKO TFI²³³ and PZU TFI,²³⁴ it posed an obstacle to the state's takeover and consolidation of the financial market. Among its successes, Altus was granted management of parts of Norway's Oil Fund over its state competitors, causing hostility from the ruling party.

In late 2017, GetBack overpaid when acquiring almost all the bad debt held by state-controlled commercial banks.²³⁵ When the company's losses and potential difficulties became evident, Konrad Kąkolewski, its CEO, asked PiS leaders for financial assistance, reminding them of the support GetBack gave to PiS and to government-friendly media.²³⁶ In his letters, Kąkolewski stated that he *"would not go down alone"* and mentioned the risks to the government's image if the scandal went public.²³⁷ Finally, in April 2018, he met with Kornel Morawiecki, father of the Prime Minister Mateusz Morawiecki. Morawiecki who was allegedly recorded claiming to have secured

229 An extended version of this case is available on our website: <https://en.odfoundation.eu/a/203407,the-case-of-entrepreneur-piotr-osiecki-and-altus-tfi/>

230 <https://wyborcza.pl/7,75398,26403095,ujawniamy-co-prokuratura-ma-na-leszka-czarneckiego-to-jego.html>

231 <https://tvn24.pl/biznes/z-kraju/afera-getback-o-co-chodzi-kalendarium-4722589>

232 <https://wiadomosci.dziennik.pl/polityka/artykuly/574998,afera-getback-czy-kornel-morawiecki-lobbowal-w-sprawie-spolki.html>

233 <https://www.pkotfi.pl/tfi-en/about-us/who-are-we/>

234 <https://www.pzu.pl/tfi>

235 <https://www.forbes.pl/biznes/jak-getback-kupil-od-pekao-portfel-wierzytelnosci-powyzej-jego-wartosci/lpyysj9>

236 Among GetBack's beneficiaries, via advertising, were right-wing newspapers „Gazeta Polska”, „Sieci” or „Do Rzeczy”. GetBack was also a major donor to the Man of the Year award (awarded to PM Mateusz Morawiecki and party leader Jarosław Kaczyński).

237 <https://biqdata.wyborcza.pl/biqdata/7,159116,23607513,getback-o-co-chodzi-w-afierze-siec-powiazan.html>

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a PLN 200 million (EUR 44 million) public loan for the company.²³⁸ The next day this support was officially announced by GetBack, only to be denied hours later by the state institutions involved: the Polish Development Fund (Polski Fundusz Rozwoju, PFR), and PKO BP bank.

Due to the scandal, Kąkolewski lost his post and GetBack was suspended on the stock exchange by the Financial Supervision Authority (Komisja Nadzoru Finansowego, KNF), with the Prosecutor's Office being notified. Yet, it was done only in April 2018 (despite the whistle-blower report delivered in 2017) and with no relevant security agencies (CBA or ABW) showing any involvement in the case.²³⁹

It was at this time that Piotr Osiecki was targeted with a fabricated criminal case to redirect the blame for the affair from PiS. Altus was a client of GetBack, which managed a small portion of Altus's assets: its debt management funds. At the same time Altus, owned EGB Investments, a debt collection company in competition with GetBack.

Osiecki was arrested in August 2018 for the first out of three times on charges of allegedly exposing GetBack to substantial financial losses (Art. 296. kk - causing damage to business) when selling EGB Investments. The prosecution charged Osiecki with acting against GetBack's interest by selling EGB for an inflated price, despite Osiecki's duty being to the shareholders of Altus and its clients, not to GetBack. This is the first instance in the history of Poland's judicial system that an accused has been arrested three times on the same charges, unlawfully spending a total of 16 months behind bars.

As an example of the fabricated criminal charges against Osiecki, the prosecution accused him of having *"organised and conducted the bond sale through the networks of Idea Bank and Lions Bank"*, despite Osiecki not being employed by either of these two entities. In reality, neither Altus TFI S.A. nor investment funds managed by it offered any bonds issued by GetBack. The prosecution apparently *"confused"* the parties involved in the transaction, as investment funds managed by Altus TFI did not sell, but took up bonds issued by GetBack.

Furthermore, the alleged illegal acts were described as *"being in the interest of funds under his management"*, which is precisely what Osiecki was required to do per business logic and Poland's law on investment funds. In addition, Osiecki was one of the cheated bondholders of GetBack S.A. and suffered a loss of 1.8 million EUR.

The CBA was unconventionally used to deliver a summons to Osiecki's wife, Anna, at 06:00. Anna also became a suspect in the case due to her formal management of an Altus subsidiary, having to post a bail of PLN 3 million to avoid detention. Anna's last-minute questioning by the prosecution was specifically timed so that Osiecki would, through pure coincidence, see his wife

²³⁸ <https://wyborcza.pl/7,75398,24037093,jak-getback-nagral-ojca-premiera-kornel-morawiecki-obiccal.html>

²³⁹ <https://www.forbes.pl/gospodarka/konrad-kakolewski-zeznawal-w-prokuraturze-w-sprawie-nieprawidlowosci-w-getbacku/903v3fm>

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at the Prosecutor's Office just before his own questioning, causing him to feel that his family was also threatened. The unprecedented use of CBA agents and targeting of Osiecki's wife was a clear attempt at intimidation and harassment.

In November 2018, the District Court agreed to release Piotr Osiecki from custody for a record-setting bail of PLN 108 million (roughly EUR 24 million), higher than the alleged losses incurred by GetBack, despite having frozen Osiecki's assets.²⁴⁰ Piotr Osiecki was arrested again in January 2019 after a ruling by the Court of Appeal, which agreed to the prosecution's request for another three months' detention, while at the same time upholding the continued posting of the bail. As a result, Piotr Osiecki was illegally incarcerated despite posting bail.

In February 2019, the Polish Ombudsman requested access to court decisions on Osiecki's detention. The requests followed a legal analysis which concluded that *"by virtue of the judgement of the Court of Appeal, the arrest was legally converted into a property surety and therefore the arrest warrant was issued unjustly"*.²⁴¹

In April 2019, the District Court ruled again that Osiecki could be released from custody in exchange for bail of PLN 110 million (EUR 24 million). The Prosecutor's Office appealed this ruling, and, in June 2019, Osiecki was again arrested by the decision of the Court of Appeal, which extended his arrest for another three months from the date of arrest.

Both rulings by the Court of Appeal that were favourable to the prosecution were made by District Court judges appointed by Prosecutor General Zbigniew Ziobro.

Osiecki's detention was criticised in several public appeals by the Polish Business Roundtable (Polska Rada Biznesu (PRB)), the association of owners and top managers of the largest companies operating in Poland. The Roundtable called it *"lawless"* and *"an example of violation of the rule of law, civil liberties, dignity and fundamental human rights"*.²⁴²

In April 2020, the Court of Appeal issued a final order to release Piotr Osiecki from custody on another bail, this time of PLN 30 million (EUR 6.5 million). The Court confirmed that Osiecki had no legal responsibility towards GetBack S.A. or Idea Bank S.A.

No one out of the special team of prosecutors currently in the Warsaw Provincial Prosecutor's Office handling the GetBack case and Osiecki has experience in such economic cases. The prosecutors involved are Jakub Romelczyk, Wojciech Smoleń, Przemysław Baranowski, Karol Węgrzyn, Marta Choromańska, Monika Milewska, Przemysław Ścibisz and Dariusz Cioban. All were either delegated or expeditiously promoted to the Warsaw Provincial Office and all are included in LSO

²⁴⁰ <https://www.money.pl/gospodarka/wiadomosci/arttykul/108-mln-zlotych-czyli-najwieksza-zrzutka-w-62,0,2422334.html>

²⁴¹ <https://www.pb.pl/rpo-przyglada-sie-aresztowaniu-piotra-osieckiego-952568>

²⁴² <https://www.money.pl/gospodarka/aresztowanie-piotra-osieckiego-polska-rada-biznesu-jest-bezprawnie-pozbawiony-wolnosci-6359251673982593a.html>

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and/or Państwo PiS databases. Decisions in Osiecki's case were signed by Prosecutors Romelczyk and/or Smoleń and/or Baranowski.

The entire case seems to have been created to take responsibility away from the government and its leaders, most notably PM Morawiecki and his family, covering the failures of the KNF and the ties between GetBack and the ruling party. It is also a striking example of an attempt at corporate raidership in Poland, as directly after the public prosecution initiated its investigation into Osiecki, Altus started receiving extremely undervalued purchase offers from state-linked buyers. This practice of state extortion is well known in Russia, Ukraine, Kazakhstan and other post-Soviet states. As a result of this persecution, the capitalisation of Osiecki's Altus TFI dropped from approximately PLN 1 billion to PLN 60 million, so by 94%.

Przemysław Krych and Griffin Real Estate

Griffin Real Estate, a major player in Poland's real estate market, had around EUR 5 billion in assets managed, primarily for US institutional investors. The founder, Przemysław Krych, was arrested and faced charges related to alleged bribery involving Law and Justice Senator Stanisław Kogut and donations to Kogut's Foundation for People with Disabilities.

Krych donated, or arranged the donation of, approximately PLN 2 million over a 10-year period to the foundation, including for a hospice and support centers for disabled individuals. In total, in his philanthropic work, Krych had donated or arranged for the donation of about PLN 16 million to various charitable initiatives. This included being the largest donor of the Investigative Journalism Initiative of Poland's leading liberal daily, Gazeta Wyborcza.

Krych supported Kogut's foundation for ten years, during eight of which Kogut was in the opposition, limiting his influence over state affairs.²⁴³ In December 2017, Krych was detained by the CBA and accused of promising a PLN 1 million bribe (of which PLN 0.5 million was allegedly paid), partly through donations to the foundation, in exchange for support for a development project, considering Kogut's role as Chair of the Senate Infrastructure Committee. The donations were made by Echo Investment - a company where Krych had no decision-making authority.

According to the Provincial Prosecutor's Office in Katowice, the alleged bribe was meant to support a new investment at the location of the "Cracovia" hotel and "Kyiv" cinema in Cracow.²⁴⁴ In exchange for the bribe, Kogut was allegedly supposed to arrange for the Lesser Poland Voivodeship Monument Conservator to discontinue the administrative proceedings regarding the entry of the hotel into the register of historic monuments, allowing Echo to construct a shopping mall in its place.

Despite the alleged bribe, the buildings were designated as historic monuments, and Echo Invest-

²⁴³ <https://wiadomosci.onet.pl/tylko-w-onecie/zatrzymany-przez-cba-biznesmen-przemyslaw-krych-ujawnia-ze-dostal-oferte-wolnosc-za/h9lcb2d>

²⁴⁴ <https://www.money.pl/gospodarka/wiadomosci/artykul/przemyslaw-krych-griffin-real-estate,50,0,2394674.html>

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ment sold them to the Ministry of Culture. Furthermore, part of the alleged bribe was paid already after the failed promises, and Echo incurred loss on the said transaction with the State Treasury.²⁴⁵ Lastly, the construction of a shopping mall was not allowed by the land development plan for that part of the city anyway.

Later on, Kogut's foundation continued to receive support from both Echo and Krych's other associated businesses, up until the date of his arrest.

Przemysław Krych pleaded not guilty to all charges. By decisions of courts, he was detained in the Sosnowiec detention centre for three months (later extended for another three months). During the first detention hearing in December 2017, judge Joanna Barut of the Katowice East District Court reportedly did not even read the case file and stated that the businessman, who at that point had donated, recommended or organised the donation of a total of approx. PLN 16 million to various charitable organisations, *"plays at being a philanthropist"*.²⁴⁶

During Krych's detention, he was approached by individuals posing as inmates who suggested he incriminate opposition politicians, implying corruption links, in exchange for his freedom. Krych refused these offers.²⁴⁷

Notably, Krych was offered protection from legal repercussions by businessman Krzysztof Porowski shortly before his arrest. Porowski, who previously faced charges related to extortion, demanded EUR 1.5 million for this protection, hinting at influential figures within the legal system who could provide cover. Krych refused this offer but mentioned that it was repeated during his detention to one of his business partners, with the payment supposedly ensuring his release.

Krych was eventually released on a PLN 4 million (~EUR 942 000) bail after six months of detention. Following a Bloomberg interview with Krych, highly critical of the prosecution,²⁴⁸ the Katowice prosecutor's office released a statement, referencing supposed evidence such as bank statements and court-approved wiretaps.

Krych also alleged that former Law and Justice spokesperson Adam Hofman approached him after his release, calling Krych's arrest *"their f**k-up"* and presenting an offer to arrange a meeting with Zbigniew Ziobro and his wife, Patrycja Kotecka-Ziobro. Krych declined this offer. During the meeting, Hofman suggested that Krych's case was part of a political maneuver by Justice Minister Ziobro and Law and Justice MP Arkadiusz Mularczyk to diminish Senator Kogut's influence in the Lesser Poland voivodeship, as Kogut was their political rival in the region.²⁴⁹

²⁴⁵ <https://www.marketscreener.com/quote/stock/ECHO-INVESTMENT-S-A-6495159/news/Echo-Investment-Poland-s-Ministry-of-Culture-buys-from-Echo-Investment-a-for-mer-%20Cracovia-building-23624190/>

²⁴⁶ <https://www.rp.pl/biznes/art1101921-przemyslaw-krych-nigdy-w-zyciu-nie-dalem-lapowki>

²⁴⁷ <https://www.slaskibiznes.pl/wiadomosci/przedsiębiorca-opowiada-o-koszmarze-w-areszcie-w-sosnowcu-prokuratura-w-katowicach-to-jego-linia-obrony,wia5-1-1918.html>

²⁴⁸ <https://www.bloomberg.com/news/articles/2019-09-23/has-poland-s-government-become-a-threat-to-business>

²⁴⁹ <https://wiadomosci.onet.pl/tylko-w-onecie/zatrzymany-przez-cba-biznesmen-przemyslaw-krych-ujawnia-ze-dostal-oferte-wolnosc-za/h9lcb2d>

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Krych's allegations against Porowski and Hofman regarding extortion have not led to any legal action on their part or investigation, despite being publicized in the media.²⁵⁰

Instead, an investigation into "*fabricating false evidence and directing false suspicion at third parties*" (Art. 235 kk, supposedly by Krych in the form of a press interview) was initiated in May 2022 by prosecutor Agnieszka Wichary of the Provincial Prosecutor's Office in Katowice. She summoned the investor to appear as a witness. Krych's version of events is documented by his company's records and other witnesses (participants of the meeting with Porowski).

The *modus operandi* employed by Porowski and Hofman does not appear to be an isolated case. According to Krych, an equivalent attempt at extortion took place on Porowski's part in relation to another entrepreneur. Also, Adam Hofman played a similar role, offering meetings with ruling camp members in his dealings with Leszek Czarnecki (see case of Leszek Czarnecki and GetBack).

The case of Przemysław Krych is handled by prosecutor Leszek Sroka, Head of the Fiscal Crime Department of the Katowice Provincial Prosecutor's Office. The same prosecutor was responsible, i.e., for charging opposition senator Jan Bury of corruption - a case ongoing since 2015 where the court found no grounds for arrest requested by the prosecutor. In 2016 Sroka was delegated to the special prosecution department for countering organised crime and corruption in state institutions, dubbed 'Ziobro's stormtroopers' by the media.²⁵¹

The case of alleged corruption related to senator Kogut, Przemysław Krych and other supposedly involved individuals was originally handled by the District Court in Nowy Sącz. Subsequently, it was transferred to different district courts in Katowice and eventually to the District Court in Cracow. The court proceedings have not formally commenced as the Cracow court is still deliberating on certain procedural matters.

Przemysław Krych's case is described in more detail in ODF's dedicated report, "*Punishing Philanthropy in Poland: Case of Przemysław Krych*", from 9 June 2023.

Business leader Maciej Witucki and former senator Tomasz Misiak

Maciej Witucki is the President of Confederation Lewiatan, Poland's leading business organisation, and one of the most experienced Polish top-level executives, having headed Lukas Bank, Polish Telecommunications (*Telekomunikacja Polska S.A.*) and Work Service. He is also the vice-president of the Presidency of the Social Dialogue Council, the state-created forum for cooperation between employers, employees and the government, as well as a vocal critic of the latter. Tomasz Misiak is a former Senator of the Civic Platform (PO).

On 12 October 2023, Misiak, Witucki, as well as Tomasz H. and Iwona S. were detained by officers of

²⁵⁰ <https://wyborcza.pl/7,75968,27484568,rozmowa-z-przemyslawem-krychem.html>

²⁵¹ <https://katowice.wyborcza.pl/katowice/7,35063,19896802,znow-dobra-zmiana-w-prokuraturze-powstal-oddzial-szturmowy.html>

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the Central Anti-Corruption Bureau and the Central Bureau of Police Investigation, in an excessive 6am raid, on orders from the Regional Prosecutor's Office in Szczecin. The arrests were made in connection with an investigation into an alleged multimillion-złoty extortion of state donations by the Work Service outsourcing company, which all four suspects led, with 22,000 victims claimed by the prosecution.²⁵²

Considering the detentions took place in the morning of the opening of the European Forum for New Ideas - a large conference organised by Lewiatan, which Witucki was supposed to open - commentators such as former top state executive Jakub Karnowski view them as an attempt to cause a chilling effect on Polish entrepreneurs, generally critical of the PiS government.²⁵³ More than 300 business leaders vouched personally for Witucki after his detention, including heads of the organisations that currently make up the Social Dialogue Council, both on the part of employers and some trade unions.²⁵⁴

On 14 October 2022, the Regional Court Wrocław-Śródmieście dismissed the prosecutor's motion for the temporary arrest of Misiak, Witucki, and two other persons. The Prosecutor's Office appealed and, in November 2022, the Wrocław District Court upheld the decision without the consent for arrest but agreed to PLN 200,000 bail, police supervision, and a ban on leaving the country.²⁵⁵

Lotos President Paweł Olechnowicz

Paweł Olechnowicz is the former President of majority state-owned Grupa Lotos S.A. oil company. He was dismissed from this position in 2016. Olechnowicz was then highly-critical of the PiS government's 2018 decision to merge Lotos with Orlen - a merger, which he viewed as a "sell-off of Lotos's assets",²⁵⁶ and which according to the opposition resulted in a PLN 7 billion loss for the Polish state.²⁵⁷ At the end of January 2019, he was arrested by the Provincial Prosecutor's Office in Gdańsk and the Central Anti-Corruption Bureau together with the businessman Tomasz S., who was the assistant of a Civic Platform MP.

Both were accused by the investigators of causing financial harm and infringements by issuing invoices for advisory services which were paid but not completed. The alleged infringement took place in 2011, and according to the Prosecutor's Office, the damages were estimated to reach almost PLN 246,000.

The arrest of Olechnowicz was abrupt and illegal, as the prosecution was not granted permission to conduct it. Olechnowicz was not notified of the Prosecutor's Office's intention to interrogate him. He was arrested in his own house in Wadowice while participating in a family gathering and

²⁵² <https://www.gazetaprawna.pl/wiadomosci/swiat/artykuly/8568629,witucki-misiak-areszt-tymczasowy-wyludzenia-pfron-zus-prokuratura-sad.html>

²⁵³ <https://www.rp.pl/biznes/art37231581-po-zatrzymaniu-wituckiego-i-misiaka-wladza-chce-pokazac-przedsiębiorcom-ze-moze-zrobic-z-nimi-wszystko>

²⁵⁴ <https://www.pulshr.pl/zarządzanie/biznes-wspiera-wituckiego-zebrano-setki-poreczen-osobistych,93020.html>

²⁵⁵ <https://tvn24.pl/polska/wroclaw-bez-aresztu-dla-tomasza-misiaka-i-macieja-wituckiego-sad-nakazal-kaucje-dozor-policyjny-i-zakaz-opuszczania-kraju-6219478>

²⁵⁶ <https://www.rmfm24.pl/fakty/polska/news-olechnowicz-o-zatrzymaniu-przez-cba-opluty-sprawadzony-do-po,nld,5502597>

²⁵⁷ <https://www.money.pl/gospodarka/fuzja-orkenu-z-lotosem-ko-polska-stracila-7-mld-zl-685433883751328a.html>

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taken for an interrogation to Gdańsk. Bartosz Grabowski was the prosecutor responsible for the case. The investigation started at 09:00, however, only at 21:00 did the prosecutor decide to fill in a request for pre-trial detention.²⁵⁸ It is worth noting that Prosecutor Grabowski, as it turned out, requested Olechnowicz's arrest following an order of his superiors at the Gdańsk Provincial Prosecutor's Office, though he himself opposed it. He left the case only a week later.²⁵⁹

Shortly after these events, Olechnowicz's lawyer, Janusz Kaczmarek, formerly a public prosecutor, brought a complaint to the Regional Court in Gdańsk. After its positive consideration in June, it was ruled that Olechnowicz should have been brought to be questioned in a regular manner, instead of the flashy arrest by the CBA. In addition, Olechnowicz brought another claim and demanded financial compensations for his unjustified arrest.

In March 2021, the District Court for Gdańsk-South issued a decision which entitled Olechnowicz to a PLN 45,000 compensation and stated that there were no grounds for the detention. The amount of the compensation was calculated based on the costs of health consequences, as the defendant allegedly suffered from PTSD and his family faced significant psychological distress.²⁶⁰ The decision was confirmed in October 2021.²⁶¹

Olechnowicz's case was first handled by Prosecutor Bartosz Grabowski from the Provincial Prosecutor's Office in Gdańsk, who was forced to issue the arrest warrant for Olechnowicz upon an order from his superiors. He resigned from handling the case a week²⁶² later and was replaced by Prosecutor Remigiusz Signerski, involved in other high-profile political cases like the one of opposition senator Krzysztof Brejza (see case Surveillance of opposition campaign chief Krzysztof Brejza) - reportedly the only prosecutor to resign from the Ziobro-critical Lex Super Omnia association as it stood in the way of his career.²⁶³

Orlen President Jacek Krawiec

Dariusz Jacek Krawiec, an economist, was the president and CEO of the state-controlled oil giant PKN Orlen between 2008 and 2015. He led the company's successful restructuring and expansion, saving it from bankruptcy. He was appointed president of the company after winning an open contest and dismissed in 2015 as PiS ascended to power. In private statements which were recorded in wiretaps and leaked to the press, Krawiec was critical of some figures of the Law and Justice government, which he claims was the reason behind his later prosecution.²⁶⁴

The Central Anti-Corruption Bureau, acting on orders from the District Prosecutor's Office in Łódź,

²⁵⁸ <https://www.rmfm24.pl/fakty/polska/news-olechnowicz-o-zatrzymaniu-przez-cba-opluty-sprawdzony-do-po,nld,5502597>

²⁵⁹ http://www.panstwo-pis.pl/index.php/Bartosz_Grabowski

²⁶⁰ <https://businessinsider.com.pl/wiadomosci/pawel-olechnowicz-byly-prezes-lotosu-z-odszkodowaniem-za-akcje-cba-jest-prawomocny/sxlpwx4>

²⁶¹ Ibidem

²⁶² https://www.panstwo-pis.pl/index.php/Bartosz_Grabowski

²⁶³ https://www.panstwo-pis.pl/index.php/Remigiusz_Signerski

²⁶⁴ <https://www.money.pl/gospodarka/b-prezes-pkn-orken-jacek-krawiec-jestem-niewinny-6448438344042625a.html>

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detained Krawiec for the first time in February 2019. He was then charged with having caused PLN 3.3-3.4 million (EUR 700,000) of loss to PKN Orlen during the organisation of the 2014 Verva Street Racing event at the National Stadium.

According to the investigators, Krawiec and two other Orlen directors would approve inflated quotes, invoices and final report from an external event organiser. Krawiec was formally arrested for 3 months and, after spending under 48 hours in custody, released on a PLN 1 million (EUR 200,000) bail set by the Łódź court.²⁶⁵

He was arrested for a second time by the CBA in September 2019 on charges of Orlen having allegedly covered the costs of over PLN 500,000 (EUR 119,000) for Krawiec's private travels disguised as business trips. His arrest, just 6 weeks before the upcoming parliamentary elections, was pictured in state TV using his photos together with former prime minister and then-opposition leader Donald Tusk.²⁶⁶

In September 2020, Krawiec was arrested for a third time, this time as part of Law and Justice's campaign against Sławomir Nowak (see case). The Regional Prosecutor's Office in Warsaw charged Krawiec with corruption, claiming that between 2012 and 2016, Krawiec handed Sławomir Nowak, Minister of Transport under Donald Tusk at the time, bribes in the total amount of almost PLN 200,000 (EUR 44,000). The sum was intended, according to the Prosecutor's Office, to grant him his position in PKN Orlen (according to media reports)²⁶⁷ or a raise (according to Krawiec), even though it was the treasury minister who oversees state-owned companies and the company's supervisory board handling the executive board members' remuneration. Once again, pictures of Krawiec with opposition politicians Donald Tusk and Sławomir Nowak were used by state propaganda to illustrate the arrest.

Another state executive, Wojciech T. from PGE and later Energa energy groups, was arrested together with Leszek K., his alleged intermediary in the corruption scheme, as part of the same operation.²⁶⁸

No indictment has been filed in relation to the first two charges, only following the third one, but according to Krawiec there have been no subsequent actions by the prosecution or court ever since. Prosecutor Sławomir Pintera handled the case within the District Prosecutor's Office in Łódź during Krawiec's arrest in 2019, and then Prosecutor Jolanta Jagielińska-Piwowska since 2021. It is worth mentioning that the First Economic Crime Department of that prosecutor's office is headed by Prosecutor Krzysztof Bukowiecki, a personal friend of National Prosecutor Dariusz Barski (reportedly best man at his wedding), himself a school friend of Prosecutor Gene-

²⁶⁵ <https://wyborcza.biz/biznes/7,179190,24455698,zarzuty-dla-bylego-szefa-ornenu-koncern-mial-stracic-3-4-mln.html>

²⁶⁶ <https://wyborcza.biz/biznes/7,179190,25155121,cba-znow-zatrzymalo-bylego-prezesa-ornenu-z-czasow-rzadow-po-psl.html>

²⁶⁷ <https://www.rmfm24.pl/fakty/polska/news-byly-prezes-ornenu-z-zarzutami-mial-dac-lapowke-slawomirowi-nld,4763604>

²⁶⁸ <https://polskieradio24.pl/5/3/artykul/2592526,sprawa-nowaka-byly-szef-ornenu-w-prokuraturze-nowe-informacje-ws-dariusza-jacka-k>

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ral Zbigniew Ziobro. In the Warsaw prosecutor's office the case was managed by Prosecutor Jan Drelewski when Krawiec was detained in 2020. When presenting Krawiec with charges, in reply to a comment by Krawiec's lawyer that it was the third time her client was arrested, Drelewski joked that "for serving 3 terms there are 3 detentions".

Krawiec, an experienced executive, was promptly replaced as Orlen CEO by Daniel Obajtek, a relatively obscure, small-town PiS mayor. Obajtek quickly became infamous due to his shady past, including alleged corruption in his mayoral post, and by turning PKN Orlen into one of the primary tools for PiS's political interests. The company purchased Poland's largest local media publisher, Polska Press, in December 2020, which instantly became a tool for the government's propaganda.²⁶⁹ Orlen also regularly organised large-scale media and outdoor campaigns supporting Law and Justice, most notably in the lead-up to elections, with, e.g., ~PLN 1,5 billion (EUR 340 million) spent for a pro-PiS campaign before the 2023 parliamentary election.²⁷⁰

Jacek Krawiec, remained a commentator on the government's economic policies and critic of PKN Orlen's new management,²⁷¹ despite serious health and family issues, as well as necessity to move abroad, all resulting from the arbitrary prosecution. He maintains his innocence and points to the absurdity of the charges considering, among other things, the actual responsibilities of the CEO and scale of the losses allegedly caused to Orlen in relation to its multi-billion operations.

1.7 Journalists, writers and artists

Rapper Michał "Mata" Matczak

Michał Matczak is a young Polish rapper using the pseudonym "Mata". He was born in 2000 as the son of law professor Marek Matczak, one of the most vocal critics of the changes introduced by the ruling party to the judiciary system. Considering his father's activities and the ongoing hate campaign against him by state propaganda, as well as Mata's own songs highly critical of the PiS government (most notably attacking then-TVP chairman Jacek Kurski),²⁷² there are reasons to believe Mata was targeted by the Public Prosecutor's Office and was facing a total of 11 years in jail for political reasons.

Mata and his friend were stopped and frisked by police in January 2022²⁷³ on the street and then charged for possession of 1.45 grams of marijuana, carrying a maximum sentence of 3 years (Art. 62 of the Act on counteracting drug addiction). The event was publicised by the government propaganda and pro-government media and used to attack Mata's father, Prof. Matczak, as well

²⁶⁹ <https://oko.press/polska-press-orken-raport>

²⁷⁰ <https://www.newsweek.pl/biznes/15-mld-zl-z-orkenu-tak-spolki-skarbu-panstwa-wspieraja-kampanie-pis/bsgwd60>

²⁷¹ <https://businessinsider.com.pl/wiadomosci/jacek-krawiec-byly-prezes-orkenu-ostro-komentuje-rzady-pis-zestawiamy-jego-wypowiedzi/civmdbe>

²⁷² <https://kultura.onet.pl/muzyka/wiadomosci/mata-rapuje-o-tvp-jacek-kurski-zapytany-o-utwor-patoreakcja/dvndknh>

²⁷³ <https://wiadomosci.wp.pl/mata-odpowie-za-posiadanie-marihuany-jest-akt-oskarzenia-6775537669880384a>

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as the opposition.²⁷⁴ The police then searched their apartments, where they failed to find drugs or equipment that could have been used to produce or sell drugs.

The Warsaw Regional Prosecutor's Office referred the indictment to the Warsaw-Mokotów District Court, even though the usual practice²⁷⁵ is to waive the punishment in the case of possession of an insignificant amount of marijuana for personal use, based on a provision introduced into the law in 2011.

However, the Prosecutor's Office felt that the punishment should be requested for "educational" reasons and referred to his public activities, including that *"during these speeches, the accused, directing his words publicly and to an unlimited number of people, called for action to (...) bring about the so-called 'legalization' of possession of narcotic drugs, namely marijuana"*.

In February 2023 the District Court for Warsaw-Mokotów discontinued the proceedings. The prosecution appealed the decision, but in May the Regional Court in Warsaw upheld it.²⁷⁶

Mata was facing an additional 8 years in prison for organising an illegal gathering (Art. 52 of the Code of Misdemeanours) after he organised a spontaneous concert in May 2022, rapping from a wooden boat for fans on the steps of the Vistula river in Warsaw.²⁷⁷ In August the police itself discontinued the proceedings, a decision which was confirmed by the prosecution a week later, but in September the District Prosecutor's Office for Warsaw-Śródmieście decided to restart the investigation. In August 2023 the investigation was finally discontinued by the Regional Prosecutor's Office in Warsaw.²⁷⁸

Journalist Piotr Zapotoczny

Piotr Zapotoczny, a journalist for the Opole edition of Gazeta Wyborcza, was questioned at the Opole Municipal Police Station on 14 April 2023. In an article written in October 2022, Zapotoczny revealed details of a classified report following an inspection by the State Labor Inspectorate at the city's Waterworks and Sewerage Company.

The company's majority owner is the city of Opole. The report dealt with mobbing at the company managed by the father of Patryk Jaki, former First Deputy Minister of Justice and well-known MEP from Justice Minister Zbigniew Ziobro's party, Sovereign Poland.

Zapotoczny, citing journalistic secrecy, refused to answer any questions other than those confirming that he was the author of the article. As a result, the police applied to the Świdnica District Prosecutor's Office to exempt the journalist from professional secrecy even though by law, this is

²⁷⁴ <https://www.tvp.info/58194153/michal-matczak-mata-zatrzymany-onet-ociepla-wizerunek-rapera>

²⁷⁵ <https://www.rp.pl/plus-minus/art37481111-kataryna-mata-na-celowniku-ziobry>

²⁷⁶ <https://www.bankier.pl/wiadomosc/Raper-Mata-i-narkotyki-Sad-podjal-ostateczna-decyzje-8538230.html>

²⁷⁷ <https://wirtualnemedial.pl/artykul/mata-2040-kampania-prezydencka-program-marihuana-policja-sad>

²⁷⁸ <https://kultura.onet.pl/muzyka/wiadomosci/prokuratura-umorzyla-sledztwo-w-sprawie-koncertu-maty-nad-wisla/p6sg1fs>

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only possible in exceptional situations when it is necessary for the application of justice in respect to a criminal act. The prosecution has as of yet not submitted such a request to the court.²⁷⁹

The case was initially handled by the Second Investigation Department for Economic Crime of the Opole Regional Prosecutor's Office. By decision of the Regional Prosecutor's Office in Wrocław, the investigation was transferred to the Świdnica District Prosecutor's Office.

Journalist Mirosław Jamro

Mirosław Jamro, an investigative and interventional journalist from local media in Bielsko-Biała, was accused by the prosecutor's office for *"inciting officers to overstep their authority"*.

Mirosław Jamro has been involved in so-called interventional journalism at the local level for many years. In his column entitled *"On sirens"* in the local news portal, Bielsko.biala.pl, Jamro reports on the causes and consequences of accidents, fires, etc. Therefore, he works with police officers regularly and inquires about details of various events.

Due to one such question, Jamro was charged in connection with information that he had established while performing his professional duties. On June 9, the Sosnowiec District Prosecutor's Office charged him under Article 18 par. 2 KK (abbeing) in connection with art. 231 par. 2 KK and art. 266 par. 2 KK.²⁸⁰ The prosecutor's office treated the journalist's questioning of police officers as incitement of uniformed officers to give him classified information.

*"Working as a journalist, I had the right to gather information. What information someone gave me was a matter for the people I spoke to: what they could say, how much they could say"*²⁸¹ – Jamro commented.

Jamro underlined that each of his interlocutors voluntarily responded to his questions. *"He could and did decide, without coercion. I only asked questions. The officers were free not to give information. Everyone knew who they were talking to"*.²⁸²

Piotr Surmaczyński and the defamation of Beata Szydło's son

Beata Szydło was Prime Minister of Poland (2015-2017) and Deputy Prime Minister (2017-2019). Her image was built on the value of traditional family and rural religiosity. An important element of this narrative was the fact that Beata Szydło's son became a priest during her term as PM in 2017. The young priest was ordained in the presence of the media, and his first holy mass was celebrated similarly.

²⁷⁹ <https://opole.wyborcza.pl/opole/7,35086,29674422,policja-chce-zwolnienia-z-tajemnicy-dziennikarskiej-reportera.html>

²⁸⁰ <https://bielsko.biala.pl/aktualnosci/49317/dziennikarz-scigany-bo-pytal-zamach-prokuratury-na-media-lokalne>

²⁸¹ <https://natemat.pl/435748,dziennikarz-z-zarzutami-miroslaw-jamro-mial-podzegac-policjantow>

²⁸² Ibidem.

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Freshly minted priest Tymoteusz Szydło celebrated his Primate Mass at Jasna Góra, Poland's holiest shrine. The young priest was accompanied at the altar by father Tadeusz Rydzyk, an ultra-conservative backer and beneficiary of the ruling camp, while members of the government, Law and Justice Chairman Jarosław Kaczyński and First Lady Agata Kornhauser-Duda sat in the front row. A congratulatory letter to young Szydło was sent by Hungary's far-right prime minister Viktor Orbán.

In 2019, just 2 years after being ordained, Tymoteusz Szydło went on an indefinite leave of absence, which was met with a wave of online jokes, memes, and suggestions about the begetting of an offspring by the hitherto model conservative priest.

The District Public Prosecutor's Office in Warsaw has launched a defamation case regarding the suggestions of Tymoteusz Szydło's departure from priesthood. Piotr Surmaczyński, a Polish civic journalist and playwright, was questioned by Polish Deputy Consul Bogusz Nieśluchowski in London as a result of a mutual legal assistance (MLA) request from the District Prosecutor's Office in Warsaw.

As Surmaczyński told *Gazeta Wyborcza*, *"I was invited to the consulate for an absurd interrogation about Tymoteusz Szydło's sex life. I was supposed to be a witness, but the conversation went on as if I had already been accused"*. The allegedly defaming content that Surmaczyński was shown included congratulations to Beata Szydło on becoming a grandmother soon. Even more surprisingly, however, the investigation was given a transatlantic scope.

"A request has been made to the U.S. authorities to obtain data identifying the user of the [suspected] profile from Facebook Inc., as part of international legal assistance. In addition, two potential witnesses who reside in the UK have been identified. Accordingly, a request has been made to the judicial authorities of the United Kingdom to interview both witnesses",²⁸³ Szymon Banna, spokesperson of the Warsaw District Prosecutor's Office, explained.

In 2021, the investigation was suspended due to a lack of response from British courts.

Writer Jakub Żulczyk and "idiot" Andrzej Duda

In 2020, writer and journalist Jakub Żulczyk used the term *"debil"* (synonym of *"idiot"* in Polish) in one of his posts on Facebook, criticizing President Andrzej Duda's tweet, which had questioned the victory of Joe Biden in the 2020 U.S. presidential election, in line with Donald Trump's narrative. According to Art. 135 KK, defamation of the President carries a penalty of up to 3 years in prison.

After the post was published, the prosecutor's office received a notice from a private individual,

²⁸³ <https://wiadomosci.wp.pl/miedzynarodowe-sledztwo-w-sprawie-znieslawienia-syna-beaty-szydlo-6918499044363104a>

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which led prosecutor Michał Marcinkowski from the District Prosecutor's Office Warsaw Śródmieście-Północ to accuse Żulczyk of insulting the President. In January 2022, the Warsaw District Court dropped the case, deciding that Żulczyk had not committed a crime. An appeal was soon filed followed by a cassation appeal by the District Prosecutor's Office, which was dismissed by the Supreme Court in 2023. Thus, it was upheld that Jakub Żulczyk was innocent, as *"in this particular case the social harm of this behavior is negligible"*.²⁸⁴

1.8 The unfortunates

Doctors caring for the Prosecutor General Ziobro's father

In 2006, Zbigniew Ziobro's father, Jerzy Ziobro, died. Zbigniew Ziobro demanded punishment for the four doctors who cared for his father, including renowned cardiologist Professor Dariusz Dudek and Professor Jacek Dubiel. Under pressure from Ziobro, the prosecution abused its power, despite having no proof of malpractice.

The case was filed by Ziobro's family during his first term in office in 2006; following his departure, the independent prosecution at the time decided to close the case twice for lack of merits, paving the way for Ziobro's family to file a subsidiary indictment in 2011. In February 2012, the District Court in Cracow dismissed the indictment and closed the case. Following the family's request, an extraordinary cassation appeal was filed by the Prosecutor General with the Supreme Court, which brought the case back to the Cracow District Court in March 2013.

After Ziobro returned to his post as Prosecutor General in 2015, the prosecution opened a series of new investigations into the case. In 2016, the local division of the National Public Prosecutor's Office in Cracow entered the case, leading to the trial proceeding under the public prosecution procedure. In February 2017, the District Court for Cracow-Śródmieście found the four doctors not guilty, stating that *"the evidence does not warrant the conclusion that the conduct of the defendants involved was a medical error"*.²⁸⁵

In 2017, Ziobro's family appealed the 2017 verdict. This time, Ziobro personally acted as auxiliary prosecutor, which was possible due to the change just one month before in art. 55 of the Penal Procedure Code in 2016.²⁸⁶ In November 2017, the Regional Court in Cracow submitted a request to the Supreme Court to transfer the case to another city. Shortly before that request, Judge Dagmara Pawełczyk-Woicka, a close friend and former classmate of Ziobro, was nominated as President of the District Court in Cracow. Judge Pawełczyk-Woicka was known to directly follow Ziobro's orders,²⁸⁷ and she was expressly promoted despite negative assessments of her work. The request was denied by the Supreme Court, which was still independent at the time.

²⁸⁴ <https://oko.press/czy-debil-zniewaza-prezydenta-nie-zniewazyl-duren-i-dpa-za-to-obrazil-penis-na-czole>

²⁸⁵ <https://wiadomosci.onet.pl/tylko-w-onecie/rekordowo-dluga-apelacja-w-procesie-lekarze-kontra-ziobro/38nbryt>

²⁸⁶ <https://wiadomosci.wp.pl/prywatny-proces-ziobry-sedzia-ujawnia-wstrzasajace-kulisy-6853748687899200a>

²⁸⁷ <https://krakow.wyborcza.pl/krakow/7,44425,26440032,prezeski-z-awansem.html>

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At various stages of the case, Ziobro, who initially stated he would not interfere through his prosecution service or personally, attempted to influence its proceedings, often breaching its competences and even the law.

The prosecution sought unsuccessfully to have Judge Agnieszka Pilarczyk removed from the case and tried to intimidate her by initiating an investigation into her alleged abuse of powers (Art. 231 para. 1 kk).²⁸⁸ In December 2015, with an order from the Appellate Prosecutor's Office in Katowice, CBA was used to try to intimidate Professor Dominika Dudek, the wife of Professor Dariusz Dudek and a renowned doctor, by searching her house, cabinet, and university office in early morning hours despite a 2011 state audit of her practice finding no irregularities.

Judge Pilarczyk revealed the circumstances in TVN24's *"Czarno na białym (Black on white)"*:

"For sure, the actions were aimed at intimidating me in a situation where it was obvious that I wanted to end the trial and issue a verdict. They wanted to put pressure on me to issue a verdict favourable to the Ziobro family," said Judge Agnieszka Pilarczyk.²⁸⁹

Finally, during an April 2018 appeal hearing, Prosecutor Paweł Baca of the Cracow division of the National Prosecutor's Office requested the testimony of experts, who were questioned by the prosecution as part of a parallel investigation, to be included as proof in the court proceedings. This constituted a breach of the law.

Furthermore, the mere existence of a parallel investigation during an ongoing investigation is deemed unlawful.²⁹⁰

As of January 2020, 26 appeal hearings have taken place. In 19 of them, court experts testified at the prosecution's request regarding their opinion on the alleged fault of the doctors. In all 19 cases, they did not find any irregularities.

In March 2023, the Grand Chamber of the European Court of Human Rights rejected an appeal by Zbigniew Ziobro's mother,²⁹¹ against an October ECHR ruling that Poland had not violated the Convention in the case. Krystyna Kornicka-Ziobro had accused Poland of violating Article 2 of the European Convention on Human Rights, the right to life.²⁹²

The Court found no violations either at the stage of the prosecution or judicial proceedings. It recognized that a number of medical opinions had been collected, and that the duration of the case was due to the complexity of the case.

²⁸⁸ <https://www.polityka.pl/tygodnikpolityka/kraj/1693828,1,krs-broni-sedzi-ktora-prowadzi-proces-w-sprawie-smierci-ojca-ziobry.read>

²⁸⁹ <https://wiadomosci.wp.pl/prywatny-proces-ziobry-sedzia-ujawnia-wstrzasajace-kulisy-6853748687899200a>

²⁹⁰ <https://krakow.wyborcza.pl/krakow/7,44425,19388195,cba-na-tropie-recept-przeszukanie-apteki-i-domu-znanej-profesor.html>

²⁹¹ <https://wyborcza.pl/7,75398,29536538,matka-zbigniewa-ziobry-ostatecznie-przegrywa-w-strasburgu-nie.html>

²⁹² https://wyborcza.pl/7,75398,29046349,trybunal-w-strasburgu-wydal-wyrok-w-sprawie-smierci-ojca-ziobry.html#S.embed_link-K.C-B.1-L.1.zw

*1. Cases of malicious prosecution***Former MP and sport manager Cezary Kucharski**

Cezary Kucharski is mainly known as a former football player and the former manager of Polish football star Robert Lewandowski (of FC Bayern Munich), with whom he worked for a long time. Apart from his job as a manager, Kucharski was also an MP for Civic Platform between 2011 and 2015.

In 2014, the two established a partnership limited by shares, RL Management. It would allow for Lewandowski's income not to be taxed in Germany. The two later developed strong disagreements, which exploded in August and September 2020.

On 11 September 2020, Kucharski filed a lawsuit, demanding PLN 39 million (EUR 8.5 million) as part of the settlement for shares in RL Management. Kucharski sued RL Management, accusing his former partner of misusing the funds of the company and depleting them, e.g. on a luxurious vacation for which Lewandowski used the company's money.²⁹³

On 7 October 2020, the National Prosecutor's Office received a notification by Lewandowski of a potential crime addressed to the National Prosecutor Bogdan Świączkowski, which did not follow the normal procedure of going to the police first.

On 27 October 2020, Kucharski was spectacularly arrested (six policemen showed up at his house at 06:00) and charged, with the police taking his personal belongings. Kucharski was put on an enormous bail of PLN 4.6 million (EUR 1 million), an amount unheard of in similar cases. Only at a later stage was Kucharski able to reobtain the right to leave the country and to reduce the bail to PLN 500,000 (EUR 109,000).²⁹⁴

The prosecution in charge of the case was the Warsaw Provincial Office, with Prosecutor Dawid Hieropolitański receiving a special promotion despite lacking the required length of service.²⁹⁵

Kucharski was charged with blackmailing Lewandowski, as per Art. 191 kk. Lewandowski claims that he was blackmailed by Kucharski, who threatened he would give German media information regarding Lewandowski's alleged tax frauds that he was supposed to keep for himself. The footballer recorded Kucharski during some phone calls.²⁹⁶

The prosecution used transcriptions of phone calls between Lewandowski and Kucharski, which the prosecution said proves that Kucharski was threatening Lewandowski. However, according to independent experts, there were some issues with the transcriptions: the transcription of the

²⁹³ <https://www.polsatnews.pl/wiadomosc/2020-09-18/cezary-kucharski-pozywa-roberta-lewandowskiego-w-tle-wielomilionowe-odszkodowanie/>

²⁹⁴ <https://www.polsatnews.pl/wiadomosc/2020-10-27/zatrzymano-bylego-wspolpracownika-roberta-lewandowskiego-mial-grozic-pilkarzowi/>

²⁹⁵ http://www.panstwo-pis.pl/index.php/Dawid_Hieropolita%C5%84ski

²⁹⁶ <https://sportowy24.pl/cezary-kucharski-przerywa-milczenie-robert-lewandowski-mnie-prowokowal-zawsze-bolalo-go-ze-musial-dzielic-sie-ze-mna-zyskiem/ar/c2-15274018>

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prosecution was identical, even with the same small typos, to Lewandowski's transcription, indicating that they just used his version and that the record was likely taken out of context, trimmed, and altered.²⁹⁷

Kucharski's lawyer claimed that he unsuccessfully requested a phonoscopy expert opinion and that the prosecution withdrew any access to the case files in Kucharski's defence.

The defence's complaints about lack of access to the files have gone unanswered since the beginning of April, when they were submitted to the desk of Judge Marta Pilśnik. Judge Pilśnik was suspended in October 2021 by Ziobro over her decision to apply an ECJ ruling.²⁹⁸

On 18 May 2023, shortly after Cezary Kucharski woke up from a coma caused by a serious illness, the prosecution sent an indictment against Kucharski to the Warsaw Downtown District Court. Prosecutors accused him of threatening Robert Lewandowski several times between September 2019 and September 2020 to spread information about alleged tax irregularities related to Lewandowski's company, RL Management. According to the investigators, the agent demanded 20 million euros for his silence. The second charge related to Kucharski's disclosure of advertising, soccer contracts, and tax documents of Lewandowski and his wife Anna.²⁹⁹

Several elements of this case seem to indicate suspicious conduct on behalf of the prosecution. The case moved faster than would normally be expected, as the first arrest came after only 20 days. While one would usually go to the police for such a matter, Lewandowski's attorneys directly contacted National Prosecutor Bogdan Świączkowski, who, after the seizure of the judicial system, holds extremely vast power.

It is also suspicious that the prosecutors are not allowing further examinations of the recordings and that they are using the same transcription as Lewandowski's lawyers, despite having the recordings at their disposal.

Kucharski is a former Civic Platform MP, and this was brought up during the interrogations. The ruling party might seek to use this case to win popularity by siding with a football star and tarnish the reputation of its adversaries.

Sebastian Kościelnik and the car accident of Prime Minister Szydło

In February 2017, a 20-year-old student named Sebastian Kościelnik was involved in a road collision with a BOR motorcade transporting then-Prime Minister Beata Szydło.³⁰⁰

²⁹⁷ <https://sport.onet.pl/pilka-nozna/liga-niemiecka/robert-lewandowski-i-cezary-kucharski-kulisy-konfliktu-mocne-slowa-bylego-menedzera/j2ykslz>

²⁹⁸ <https://warszawa.wyborcza.pl/warszawa/7,54420,27577339,sedzia-marta-pilnsnik-z-warszawy-zawieszona-bo-zastosowala-wyrok.html>

²⁹⁹ <https://businessinsider.com.pl/wiadomosci/lewandowski-i-kucharski-spotkaja-sie-w-sadzie-znamy-akt-oskarzenia-tylko-u-nas/nm2xb2p>

³⁰⁰ <https://wiadomosci.onet.pl/kraj/wypadek-limuzyny-rzadowej-przewozacej-premier-beate-szydlo-oswiadczenie-bor/tcvt709>

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According to the statements of 20 witnesses, the motorcade drove without sirens, meaning it did not have the status of a privileged vehicle, and committed several traffic offences. Therefore, the BOR drivers were ultimately responsible for the accident.³⁰¹

Nevertheless, a team of three prosecutors from the Regional Prosecutor's Office in Cracow conducted an investigation under the supervision of the Office's Head, Prosecutor Rafał Babiński,³⁰² even though traffic incidents normally fall under district office jurisdiction.

Babiński is a university colleague of Zbigniew Ziobro's right-hand man, National Prosecutor Bogdan Świączkowski. Świączkowski is in the Państwo PiS database for expedited promotions and suspicious decisions.³⁰³

According to sources from the press, Babiński steered the investigation away from looking into the possible fault of the BOR officers, allowing it to exceed the statute of limitations.³⁰⁴ The following are among the possible abuses committed by Babiński: dispatching his deputy to the scene with an expert who turned out to be the prosecutor's husband, making his expertise inadmissible; excluding public hearings of witnesses confirming the guilt of BOR officers; and requesting that witnesses be submitted to psychological examinations.³⁰⁵

The only piece of hard evidence regarding the BOR motorcade's lack of sound signals—a CD with CCTV recordings—was supposedly broken by an unidentified individual before it was delivered to the court by the Prosecutor's Office³⁰⁶. Another CD, provided by TVN, was also broken. The Prosecutor's Office in Nowy Sącz discontinued the investigation into the destruction of evidence.³⁰⁷ According to the justification for the decision, reached by *Gazeta Wyborcza*, the most likely mechanism that caused the damage to the discs was *"laying them on a small object and pressing on them."*³⁰⁸ In August 2023, Senator Krzysztof Brejza sent an intervention to the District Prosecutor's Office in Krakow, asking whether it had been established who had access to the disc.³⁰⁹

In July 2020, the District Court in Oświęcim conditionally discontinued the proceedings against Kościelnik. Judge Agnieszka Pawłowska found that Kościelnik was responsible for causing the accident but did not convict him. Despite not ruling on the fault of the BOR officers, as no charges had been filed against them, the Court notified the Prosecutor's Office of a possible violation on their part, finding the officers may have committed the offence of vehicular reckless

301 <https://oko.press/o-wypadku-premier-szydlo-wiadomo-twierdza-swiadkowie-ukrywa-prokuratura/>

302 <https://www.rp.pl/kraj/art9888201-sprawa-wypadku-szydlo-trafi-do-sadu>

303 https://www.panstwo-pis.pl/index.php/Rafał_Babiński

304 <https://www.rp.pl/kraj/art9888201-sprawa-wypadku-szydlo-trafi-do-sadu>

305 <https://tvn24.pl/polska/wypadek-beaty-szydlo-swiadkowie-zeznaja-czy-byla-sygnalizacja-dzwiekowa-ra92-7662-2284424>

306 <https://fakty.tvn24.pl/ogladaj-online,60/wypadek-beaty-szydlo-nie-da-sie-odzyskac-nagrania-z-kamer-monitoringu,970866.html>

307 <https://krakow.wyborcza.pl/krakow/7,44425,28764065,zniszczony-kluczowy-dowod-ws-wypadku-szydlo-senator-brejza.html>

308 <https://krakow.wyborcza.pl/krakow/7,44425,28764065,zniszczony-kluczowy-dowod-ws-wypadku-szydlo-senator-brejza.html>

309 Ibidem.

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endangerment. The prosecution refused to initiate the investigation.³¹⁰

In March 2021, an appeals trial in the case began in the Court of Appeal in Cracow. Two days before the first proceedings, Maciej Pragłowski, a judge promoted by Zbigniew Ziobro, was delegated to the jury to replace a judge being targeted with disciplinary proceedings for questioning the unlawful appointment of a judge by the politicised National Judiciary Council.³¹¹

In December 2021, one of the BOR officers who was involved in the accident came forward and admitted in an interview with *Gazeta Wyborcza* that, upon pressure from their superiors, both him and other officers filed false testimony when they claimed during the investigation that the motorcade rode with sound signals.³¹²

In January 2022, Kościelnik revealed that following the accident, he was put under surveillance. An expert IT examination revealed his and his attorney's phones were wiretapped; he also claimed to have been followed for three to four months.³¹³ Directly after the accident, witnesses reported that their phones started malfunctioning as soon as they approached the crash site, with photos they took disappearing from their phones, suggesting a military-grade signal jamming device and/or hacking being used to keep evidence from the accident from leaking. The prosecution refused to follow up on any reports of possibly illegal surveillance.³¹⁴

On 27 February 2023, the Regional Court of Krakow conditionally discontinued the case against Koscielnik, stressing that the government column did not have its sirens on. During his closing speech, the prosecutor alleged that the defendant was *"making a victim of himself"*.³¹⁵

The prosecution has still not addressed the possibility of a crime involving false testimony by BOR officers.

³¹⁰ <https://tvn24.pl/polska/oswiecim-wypadek-beaty-szydlo-sad-umorzyl-warunkowo-postepowanie-co-to-oznacza-dla-sebastiana-koscielnika-komentarz-mecenas-4632979>

³¹¹ <https://krakow.wyborcza.pl/krakow/7,44425,26842449,nagla-zmiana-w-skladzie-sedziowskim-ktory-rozstrzygnie-apelacje.html>

³¹² <https://wyborcza.pl/7,75398,27920606,oficer-bor-sumienie-kaze-mi-wyznac-prawde-o-wypadku-premier.html>

³¹³ <https://www.rp.pl/polityka/art19288101-wypadek-beaty-szydlo-kierowca-seicento-po-wypadku-bylem-podsluchiwany>

³¹⁴ <https://wiadomosci.gazeta.pl/wiadomosci/7,114884,28000956,sebastian-koscielnik-twierdzi-ze-po-wypadku-szydlo-byl-podsluchiwany.html>

³¹⁵ <https://wiadomosci.onet.pl/krakow/wypadek-beaty-szydlo-sebastian-koscielnik-uslyszal-wyrok/dz9kf91>

2. Cases of politically-motivated dereliction of duty

2. Cases of politically-motivated dereliction of duty

In stark contrast to the overzealous pursuance of cases with a political background aimed at people who became inconvenient for the authorities, the Public Prosecution Service is known for not initiating or discontinuing multiple investigations inconvenient for the current ruling elites.

Failed presidential election

Although PLN 70 million (EUR 15 million) were squandered by the Deputy Prime Minister Jacek Sasin³¹⁶ and other abuses by the government³¹⁷ were observed during the attempted 2020 mail-in presidential elections, the investigations were discontinued by the District Prosecutor's Office in Łódź-Bałuty and not initiated by the Regional Prosecutor's Office in Warsaw.

An investigation by Prosecutor Ewa Wrzosek from the District Prosecutor's Office in Warsaw-Mokotów, initiated in April 2020 based on Art. 165 kk (introduction of a public hazard), was quashed three hours later by her supervisor, Prosecutor Edyta Dudzińska, without even reading the case file.

Prosecutor Wrzosek—who planned to question i.a. Prime Minister Morawiecki, Deputy PM Sasin, Sejm speaker Elżbieta Witek and PiS Chairman Jarosław Kaczyński—was sent on a forced delegation 311 km away from home in January 2021 by the National Prosecutor Świączkowski, as punishment and is now facing several disciplinary charges.

The day after Prosecutor Wrzosek's investigation was discontinued by her superior, the Internal Affairs Department of the National Prosecutor's Office, on the order of the National Prosecutor, initiated criminal proceedings regarding an abuse of powers by Prosecutor Wrzosek in connection with issuing the decision to initiate the investigation (Art. 231 kk). Prosecutor Wrzosek's case constitutes yet another example of criminal prosecution for issuing a procedural decision on the basis of the law, but not in accordance with the whims of the people in power (similarly to Judge Tuleya).³¹⁸

In September 2020, the Voivodeship Administrative Court in Warsaw ruled that the Prime Minister's decision to instruct the Polish Post Office to prepare the mail-in election was invalid and grossly violated the law, including the Polish Constitution, the Electoral Code, the Code of Administrative Procedure, the Law on the Council of Ministers and the anti-COVID act.³¹⁹

In May 2021, the Supreme Audit Office (NIK) filed a notification with the prosecution against the

³¹⁶ <https://natemat.pl/334379,wybory-i-pakiety-sasina-za-70-mln-zl-prokuratura-odmawia-sledztwa>

³¹⁷ <https://wiadomosci.onet.pl/tylko-w-onecie/nieoficjalnie-nie-bedzie-sledztwa-po-doniesieniach-nik-w-sprawie-wyborow-kopertowych/5tj84f3>

³¹⁸ <https://www.rp.pl/prawnicy/art18931111-chca-poslac-prokurator-wrzosek-do-wiezienia-za-sledztwo-ws-wyborow-kopertowych>

³¹⁹ https://www.rp.pl/ustroj-i-kompetencje/art8821351-wyrok-wsa-bezprawne-wybory-kopertowe-10-maja-2020-roku#error=login_required&state=569cce05-f0a0-47a4-9274-86f39122197d

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Prime Minister and three ministers, citing serious violations of the law during the preparation of the 2020 election. The NIK claimed that between PLN 70 million and PLN 133 million (EUR 15 million and 29 million) of state budget funds could have been spent unlawfully.³²⁰

A parallel complaint was filed on 5 October 2020 with the Regional Prosecutor's Office in Warsaw by the Racist and Xenophobic Behaviour Monitoring Centre (OMZRiK, Ośrodek Monitorowania Zachowań Rasistowskich i Ksenofobicznych). The complaint alleged that *"in 2020, men named Mateusz Morawiecki and Jacek Sasin, as well as employees and members of the management board and supervisory board of the Polish Post Office cooperating with them, and members and supporters of the Law and Justice party cooperating with them, including the party chairman, Jarosław Kaczyński - committed a crime of abuse of power and commissioned unlawful preparations for the presidential elections and in this way caused damage of great magnitude in which the State Treasury and the Polish Post Office were injured. (Art. 231 CC and Art. 286 CC and 296 CC and others)"*.

On 23 November 2020, Prosecutor Maryla Potrzyszcz-Doraczyńska of the Regional Prosecutor's Office in Warsaw refused to initiate proceedings in case PO I Ds 249.2020. The prosecutor is included in the Państwo PiS³²¹ and LSO's databases³²² for *"expedited promotion and conducting political investigations"*.

A complaint against the refusal was filed on 9 December 2020 and upheld on 29 September 2021 by the Regional Court in Warsaw, overruling the prosecution's decision. The Court emphasised that the prosecution limited its examination of the case solely to obtaining printouts from the websites of state authorities. It ordered a thorough investigation of the case during the proceedings.

However, Prosecutor Maryla Potrzyszcz-Doroczynska in November 2022 again refused to open an investigation into the ballots on the grounds that *"the election on 10 May 2020 did not take place, so the mail-in ballots were not used"*.³²³

Refusal to reinstate Judge Igor Tuleya

The illegally suspended Judge Igor Tuleya in August 2022 filed a notification with the Prosecutor's Office on the suspicion that Piotr Schab and Przemysław Radzik, President and Vice-President of the Warsaw Court of Appeals nominated by Minister Zbigniew Ziobro, and President of the Warsaw District Court Joanna Przanowska-Tomaszek, exceeded their powers.³²⁴ Judge Tuleya was not allowed by them to return to active adjudication, despite a labour court decision permitting him to do so.

³²⁰ <https://www.euractiv.pl/section/demokracja/news/NIK-wybory-kopertowe-morawiecki-sasin-dworczyk-kaminski-prokuratura/>

³²¹ https://www.panstwo-pis.pl/index.php/Maryla_Potrzyszcz-Doraczy%C5%84ska

³²² <https://wyborcza.pl/7,75398,23049556,959-prokuratorow-w-delegacji-czyli-droga-armia-ziobry.html>

³²³ <https://www.facebook.com/osrodek.monitorowania/posts/509171127907527>

³²⁴ <https://wiadomosci.dziennik.pl/polityka/artykuly/8521438,igor-tuleya-zawiadomienie-prokuratura-piotr-schab-przemyslaw-radzik-joanna-przanowska-tomaszek.html>

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Prosecutor Jerzy Laufer, delegated to the domestic affairs division of the National Prosecutor's Office, refused to initiate an investigation into the matter. Laufer argued that Schab and Radzik, his deputy, had not broken the law in refusing to allow Judge Igor Tuleya to adjudicate. The National Prosecutor's Office claimed that they did not have to comply with three rulings of the CJEU under which the Supreme Court's Disciplinary Chamber was declared illegal and its work suspended, which would have also invalidated its suspension of judge Tuleya.

On 25 November, 2022, Judge Ewa Dubij of the Regional Court in Białystok overruled Prosecutor Jerzy Laufer's refusal to initiate an investigation against Radzik and Schab.³²⁵

Abuses during the procurement of COVID-19 equipment

In 2020, during the COVID pandemic, the Ministry of Health, headed by Minister Łukasz Szumowski, failed to procure ventilators (PLN 250 million contract, bought from an arms dealer and the vast majority never delivered) and masks (PLN 5 million contract, roughly EUR 1 million, bought from a skiing instructor and friend of the minister, turned out to be faulty) during possibly corrupt³²⁶ tenders.

An investigation into the purchases was initiated on the notification of the Ministry of Health itself in November 2020 due to the lack of delivery of most of the ventilators. Four other notifications were filed by opposition MPs, the last dating from April 2021.

The investigation into both purchases was discontinued by the Regional Prosecutor's Office in Warsaw in July 2021, having allegedly found no irregularities in the purchases, as *"at the time the contract was signed, there were no circumstances that undermined confidence in the bidder or indicated that he would not be able to fulfil the contract"*.

In its annual report on the use of the state budget, released in June 2021, the Supreme Audit Office found serious irregularities in the purchases.³²⁷

The prosecutor's office is still looking for Andrzej Izdebski, from whom the health ministry bought non-functioning respirators during the COVID-19 pandemic, with an APB, *"We want to avoid potential compromise and be sure that our wanted man has been cremated"*³²⁸ Andrzej Jeżyński, spokesman for the Regional Prosecutor's Office in Lublin, told Gazeta Wyborcza.

Officially, Izdebski has been dead since last year when his body was found in an apartment in the Albanian capital Tirana. However, the circumstances of his death are causing controversy, especially since no one has seen Izdebski's body. No one close to the allegedly deceased or consular services attended the identification of the body in Albania.

³²⁵ <https://oko.press/sad-prokuratura-ma-zajac-sie-schabem-i-radzikiem-za-blokowanie-powrotu-do-pracy-sedziego-tulei>

³²⁶ <https://businessinsider.com.pl/wiadomosci/prokuratura-umorzyla-sledztwo-w-sprawie-zakupu-respiratorow/hmyek7h>

³²⁷ <https://businessinsider.com.pl/wiadomosci/prokuratura-umorzyla-sledztwo-w-sprawie-zakupu-respiratorow/hmyek7h>

³²⁸ <https://wyborcza.pl/7,75398,29702938,prokuratura-nie-ma-100-proc-pewnosci-ze-handlarz-bronia.html>

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Immediately after the coffin arrived in the country on July 4, the cremation took place at a facility in Łódź. No one from the family was present at it, nor did any investigators appear at the facility. Not even the trader's neighbours knew anything about Izdebski's funeral, as there were no obituaries or hourglasses.³²⁹

Jarosław Kaczyński's "Twin Towers"

Srebrna, a company linked to and de facto controlled by the PiS Chairman Jarosław Kaczyński, failed to build two skyscrapers in Warsaw, nicknamed the "Twin Towers". A notification of the crime was filed in January 2019 by the Austrian businessman Gerald Birgfellner with the Regional Prosecutor's Office in Warsaw, who was tasked by Srebrna with carrying out the project.

Birgfellner, represented by attorneys Roman Giertych and Jacek Dubois, accused the PiS Chairman of failure to pay for an order submitted to the Austrian businessman, related to preparations for the construction. Birgfellner was questioned by the prosecution at least six times, in one instance having to reply to some 100 questions, many of which were repetitions. After nearly a year, in October 2019, Prosecutor Renata Śpiewak of the Regional Prosecutor's Office in Warsaw (included in the Państwo PiS database for an expedited promotion, receiving a cash bonus and conducting political investigations)³³⁰ refused to initiate an investigation. While handling the case, Prosecutor Śpiewak reportedly tried to pressure Birgfellner to retract his statements, which proved damaging to Kaczyński.

Birgfellner's attorneys filed a complaint with the Provincial Prosecutor's Office regarding the regional prosecution's tardiness, quoting the KPK, which gives the prosecution six weeks to either initiate an investigation or refuse to do so. The complaint was dismissed.

Three opposition MPs, Cezary Tomczyk, Marcin Kierwiński, and Krzysztof Brejza, who also filed a notification with the Provincial Prosecutor's Office, noted that the prosecution refused to initiate the investigation on 11 October, two days before the planned elections, thus ensuring that the news was not revealed until after the elections.³³¹

Orlen President Daniel Obajtek

The investigation into numerous abuses by Daniel Obajtek, Chairman of Poland's largest state-owned company: oil refiner PKN Orlen, and protégé of Jarosław Kaczyński, was discontinued by the National Prosecutor's Office. A criminal case concerning fraud, corruption, and false testimony while Obajtek served as Mayor of Pciem was handled by the Regional Prosecutor's Office in Ostrów Wielkopolski, then transferred to its counterpart in Piotrków Trybunalski.

In 2016, the parliamentary majority changed the law allowing the prosecution to exclude Obaj-

³²⁹ Ibidem.

³³⁰ https://www.panstwo-pis.pl/index.php/Renata_%C5%9Apiewak

³³¹ https://www.rmf24.pl/fakty/polska/news-prokuratura-odmawia-wszczecia-sledztwa-ws-budowy-wiez-ka-czyn,nld,3289171#crp_state=1

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tek's indictment from the case. In March 2017, the case was handed over to Prosecutor Tomasz Dudek (delegated to the National Prosecution Office from the Regional Prosecutor's Office in Cracow), who in June 2017, promptly discontinued the case against Obajtek and three other defendants, all of whom were set to testify against Obajtek.³³²

In September 2019, the Regional Public Prosecutor's Office in Łódź concluded that the reasoning for the discontinuation in 2017 was invalid, which under normal circumstances would lead to its resumption. Nonetheless, the National Prosecutor's Office to this day has not reinstated the case, refusing to comment on the reason.

Another investigation into Obajtek was initiated by the District Prosecutor's Office in Cracow

Śródmieście West in February 2013 upon a notification of the CBA. The investigation was based on a year-long investigation, which found, among others, that Obajtek provided false statements in four tax declarations, concealing a total of nearly PLN 1 million (EUR 200,000) in assets.

The prosecution discontinued the case, finding Obajtek's errors "*unintentional*", merely resulting from his "*carelessness and negligence*". The conclusions were based on the testimony of Obajtek and other suspects.

A series of press publications in 2021 revealed the sizable fortune belonging to Obajtek and his family, with transactions of a potentially corrupt nature. Accusations included PLN 800,000 (EUR 174,000) of state aid received for the renovation of Obajtek's mansion and a PLN 800,000 purchase of stock by Obajtek's mother, who worked as a tailor, with her latest salary being in the PLN 1200-1500 per month range (EUR 260-326). The public prosecution has not initiated any investigation into these matters.³³³

The Warsaw District Prosecutor's Office³³⁴ has summoned journalists from various media outlets who wrote about Daniel Obajtek's numerous properties for questioning. Investigators most likely want to know the sources of the information that appeared in the articles about the head of PKN Orlen.

In the subpoenas, the prosecution does not mention any legal basis. This is significant as, according to Polish law, a journalist can be released from secrecy through the process only in exceptional cases. However, even those cases may not involve any data identifying the journalists' informants.

MEPs hung from gallows

This case concerns an event organised by a few far-right nationalist groups (National Movement,

³³² https://wyborcza.pl/7,75398,26858443,lex-obajtek-tak-pis-zmienial-prawo-by-oczyszcic-prezesa-orklenu.html?_ga=2.55690472.238706212.1638267027-902046449.1637856744

³³³ <https://krakow.wyborcza.pl/krakow/7,44425,27158263,prokuratura-obajtkiem-sie-nie-zajmie-choc-sama-uznala-ze-dowody.html>

³³⁴ <https://wiadomosci.wp.pl/prokuratura-wzywa-dziennikarzy-ktorzy-pisali-o-interesach-obajtka-6839451472558656a>

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All-Poland Youth, National-Radical Camp) in Katowice in November 2017. Its participants symbolically hung the pictures of six Civic Platform Members of the European Parliament (Danuta Jazłowiecka, Danuta Huebner, Barbara Kudrycka, Julia Pitera, Róża Thun and Michał Boni) on gallows, depicting them as traitors receiving their punishment. The six MEPs' "crime" was voting in favour of the first European Parliament's resolution on the rule of law in Poland.³³⁵

The Regional Prosecutor's Office in Katowice initiated an investigation based on a notification by the six MEPs. The investigation lasted three years, despite the possession of a video recording from the event and all witnesses having been questioned.³³⁶ In January 2019, the unexplained delay in the case was formally criticised by then-Ombudsman Adam Bodnar, along with 29 other investigations into the discontinuations, delays, or failures to initiate proceeding regarding hate crimes by the public prosecution.³³⁷

The investigation was discontinued in December 2020 by Prosecutor Adam Piotrowski from the Katowice Office, who claimed the event was merely "*an enactment*", criticising the organisers' beliefs from "*a moral-ethical*" perspective, but viewing them as a lawful "*expression of criticism*".³³⁸ Such a decision was taken despite the court having already stated that the far-right group's actions could not be considered a simple instance of free speech.

In January 2021, the Provincial Prosecutor upheld the decision of the District Prosecutor.³³⁹ The victims filed a private subsidiary indictment in February 2021. In May 2021, the Katowice court asked the Supreme Court whether it had jurisdiction: the Court seized the opportunity to transfer the case from Katowice to the Regional Court in Cracow. The decision was based on the fact that one of the organisers of the event, Jakub K., worked as a judge's assistant in the court of appeal in Katowice, hence the Supreme Court wanted to defend his right to a fair trial. Previously, following his work in the Gliwice court, Jakub K. was delegated to the Justice Ministry under Zbigniew Ziobro³⁴⁰.

Abuses of power by the police against peaceful protesters

Dozens of abuses of power including brutality of police officers against peaceful protesters, often women, e.g., during protests against the 2020 abortion ban, have been ignored by the prosecution service. A mini report on 19 selected cases, attached to a joint appeal by seven Polish NGOs to stop police brutality against protesters, was published by the Open Dialogue Foundation on 13 July 2021.³⁴¹

³³⁵ <https://katowice.wyborcza.pl/katowice/7,35063,22699387,narodowcy-powiesili-na-szubienicach-euro-poslow-platformy-obywatelskiej.html>

³³⁶ <https://www.gazetaprawna.pl/wiadomosci/kraj/artykuly/8161027,sn-sprawa-wieszania-zdjec-europoslow-na-szubienicach.html>

³³⁷ <https://www.gazetaprawna.pl/wiadomosci/artykuly/1441770,bodnar-prokuratura-zdjecie-europoslow-po.html>

³³⁸ <https://dorzeczy.pl/kraj/118200/gw-nie-ma-kary-za-wieszanie-na-szubienicach-wizerunkow-europoslow.html>

³³⁹ <https://www.polsatnews.pl/wiadomosc/2021-01-20/zdjecia-europoslow-na-szubienicach-sledztwo-zostalo-umorzono/>

³⁴⁰ <https://tvn24.pl/katowice/sprawa-wieszania-zdjec-europoslow-na-szubienicach-przeniesiona-z-sadu-w-katowicach-do-krakowa-5123278>

³⁴¹ <https://en.odfoundation.eu/a/37347,appeal-against-police-violence-and-impunity-in-poland/>

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To name a few, 19-year old Mola Melaniuk had her arm broken by the police during a peaceful protest in Warsaw in December 2020,³⁴² Katarzyna Augustynek, known as “Grandma Kasia”, was subjected to physical and psychological abuse by the police in January 2021, forced to walk shoeless in the cold, not receiving her medication and food despite being diabetic,³⁴³ in April 2021, Dominika Dobosz had to experience an unreasonable use of force by the police which almost suffocated her,³⁴⁴ and Bartosz Kramek, in January 2021, had a policeman kneeling on his neck after being sprayed with tear gas.³⁴⁵

In all of the aforementioned cases the public prosecution refused to initiate an investigation or quickly discontinued one. The list above is not exhaustive and many more can be found in the mini report as well as in the press.

“Hate affair” in the Ministry of Justice

In August 2019, the existence and operations of a group within the Justice Ministry tasked with conducting black PR against judges who displayed criticism of the government, was revealed by the press. The group was headed by the Deputy Minister Łukasz Piebiak, who resigned after the scandal became public. An investigation was initiated in September 2019 by the Warsaw District Prosecution and soon transferred to the Provincial Prosecutor’s Office in Lublin (the same city that Łukasz Piebiak was from) to be headed by Ziobro-loyal Prosecutor Jerzy Ziarkiewicz.

The investigation was extended every 6 months and conducted in rem, not against any of the known culprits, with its object being the exceeding of powers by public officials through “*unlawful processing of personal data which constituted an action prejudicial to public and private interests*” (Art. 231 kk in relation to Art. 107 of the personal data protection act). The Lublin prosecution interrogated several of the victims, but it is not known if any of the culprits like Łukasz Piebiak or his close associate Judge Jakub Iwaniec were questioned.

In February 2021, the investigation was transferred again, this time to the District Prosecutor’s Office in Świdnica. The office is headed by Prosecutor Wiesław Dworczak, Head of the “Ad Vocem” association of prosecutors, formed by the top prosecutors from Ziobro’s first term (2005-2007) and now again loyal to him.³⁴⁶

A separate investigation was initiated by the prosecution in Cracow upon a notification by judge Waldemar Żurek, one of the victims. The prosecution stalled, forcing Żurek to file a complaint about the lengthiness of the proceedings. Then the Cracow prosecution moved the investigation to Kielce. According to Żurek, due to the slow speed of the investigation, it was too late for the

³⁴² <https://polskatimes.pl/19latka-ze-zlamana-reka-przez-policjanta-na-protescie-az-krzyczalam-z-bolu/ar/c1-15340480>

³⁴³ <https://www.onet.pl/styl-zycia/onetkobieta/niepokojace-nagrania-z-zatrzymania-babci-kasi-miala-byc-tez-zle-traktowana-na/wbz22ft,2b83378a>

³⁴⁴ <https://wyborcza.pl/7,162657,27355494,apel-przeciw-przemocy-i-bezkarnosci-policji-w-polsce.html>

³⁴⁵ *ibidem*

³⁴⁶ <https://wiadomosci.onet.pl/tylko-w-onecie/afery-hejterska-sledztwo-przeniesione-do-bliskiej-ziobrze-prokuratury/f368jpk>

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internet provider to recover the IP of the culprits. The prosecution then closed the investigation without questioning any of the potential culprits, despite them being mentioned by name in the notification. In March 2023 the Katowice-Wschód District Court overturned the decision of the Kielce prosecutor's office and ordered it to re-investigate the affair.³⁴⁷

PiS MEP Ryszard Czarnecki

PiS MEP Ryszard Czarnecki was involved in the misappropriation of EU funds for alleged travel expenses and other fabricated costs, including fictitious hires of assistants. Czarnecki was ordered by the European Parliament to return the sum.

An investigation into an adverse disposition of the EP's property (Art. 286 kk) was ordered by the European Anti-Fraud Office (OLAF) in May 2017, but the Regional Prosecutor's Office in Warsaw obstructed it by investigating in rem, refusing to initiate an investigation against Czarnecki. In the summer of 2019, an investigation was started by the Regional Prosecutor's Office in Zamość, handled by prosecutor Artur Szykuła.

As of November 2021, Czarnecki has only returned less than half of the sum, estimated at around EUR 100,000. The case is still pending.³⁴⁸

Regardless of - or due to - the inaction of the prosecution (despite the strong proof of fraud gathered by OLAF), prosecutor Szykuła has been promoted in 2021 to a managerial position, and as of 2023 serves as Head of the Investigative Department of the Zamość prosecution.³⁴⁹

Solidarna Polska party congress

Solidarna Polska (United Poland), and since 2023 Suwerenna Polska "*Sovereign Poland*", a junior member of the ruling United Right coalition and the party of Minister of Justice and Prosecutor General Zbigniew Ziobro, is involved in a case of misappropriation of EU funds. The party organised its congress in 2013 while claiming it was a conference on climate change in order to receive EUR 40,000 funding from the European Parliament (Ziobro was an MEP at that time). Furthermore, the external organiser of the event was a company belonging to Mariusz Badura, a friend of Zbigniew Ziobro's brother, Witold, which charged over EUR 15,000 for the service.

The investigation was discontinued in October 2019 by the Regional Prosecutor's Office in Warsaw, described by the press as "*Ziobro's strategic unit*". In 2020 journalists from Onet and Newsweek managed to receive a copy of the decision to discontinue the investigation, which - contrary to investigators from OLAF and the European Parliament - claims the event could indeed be consi-

³⁴⁷ <https://tvn24.pl/polska/afera-hejterska-katowicki-sad-nakazal-prokuraturze-ponowne-podjecie-postepowania-chodzi-o-sprawe-waldemara-zurka-6850976>

³⁴⁸ https://www.rmfm24.pl/polityka/news-ryszard-czarnecki-oddal-europarlamentowi-pieniadze-ale-to-ni,nld,5498147#crp_state=1

³⁴⁹ <https://oko.press/sledztwo-czarnecki-awans-prokuratora>

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dered a climate conference, as “*the impact of the climate pact on energy prices in Poland*” was mentioned within the discussions on national Polish politics.³⁵⁰

The case remains one of the most striking examples of the conflict of interest constituted by the current model of merging the prosecution service with the position of minister of justice. Independent prosecutors from LSO view it as one of the likely reasons for Poland’s non-accession to the European Public Prosecutor’s Office (EPPO)–for fear of subjecting control over the spending of EU funds to the European prosecution authorities, over which Ziobro has no influence.³⁵¹

Hater Dariusz Matecki

A notification of suspicion of a criminal offence was filed on 3 July 2019 by the Racist and Xenophobic Behaviour Monitoring Centre (OMZRIK) against Dariusz Matecki, a United Poland politician from Szczecin. Matecki ran and co-managed dozens of pages on Facebook which disseminated racist content. For example: authorities discovered a photo of a woman in a burka next to two garbage bags with the caption: “*find trash in the photo*”.

On 6 August 2019, an investigation was initiated by Prosecutor Maciej Młynarczyk of the District Prosecutor’s Office Warsaw - Praga Północ.

On 12 October 2019, a follow-up notification of xenophobic and racist content posted by Matecki was filed by OMZRIK. The investigations were merged by the prosecution on 17 October 2019.

Prosecutor Młynarczyk conducted a search at Matecki’s flat in Szczecin. It turned out that Matecki, as the right hand of Justice Minister Zbigniew Ziobro, also runs the Minister’s Facebook profile.

The investigation was then withdrawn from Prosecutor Młynarczyk and transferred to the Warsaw Praga Regional Prosecutor’s Office, which is directly subordinate to the Minister of Justice and Prosecutor General Zbigniew Ziobro.

The investigation was discontinued on 17 January 2020 by Prosecutor Piotr Bednarz of the Warsaw - Praga Regional Office. Despite OMZRIK’s efforts, it was not possible to establish the official reason for the discontinuation of the investigation.

Jarosław Kaczyński’s and Krystyna Pawłowicz’s insults

On 18 July 2017, PiS Chairman Jarosław Kaczyński, while giving a speech in the Sejm, embarked on a tirade against the opposition marked by highly-offensive language. Among others, he called the opposition “*treacherous*”, “*scum*”, and claimed they “*destroyed*” and “*murdered*” his late brother Lech, the former President of Poland.

³⁵⁰ <https://wiadomosci.onet.pl/tylko-w-onecie/zbigniew-ziobro-nadzorowal-sledztwo-ws-defraudacji-we-wlasnej-partii/e22mrrz>

³⁵¹ https://www.rmfm24.pl/fakty/polska/news-konwencja-partii-ziobry-miala-byc-kongresem-klimatycznym-sle,nld,4697400#crp_state=1

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The offences did not go unnoticed and the Regional Prosecutor's Office in Warsaw received requests from 11 individuals to prosecute Kaczyński under Art. 226 para. 1. kk (insulting a public official). Some of the requests also concerned PiS MP Krystyna Pawłowicz, who called the opposition "murderers" on 19 July 2017.³⁵²

However, in October 2017, the Warsaw Regional Prosecutor's Office refused to open an investigation, stating that both Kaczyński and Pawłowicz did not refer to specific persons, which is a requirement for this kind of crime to be committed (in striking contradiction to when such offences are committed against members of the ruling party and its allies). The unnamed prosecutor handling the case was previously employed in the District Prosecutor's Office in the Warsaw District, but temporarily delegated to the Regional Prosecutor's Office.³⁵³

Prosecutor Jerzy Ziarkiewicz

This case constitutes an offshoot of the case of attorney Roman Giertych (see Opposition attorney Roman Giertych case in part 1 of the report). Prosecutor Jerzy Ziarkiewicz, a close associate of the Minister of Justice Zbigniew Ziobro, usually tasked with handling political cases, including Giertych's, unlawfully tried to gain access to Giertych's phone.

The phone, being the property of an attorney, contained legally protected information of his clients. A Warsaw Court confirmed that the prosecutor's actions were illegal.

Giertych reported the crime, but the Prosecutor's Office refused to prosecute Ziarkiewicz. Giertych appealed against this decision. His complaint is to be dealt with by the Court in January 2022.³⁵⁴

In 2023, the media revealed that Prosecutor Ziarkiewicz was involved in the case of Lukasz Szymczyk, the brother of police commandant Jaroslaw Szymczyk,³⁵⁵ during whose rule the police became the loaded arm of the ruling party.

Łukasz Szymczyk is suspected of being a member of an organised crime group involved with the large-scale robbing of Poland on the vat carousel. The prosecutor in charge of the investigation filed a motion for the arrest of all the suspects. Subsequently, however, prosecutor Ziarkiewicz ordered in writing to withdraw the motion for arrest, but only for Łukasz Szymczyk.³⁵⁶ However, media publications and the storm they caused changed the situation. The Regional Prosecutor's Office in Lublin issued a decision to apply to Lukasz Sz. a property surety of almost PLN 1 million.³⁵⁷ However, the police chief's brother did not pay the amount and appealed the decision. Mean-

³⁵² <https://wiadomosci.dziennik.pl/polityka/artykuly/561564,prokuratura-odmowila-wszczecia-sledztwa-ws-wypowiedzi-kaczynskiego.html>

³⁵³ <https://wiadomosci.onet.pl/tylko-w-onecie/andrzej-stankiewicz-odmowa-sledztwa-ws-slow-jaroslaw-kaczynskiego/1e3sp1>

³⁵⁴ <https://poznan.wyborcza.pl/poznan/7,36001,27834764,30-porazek-prokuratury-w-sprawie-romana-giertycha-sad-bezlitosny.html>

³⁵⁵ <https://lublin.wyborcza.pl/lublin/7,48724,29390432,oto-prokurator-ktory-chroni-brata-komendanta-szymczyka.html>

³⁵⁶ https://lublin.wyborcza.pl/lublin/7,48724,29361090,prokuratur-od-ziobry-chroni-brata-komendanta-szymczyka-w-tle.html#S.embed_link-K.C-B.1-L.1.zw

³⁵⁷ <https://www.onet.pl/informacje/onetlublin/afeta-z-udzialem-brata-komendanta-policji-nowe-informacje/vxq58jj79cfc278>

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while, the arrests of both of other suspects, have been prolonged.³⁵⁸ On May 10, the court rejected a request by the defence, which disagreed with the application of a million-dollar surety.

Łukasz S. did not pay the full amount despite the expiration of the deadline, but only 400 thousand zlotys. Despite the failure to comply with the court's final decision, he was not taken into custody. The prosecutor's office established a mortgage on the commander's brother's property up to the missing amount. As a result, Łukasz S. again avoided arrest.³⁵⁹

Tolerating racism and hate speech

While seeking support further right on the political spectrum to eliminate competition in the form of the far-right party Konfederacja, the Law and Justice government has been increasingly lenient towards racism, xenophobia and hate speech. Numerous cases of hate speech, prevalent during the annual "*Independence March*" and other far-right events, are seldom investigated. The most notorious organisation known for inciting hate is the National-Radical Camp (Obóz Narodowo-Radykalny, ONR), a fascist (as per the Supreme Court ruling of 28 February 2021)³⁶⁰ organisation with roots in a Nazi-sympathising³⁶¹ pre-war organisation of the same name.

As an example, a subsidiary indictment was introduced against ONR members who, during a march through the streets of Białystok on 16 April 2016 to mark the 82nd anniversary of the establishment of the Radical-National Camp, shouted slogans like "*And on trees instead of leaves will hang Zionists!*"

The investigation conducted by the District Prosecutor's Office Warsaw and Żoliborz was discontinued for the first time on 26 June 2018. Rafał Gawel, the founder of the Racist and Xenophobic Behaviour Monitoring Centre (OMZRiK), as the injured party (with Jewish roots, against whom the chanted slogans were directed), appealed against the decision to discontinue the investigation. Consequently, on 28 August 2018, the Regional Court in Białystok revoked the decision on the discontinuance of the investigation and referred the case for further investigation. The Court emphasised that the actions of the Prosecutor's Office were ostensible: they were limited to questioning one witness, a person known in Białystok for running a portal spreading anti-Semitic content, including a textbook entitled "*How to recognise a Jew*". Obviously, he did not recognise any of the participants of the gathering, and had nothing to testify.

On 29 November 2019, a renewed decision was issued to discontinue the investigation, which was again appealed. On 3 November 2020 Prosecutor Dariusz Ziółkowski of the District Prosecutor's Office in Warsaw issued a decision to not accept the appeal and uphold the aforementioned

³⁵⁸ <https://www.onet.pl/informacje/onetlublin/afera-z-udzialem-brata-komendanta-policji-nowe-informacje/vxq58jj,79cfc278>

³⁵⁹ <https://lublin.wyborcza.pl/lublin/7,48724,29863684,zamiast-miliona-wplacil-400-tys-zl-prokuratura-laskawa-dla.html>

³⁶⁰ <https://notesfrompoland.com/2021/02/28/far-right-group-can-be-called-fascists-rules-polands-supreme-court/>

³⁶¹ <https://twitter.com/mycielski/status/986137612174884864?s=20>

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decision of 29 November 2019. As a result, Rafał Gawel acquired the right to file a subsidiary indictment, which he exercised.

The trial in case III K 131/20 was held before the Regional Court in Białystok. In the course of the trial, it came to light that the District Prosecutor's Office Warsaw - Żoliborz asked the Regional Prosecutor's Office in Białystok eight times for access to police recordings of the public assembly of 16 April 2016. The Białystok Prosecutor's Office has consistently refused to assist the investigation by delivering the video materials. They were released at the request of the court, at which time it turned out that all the discs with the recordings had been damaged. After a police laboratory reconstructed the recordings, it turned out that there were recordings of the entire gathering, from the beginning to the end. However, the ten minutes of the gathering, in which the slogans were chanted, were missing from the recordings.

On 30 June 2020, the Regional Court in Białystok sentenced two members of the ONR, Jarosław R. (1 year of imprisonment) and Krzysztof S. (6 months of imprisonment, suspended for 2 years).

The sentence is not legally binding, and the convicted have filed an appeal.

PiS's hateful electoral ad

In October 2018, PiS aired an electoral TV spot as part of their local elections campaign entitled *"Safe local government"*. The spot was designed to frighten viewers with the threat of refugees who would rape and murder residents of Polish cities. It is yet another example of the ruling party embracing hate speech for its political gain.

Rafał Gawel from the Racist and Xenophobic Behaviour Monitoring Centre filed a notice on the possibility of committing an offence under Art. 256 para. 1 and 2 kk (inciting hate in public, producing or dissemination of content inciting hate) and Art. 257 kk (racist behaviour in public).

In the decision of 27 August 2019, the prosecution discontinued the investigation in the case of *"public incitement to hatred on the grounds of national, ethnic, racial and religious differences by placing on the Internet the election spot of the Law and Justice party entitled 'Safe self-government' on 17 October 2018 in an undetermined place and on the production, storage and possession, for the purpose of distribution, of a recording of the election spot of the Law and Justice party entitled 'Safe self-government', containing content inciting hatred on the grounds of national, ethnic, racial and religious differences in an undetermined time, in October 2018 in an undetermined place"*.

An *"absence of the elements of a criminal act"* was indicated as the basis for the order. In view of the above, Rafał Gawel appealed against the decision to discontinue the investigation. Consequently, on 10 March 2020, the District Court for Warsaw - Mokotów repealed the decision on discontinuance of the investigation and transferred the case for further proceedings.

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Due to the prosecution—once again—finding no grounds to file an indictment, on 11 September 2020, another decision on discontinuance of investigation was issued, which was appealed against by Rafał Gawęł (within the statutory time limit) to the superior prosecutor. On 20 January 2021 the superior prosecutor, Paweł Śledziecki of the Warsaw - Praga Regional Prosecutor's Office, allowed the appeal filed by the auxiliary prosecutor (Rafał Gawęł) and revoked the decision of 11 September 2020. On 5 May 2021, Prosecutor Natalia Zajc-Nowakowska of the Regional Prosecutor's Office in Warsaw once again discontinued the investigation of the case in question, a decision which was again appealed by Rafał Gawęł. On 11 October 2021 the Public Prosecutor of the Regional Prosecutor's Office in Warsaw did not accept the complaint against the decision of 5 May 2021. On 15 October 2021, a notification was sent to Rafał Gawęł that the decision of 5 May 2021 was upheld.

Rafał Gawęł, as the injured party, filed a subsidiary bill of indictment against the creators of the spot and persons distributing it: Beata Kempa, Krystyna Pawłowicz, Joanna Lichocka, Beata Mazurek, Patryk Jaki, Piotr Gliński, Mariusz Błaszczak, Tomasz Poręba, and Paweł Szefernaker.

Activist Aleksandra

The prosecution has discontinued an investigation into a possible abuse of power by a policeman who broke the arm of Aleksandra, a 19 year-old activist.

On 9 December 2020, a joint climate demonstration by Women's Strike and Greenpeace was held at the Chancellery of the Prime Minister. The policemen surrounded the protesters and identified them. Aleksandra was taken by the police, who applied unnecessary force and broke her arm. She was not allowed to be seen by paramedics and no ambulance came; she was only released after a lawyer intervened.

Soon, a complaint was brought to the court about Aleksandra's unjustified detention, and the prosecutor's office initiated an investigation into the abuse of power by the officers (231 para. 1 kk) connected with causing damage to health (157 para. 1 kk), unlawful deprivation of liberty (189 para. 3 kk) and failure to provide assistance (161 para. 1 kk).

While the District Court of Warsaw-Śródmieście found that the behaviour of the police was deeply flawed and agreed with the complaints brought by Aleksandra, the Regional Prosecutor's Office, headed by Edyta Dudzińska, decided to close the case in November 2021, claiming that the police did not engage in any maltreatment.³⁶²

Activist Małgorzata Farynowska

Since PiS came to power, the authorities have been increasingly favourable to the far-right, including enabling and supporting the annual "*Independence March*" in Warsaw, which is organised by the nationalist and neo-fascist organisations All-Polish Youth and National-Radical Camp (see

³⁶² <https://oko.press/policjant-zlamal-jej-reke-podczas-demonstracji-prokuratura-umorzyla-sledztwo/>

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the Tolerating racism and hate speech case for more information). Analogous events are held every November 11th in several Polish cities. Because of the racist, xenophobic, and supremacist slogans chanted and displayed during these events, they are strongly opposed by pro-democratic movements, which organise blockades and counter-demonstrations.

One such counter-demonstration, held on 11 November 2018 in Wrocław, saw Małgorzata Farynowska, a middle-aged activist in the Obywatele RP (Citizens of the Republic of Poland) movement, struck in the face with a burning flare by participants of the march.

An investigation into the incident, concerning the *“exposure to direct danger to life or health”* (Art. 160 kk), was carried out by the Municipal Police in Wrocław under the supervision of the District Prosecutor’s Office of Wrocław-Stare Miasto. Despite the police obtaining multiple video recordings and questioning likely culprits, in June 2020 the investigation was discontinued by the police under the supervision of Warsaw-Stare Miasto district prosecutor Justyna Trzcińska, citing the failure to identify the culprit.

Theft of activist Zbigniew Komosa’s wreath

Zbigniew Komosa is known, among others, for laying a wreath every month in memory of the victims of the 2010 Smolensk air disaster. The wreath is usually then stolen by soldiers (see Activist Zbigniew Komosa case in part 1 of this report).

Komosa attempted to initiate an investigation into one of the many thefts, notifying the prosecution of the wreath being stolen by soldiers on 10 June 2018. Despite multiple witnesses and proof of the theft, in October 2019 Prosecutor Maj. Marcin Maksjan from the Military Affairs Department of the District Prosecutor’s Office for Warsaw-Ursynów refrained from filing a motion for punishment with the Garrison Court in Warsaw, *“having carried out an investigation into the theft by soldiers of the Representative Regiment of the Polish Army”*.

In a different case, Komosa filed a notice of a possible criminal offence with the public prosecutor’s office in Warsaw after press reports revealed serious irregularities during President Andrzej Duda’s flight from Zielona Góra in July 2020. The notice concerned *“endangering the life of the president by failing to supervise the flight”*, as it was conducted for four minutes without any air traffic control present. This dangerous situation constituted breaches of several laws, most notably Art. 174 para. 1 kk (creating an imminent risk of air traffic disaster) and Art. 231 para. 1 kk (failure of public officials to comply with their obligations).

The Warsaw Prosecutor’s Office transferred the case to the District Prosecutor’s Office in Zielona Góra, which opened an investigation after three months. The case was then transferred back to Warsaw and the regional prosecution and discontinued after only two months *“in the absence of the constituent elements of criminal acts”*, without revealing any steps having been taken.³⁶³

³⁶³ <https://www.facebook.com/wolnistrzelcy.demokracji.1/posts/750692812553170>

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Fascist and antisemitic slogans on Obywatele RP headquarters

Because of the Obywatele RP movement's firm stance against the far-right, the building facade of the movement's headquarters in Warsaw was defaced several times with fascist and antisemitic slogans and imagery.

After one such instance in 2019, the movement filed a notification with the District Prosecutor's Office in Warsaw-Żoliborz. Since the images included a Star of David hung from the gallows and a Celtic cross (the symbol of white supremacy), an investigation began into potential crimes under Art. 256 para. 1 kk (propagating fascism) in concurrence with Art. 257 kk (displaying racism in public).

The Warsaw-Żoliborz prosecution discontinued the investigation just months later without providing a reason.

"Women from the Bridge"

During one of the annual *"Independence Marches"* organised by the far-right, on 11 November 2017, a group of 14 women blocked their path on the Poniatowski Bridge in Warsaw with a home-made banner that read *"Stop Fascism"*. The activists peacefully protested the abuse of the Polish Independence Day to promote fascist and hateful slogans by nationalists. The women were brutally assaulted, both verbally and physically, by the nationalists.³⁶⁴

With ample evidence available from video recordings, Prosecutor Magdalena Kołodziej from the District Prosecutor's Office in Warsaw admitted that the women were beaten, spat on, and verbally assaulted (i.a. being called *"red whores"* and *"sluts"*). Yet the prosecutor discontinued the investigation in September 2018, arguing that the violence of the attackers *"was directed at less sensitive parts of the body, so it cannot be said that the intention of the attackers was to put the victims in danger"*. She concluded that the beating was not an act of aggression but merely a *"show of displeasure"* that the women were in the way of the march.

The victims appealed the decision, and the court ordered the prosecution to investigate. Prosecutor Kołodziej identified the culprits but only questioned them as witnesses. She then discontinued the investigation yet again in January 2020, splitting it into two potential crimes. In the case of the more severe beating of the women, she dropped the investigation and claimed that the perpetrators had not been identified. In the case of the lighter beating, which she called a *"violation of bodily organs"*, she argued that there was no public interest in prosecuting the perpetrators, whom she said the victims should prosecute themselves.³⁶⁵

³⁶⁴ <https://wiadomosci.onet.pl/tylko-w-onecie/uczestnicy-marszu-niepodleglosci-pobili-kobiety-prokuratura-nie-bedzie-ich-scigac/18s3plt>

³⁶⁵ <https://www.polityka.pl/tygodnikpolityka/spoleczenstwo/1937370,1,scigajcie-ich-same-prokuratura-umarza-sprawe-pobicia-kobiet-z-mostu.read>

2. Cases of politically-motivated dereliction of duty

March 2017 counter-memorial

During many of the memorial commemorations of the 2010 Smolensk air disaster, which are organised in Warsaw by officials from PiS (see Activist Zbigniew Komosa case in part 1 of this report), counter-protests are organised by pro-democracy movements and activists. Their goal is to show opposition to the appropriation of public space by one party and to the granting of Jarosław Kaczyński's rallies the official privileges of a "*religious ceremony*".

One of the "*counter-memorials*" was held by the Obywatele RP movement on 10 March 2017 in front of the Presidential Palace. PiS tried to delegitimise it via an amendment to the law on gatherings, prioritising state gatherings above other ones, but these legal changes were deemed incompatible with international treaties by experts and violated the constitutional right to gather (which was not defended by the Constitutional Tribunal due to its unconstitutionally-elected justices).³⁶⁶ The participants also had an official permit to conduct a gathering in front of the Presidential Palace, including on the street.³⁶⁷ Despite the protest's legality, the participants were forcefully removed by police officers. According to witnesses, the police separating the two events from each other permitted participants of the pro-government rally to approach the activists and assault them, cutting their jackets with razors. The organisers filed a complaint with the District Prosecutor's Office for Warsaw-Śródmieście North against the officers who had allegedly abused their powers (Art. 231 kk) and disrupted a legal gathering (Art. 52 para. 2 kk).

During the investigation, several of the activists were questioned. Nevertheless, that December, the investigation was discontinued by Prosecutor Dariusz Ziółkowski of the District Prosecutor's Office for Warsaw Żoliborz. To justify the cancellation, the prosecutor argued that "the abuse of powers or dereliction of duties alone does not constitute a crime (...) as acting against the public or private interest is also necessary". He did not determine such an act, as well as any abuse of powers whatsoever on the part of police officers.

In July 2018 the District Court in Warsaw reviewed a complaint by Wojciech Kinasiewicz of Obywatele RP on the prosecution's cancellation, in a closed-doors hearing, and dismissed it, failing to find an abuse by the police.³⁶⁸

Surveillance of opposition campaign chief Krzysztof Brejza

Krzysztof Brejza was the Head of Civic Platform's campaign during the 2019 parliamentary election, in which the Senate was decided by a handful of votes.

During the campaign, Polish state media published text messages from Brejza's phone.³⁶⁹ Brejza claimed that the messages were forged and finally, in December 2021, the Canadian organisation

³⁶⁶ <https://www.liberties.eu/pl/stories/howa-ustawa-o-zgromadzeniach-zgodna-z-konstytucja/11623>

³⁶⁷ <https://obywatelerp.org/sad-nie-dopatrzyl-sie-naduzycia-uprawnien-przez-policje/>

³⁶⁸ Ibid

³⁶⁹ <https://www.politico.eu/article/poland-opposition-politician-accuses-government-phone-hack-krzysztof-brejza/>

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Citizen Lab was able to confirm that his phone had been hacked 33 times with Pegasus, a notorious spyware used by various illiberal governments,³⁷⁰ including during the parliamentary and European elections.

Brejza was not the only victim of state-sponsored spying using Pegasus. As of 2023 it was confirmed that Pegasus has been used by Polish authorities against a group of prominent critics of the government and political opponents, incl. attorney Roman Giertych, prosecutor Ewa Wrzosek and Sopot mayor Jacek Karnowski.³⁷¹ The software was purchased with funds from the Justice Fund - a government fund created to support crime victims - and was supposed to be used to prevent terrorism and serious crimes.³⁷²

Brejza sent a notification concerning a possible crime regarding his phone being hacked to the Regional Prosecutor's Office in Bydgoszcz in September. It was first sent back to Gdańsk, and from there it went to the National Prosecutor's Office, which in turn forwarded it to Łódź.

Ultimately, the case ended up in the Regional Prosecutor's Office in Ostrów Wielkopolski, where the preparatory proceedings were initiated.

Brejza was finally interviewed in mid-December, after the 90-day limit within which such notifications should be either accepted or denied. The prosecutor's office has not officially rejected the case, but such delay indicates that it was not willing to handle it before media pressure increased (which only happened in December) or that it sought to let the case "expire".³⁷³

Not trusting the Polish prosecution service, Giertych notified the public prosecutor's office in Italy, where he resides.³⁷⁴

Surveillance of Prosecutor Ewa Wrzosek

Prosecutor Ewa Wrzosek of the Lex Super Omnia association, already a target of the authorities because of her fight to support rule of law, reported in late 2021 that her phone was hacked with Pegasus spyware. She learned this after receiving a notification from Apple, which was subsequently confirmed by Citizen Lab.³⁷⁵ Pegasus has indeed been used by Polish authorities against her, together with other prominent critics of the government and political opponents.

In late December 2021, Prosecutor Aneta Orzechowska, Head of the Economic Crime Department of the Warsaw Regional Prosecutor's Office, refused to open an investigation despite Wrzosek's notification, claiming that no crime could be proven or that there could be an "accidental hacking

³⁷⁰ <https://wyborcza.pl/7,75398,27944252,brejza-pegasus-podsluchy-giertych.html>

³⁷¹ <https://wyborcza.pl/7,75398,29521024,wyborcza-ujawnia-pegasus-szpiegowal-lidera-opozycyjnej.html>

³⁷² *ibidem*.

³⁷³ <https://wyborcza.pl/7,75398,27948904,brejza-zhakowany-pegasusem-prokuratura-ziobry-od-trzech-miesiecy.html>

³⁷⁴ <https://spidersweb.pl/2021/12/pegasus-w-polsce-roman-giertych-podsluch-szczegoly.html>

³⁷⁵ <https://www.euronews.com/2021/12/20/polish-opposition-duo-hacked-with-nso-spyware-digital-researchers-say>

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attack” or an “*unspecified operational control*” being carried out. Wrzosek appealed this decision in January 2022.³⁷⁶ In September 2022, Regional Court for Warsaw-Mokotów ordered the Prosecutor’s Office to launch an investigation into the suspected surveillance via Pegasus of Prosecutor Ewa Wrzosek.³⁷⁷ Also in September, Prosecutor Wrzosek, together with attorney Roman Giertych, testified before the Pegasus investigative committee of the European Parliament.³⁷⁸

Mobile Brigade of the Opposition

On the 10th day of each month, the Mobile Brigade of the Opposition (Lotna Brygada Opozycji) organises counter-manifestations to the so-called Smoleńsk mensiversary at the Saxon Garden near the Piłsudski Square in Warsaw. Even though the peaceful protests are legally registered, the politicized police force frequently beats and assaults the participants. One of the most notorious examples is of retiree Stanisława Skłodowska,³⁷⁹ who participated in one of the peaceful protests and who has been severely injured on the left leg by the police. The protesters shouted questions addressed to the Law and Justice Chairman Jarosław Kaczyński, such as: “*Where is the wreckage?*”, “*Did you order your brother to land?*”, “*Is your conscience nagging you?*”.

Since mid-2022, activists have been filing notices to the prosecutions regarding the crime of the police overstepping its authority by “*dispersing a reported gathering with violence*”.³⁸⁰ The politicized prosecutor’s office fails to follow standard procedures when initiating investigations³⁸¹ with the only exception of the mensiversary of 10 October 2022 when the prosecutor’s office opened an investigation only for the Prosecutor from the Warsaw Ochota District Prosecutor’s Office Magdalena Milewska to discontinue the proceedings in March 2023.

The Mobile Brigade of the Opposition pointed out Magdalena Milewska’s erroneous reasoning. Milewska claimed for example that “*police officers, among other things, pushed against the banner*”,³⁸² even though witnesses confirmed that “*However, the participants of the assembly did not have any banner at the gathering*”,³⁸³ which has also been confirmed by journalists. Milewska also argued that “*In order to voluntarily surrender the items, police officers used direct coercive measures by means of physical force in individual cases – without effect*”.³⁸⁴

Moreover, the Prosecutor’s Office banned activists from approaching the Piłsudski Square in Warsaw beyond 400 meters. The ban applies for religious ceremonies held on the Square, which thus covers the anniversary of the Smolensk Air Disaster.³⁸⁵

³⁷⁶ <https://www.rmfm24.pl/fakty/polska/news-prokuratura-po-prostu-nie-chce-tego-postepowania-wrzosek-o-s,nld,5751130>

³⁷⁷ <https://wyborcza.pl/7,75398,29180581,pegasus-prokuratura-zada-telefonu-ewy-wrzosek-ale-nie-sprawdza.html>

³⁷⁸ <https://www.gazetaprawna.pl/wiadomosci/kraj/artykuly/8537928,ewa-wrzosek-pegasus-komisja-sledcza-parlament-europejski.html>

³⁷⁹ <https://twitter.com/Bacon227/status/1635679143898562560>

³⁸⁰ <https://oko.press/policja-przewracala-aktywistow-dusila-ich-wyrywala-sila-megafony-prokuratura-umorzyla-sprawie>

³⁸¹ <https://oko.press/policja-przewracala-aktywistow-dusila-ich-wyrywala-sila-megafony-prokuratura-umorzyla-sprawie>

³⁸² <https://oko.press/policja-przewracala-aktywistow-dusila-ich-wyrywala-sila-megafony-prokuratura-umorzyla-sprawie>

³⁸³ <https://oko.press/policja-przewracala-aktywistow-dusila-ich-wyrywala-sila-megafony-prokuratura-umorzyla-sprawie>

³⁸⁴ <https://oko.press/policja-przewracala-aktywistow-dusila-ich-wyrywala-sila-megafony-prokuratura-umorzyla-sprawie>

³⁸⁵ <https://www.rp.pl/prawo-karne/art19011271-aktywisci-z-zakazem-od-prokuratury-nie-moga-zblizac-sie-do-pl-pilsudskiego>

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Gdańsk Refinery sale

The Gdańsk Refinery (Rafineria Gdańska) had been sold to Saudi Arabia's Saudi Aramco and some 400 Lotos' gas stations to Hungary's MOL. The deal had completely ignored Saudi Aramco's and MOL's ties to the Russian oil industry, which is fundamental for the Russian economy.

The notification of a potential crime was filed by senators of the combined Senate committees on 16 December 2022. At the time, Gazeta Wyborcza, TVN24, and Business Insider had revealed information about irregularities in Orlen selling shares in the Gdańsk Refinery (part of the former Lotos, acquired by Orlen) to Saudi Aramco. Based on this information, the senators wanted to hold Prime Minister Mateusz Morawiecki, Minister of Public Assets Jacek Sasin, Chairman of the Office of Competition and Consumer Protection Tomasz Chróstny, Orlen CEO Daniel Obajtek, and Lotos CEO Zofia Paryła criminally liable for exceeding their authority in the sale of the Gdańsk Refinery.

When asked for information regarding the status of the notification, National Prosecutor Dariusz Barski only said that the senators' request had been forwarded to the Płock District Prosecutor's Office. A spokeswoman for the Płock Prosecutor's Office, Iwona Śmigielńska-Kowalska, informed the media that *"no investigations have been launched at this stage"*³⁸⁶ even though three months had passed after the notification.

MEP Beata Kempa's son-in-law

Beata Kempa's son-in-law faced misdemeanor and felony penalties for operating illegal landfills. Arkadiusz B. owns a company that stores and disposes of waste. For many years, he had illegally stored waste on the Gagarina and Strachowicka streets, creating a threat of fire to the nearby airport.

In May 2018, the Wrocław magistrate filed a notice to the Prosecutor's Office on the suspicion of a crime, including the introduction of an imminent danger of fire. On 31 December 2019, the Wrocław-Fabryczna District Prosecutor's Office discontinued the case, ruling that a fire at the landfill would not be violent and therefore did not fill the definition of a fire.

The rest of the cases were redirected to the police as misdemeanors. The police failed to point out that the Prosecutor's Office had ordered to consider the offense (the expansion of a structure in a manner conducive to the existence of birds near the airport) as a misdemeanor. The police then wrote the misdemeanor penalty application incorrectly, but by the time corrections were made, an inordinate amount of time had passed, and misdemeanors are time-barred after just one year. However, the media also revealed that the statute of limitations was not reached at all on the date recorded by the police. However, this case for a misdemeanor cannot be reopened, and in turn, after all this time, the statute of limitations on the case finally actually occurred.³⁸⁷

³⁸⁶ <https://wyborcza.pl/7,75398,29528349,sledztwo-bez-sledztwa-w-sprawie-sprzedazy-lotosu-prokuratura.html#S.PW-K.C-B.1-L.1.duzy>

³⁸⁷ <https://wroclaw.wyborcza.pl/wroclaw/7,35771,29520792,wyborcza-ujawnia-jak-organa-sciqania-zapewnily-bezkarnosc.html>

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For context, it should be added that the wedding of Arkadiusz B. to the daughter of Beata Kempa, a Solidarity Poland MEP, was attended in person by President Andrzej Duda and his wife and Justice Minister Zbigniew Ziobro. The wedding was officiated by Radio Maryja director Tadeusz Rydzyk, the gray eminence of PiS governments.

Trench on the plot of Marta Kaczyńska's husband

In 2022, fishermen reported that the shoreline of Lake Szymon in the Warmian–Masurian Voivodeship near the town of Giżycko had been damaged due to an illegal canal having been built. As a result, the Giżycko Water Catchment Board has notified the Giżycko District Police of a potential crime.

It turned out that a trench was created without a permit and in violation of the Water Law on a parcel owned by Jana Investment, which is managed by Piotr Zieliński, the husband of Marta Kaczyńska, niece of the PiS Chairman Jarosław Kaczyński. As a result, this plot has been hailed as *"Marta Kaczyńska's Masurian Paradise"* because the couple is said to travel there by helicopter.³⁸⁸

The Giżycko District Prosecutor's Office discontinued the case in April 2023. Prosecutor Daniel Brodowski, spokesman for the Olsztyn District Prosecutor's Office, assessed that *"there was no threat to the lake ecosystem"*. Although the decision is not final, the Regional Water Board announced that it will not appeal.³⁸⁹

³⁸⁸ <https://www.onet.pl/informacje/onetwiadomosci/stworzyl-mazurski-raj-marty-kaczynskiej-prokuratura-odpuszcza-przekop/h8wtzbl,79cfc278>

³⁸⁹ <https://tvn24.pl/pomorze/warminsko-mazurskie-nielegalny-kanal-z-przystania-prowadzi-do-domu-meza-marty-kaczynskiej-jest-decyzja-prokuratury-6898152>

3. Systemic issues eroding the public prosecution

3. Systemic issues eroding the criminal justice system

Regardless of the validity of the allegations brought by the prosecution, or lack thereof, the prevalent, systemic, and deeply concerning issues undermining the criminal justice system, are:

- **The complete lack of independence of the prosecution**, symbolised by the combination of the functions of Minister of Justice and Prosecutor General into the singular role of one of the leaders of the ruling coalition;
- **The selective and unjust nature of the investigations, motivated by political and propaganda goals of the ruling party**, as well as personal animosities of its leading representatives. Even if some charges from the list above seem to possess some grounds, they remain the result of political motivation and, in fact, constitute examples of the so-called selective prosecution/justice. This offends the elementary sense of justice in a situation when (often) much more serious cases infringing the interests of the ruling camp and its individual representatives are not taken up, as listed above;
- **Propaganda attacks on persons** against whom activities of investigative organs and special services are conducted (in the form of public broadcaster TVP programmes and other media centres supporting the government, with the participation of the Prosecutor General and his subordinates as well as political management of special services);
- **The continued undermining of the right of defence and the principle of presumption of innocence** through unprecedented extension of the prosecution's powers at the expense of the rights of suspects or accused persons, and even courts, as well as via political and media (propaganda) attacks in which suspects are often presented as though they are guilty (see above);
- **The misuse of special services at the behest of the prosecution**, especially the Central Anticorruption Bureau (CBA) and Internal Security Agency (ABW), used in cases that objectively have nothing to do with the interest of the State Treasury or the security of the state, respectively, and concerning purely private entities - including small companies and non-governmental organisations - in cases of relatively little significance, even in view of the scale of the alleged offences. The use of these services often serves form over function, resulting in the authority of these services being lost, which instead of combatting actual threats focus on imaginary and exaggerated ones, are arbitrarily decided at the political level;
- **Abusing the status of suspects in cases**, without charges filed for years at a time, to defame them and paint them as suspects in the media;

3. Systemic issues eroding the public prosecution

- **Withdrawal of indictments** in cases seen as damaging to the ruling coalition, as in the case of PKN Orlen President Daniel Obajtek and the recurring 'disappearances' of numerous cases related to racist, xenophobic and hateful actions of the far-right. The withdrawal of indictments by the prosecution from the court, without the possibility to appeal, was introduced by amendments to the Code of Criminal Procedure from PiS MPs (amendments from June 10th and November 30th 2016 on changes to the Code of Criminal Procedure and other laws);
- **Ideological prosecution**, with leniency towards crimes of the far-right and prejudice against pro-democratic movements, in line with the ideology of the ruling coalition, as evidenced by the Monitoring Centre on Racist and Xenophobic Behaviour (see case Tolerating racism and hate speech)
- **Lack of qualifications among prosecutors and judges working on economic & financial crime cases**, as evidenced by cases of entrepreneurs and executives, where prosecutors and judges confused basic facts and lacked the knowledge required to investigate and understand them. This results in a conservative approach by the courts, harmful to the suspects' rights, where courts prefer to apply pre-trial detention to be 'on the safe side'.
- **The violation of the right to a fair trial**: significant undermining of the independence of the judiciary through systematic removal and destruction of mechanisms that guarantee it, and personal harassment of disobedient judges, as well as consecutive appointments of judges loyal to the Minister of Justice/political power; this leads to a loss of faith in the independence of court rulings, i.e. in the very ability and willingness of the court to hear cases objectively;
- **Illusory judicial review of pre-trial detention decisions.**

According to reports, Poland has one of the highest rates of accepting the prosecution's requests for pre-trial detention in Europe (over 90% since 2013, around 95% in case of extensions),^{390,391} with 92% of cases where pre-trial detention was used until the final conviction.³⁹² The same reports show an increase of over 83% in the number of persons held in pre-trial detention between 2015 and 2021, with the number of prison convictions dropping annually, leading to an increase in persons being unlawfully deprived of their freedom.³⁹³ The Polish Ombudsman notes the prosecution increasingly seeking pre-trial detention in cases where it wouldn't have previously done so, following i.a. guidelines of the National Prosecutor.³⁹⁴

³⁹⁰ <https://courtwatch.pl/wp-content/uploads/2020/12/Tymczasowe-aresztowania-w-Polsce-Raport-pog%C5%82%C4%99biony.pdf>

³⁹¹ https://www.hfhr.pl/wp-content/uploads/2019/07/HFPC-Tymczasowe-aresztowanie-nietymczasowy-problem-web_01.pdf

³⁹² <https://www.prawo.pl/prawnicy-sady/tymczasowe-aresztowania-w-polsce-niebezpieczny-wzrost,510515.html>

³⁹³ ibidem

³⁹⁴ <https://bip.brpo.gov.pl/pl/content/panel/prezentacja-bada%C5%84-o-stosowaniu-tymczasowych-aresztowa%C5%84-w-polsce>

3. Systemic issues eroding the public prosecution

A request for detention from the prosecution could therefore be seen as a near-guarantee of incarceration. Considering the increasing powers and politicisation of the prosecution service, the ruling political elite is able to use pre-trial detention as a de facto punitive measure instead of a preventive one, as well as a means of pressure on suspects and defendants (so-called extractive custody),³⁹⁵ with no actual control of the court (see e.g. cases of Sławomir Nowak, Piotr Osiecki or Bartosz Kramek).

As was noted by a renowned criminal attorney Radosław Baszuk, *"The problem is that no court in Poland, with perhaps a few exceptions, examines the case file during an arrest hearing. (...) The court only examines the case file when a bill of indictment is filed. But then it is a completely different court from the one that made the arrest decision"*.³⁹⁶ This situation results from a lack of time to analyse often many volumes of case files, an over-reliance on the prosecution and risk minimisation on the part of the court, for which the use of detention is usually the safer choice.³⁹⁷ In the face of increasing control over the judiciary (not least through the new disciplinary system for judges),³⁹⁸ this may be compounded by judges' fear of possible reprisals from the political authorities. The judges themselves see this practice as a pathology, with Themis judge Maciej Czajka illustrating the philosophy as *"Let's not interfere with the prosecutor prosecuting criminals as he sees fit"*.³⁹⁹

- **A deepening lack of faith in the certainty of court rulings** (from arrest and preventive measures to verdicts on merits), due to unconstitutional judicial appointments contrary to the Constitution and EU law. It will be possible to challenge them in the future (rightly so) as this is provided for by the draft laws currently being drawn up by experts and the opposition, aimed at sorting out the situation of the judiciary with a view to depoliticising it and revoking the appointment of unlawful judges, appointed with the participation of the so-called neo-National Council of the Judiciary (neo-KRS).

395 pol. "areszt wydobywczy"

396 <https://wiadomosci.onet.pl/tylko-w-onecie/bartosz-kramek-o-pobycie-w-areszcie-w-tej-sprawie-wszystko-jest-polityczne/kerpq3s>

397 <https://wyborcza.pl/7,75968,27344271,kramek-o-represjach-wiem-ze-pis-nam-nie-odpusci-jak-dlugo.html>

398 <https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-07/cp210130en.pdf>

399 <https://courtwatch.pl/en/>

4. Recommendations

4. Recommendations

As Piotr Buras, director of the Warsaw office of the European Council for Foreign Relations, pointed out in the Rzeczpospolita Daily,⁴⁰⁰ the politicisation of the prosecution in Poland is based on the very far-reaching powers of the Prosecutor General:

"In Poland, the most important role in its development [of a state system based on discretion and the logic of particularism, privileging those in power and using resources for their needs and those of their associated circles - ed.] is the complete politicisation of the prosecutor's office and the removal of systemic guarantees of judicial independence. Since 2016, the prosecutor's office has been fully controlled by the Minister of Justice, who has a power over it unparalleled in any other European country: he can freely appoint and dismiss prosecutors, decide on their promotions and rewards, arbitrarily transfer cases from one prosecutor's office to another, personally influence the course of investigations and change the prosecutors leading them. It is no wonder that the prosecution does not intervene when the interests of the ruling party are threatened (as in the case of the Srebrna affair), or acts as the minister dictates, ignoring the decisions of the courts (as in the case of the accusations against Roman Giertych)".

This issue is well summarised in the conclusions of the Council of Europe's Venice Commission's Opinion 892/2017.⁴⁰¹

"Taken together, the merger of the office of the Minister of Justice and that of the Public Prosecutor General, the increased powers of the Public Prosecutor General vis-à-vis the prosecution system, the increased powers of the Minister of Justice in respect of the judiciary (Act on the Organisation of Common Courts) and the weak position of checks to these powers (National Council of Public Prosecutors) result in the accumulation of too many powers for one person. This has direct negative consequences for the independence of the prosecutorial system from the political sphere, but also for the independence of the judiciary and hence the separation of powers and the rule of law in Poland".

A scathing opinion of the current status of the public prosecution service was also included in a recent court judgement from mid-December 2021 by Judge Sławomir Jęksa of the Regional Court in Poznań.⁴⁰² In the verdict, the judge rejected testimonies of police officers, arguing that both the police and prosecution service in Poland serve to protect the interest of the ruling party. He furthermore stated that *"the prosecution service is politically steered"* and *"the sphere of cases uncomfortable to the authorities is practically outside the realm of law"*. He added that independent prosecutors face repression from the Minister of Justice, Zbigniew Ziobro, who is also the Prosecutor General.

⁴⁰⁰ <https://www.rp.pl/Rzecz-o-polityce/307069923-Piotr-Buras-Jaka-Europe-odbudujam-nam-unijne-fundusze.html>

⁴⁰¹ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)028-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)028-e)

⁴⁰² <https://poznan.wyborcza.pl/poznan/7,36001,27991074,sad-recenzuje-rzady-pis-upolityczniona-prokuratura-kryje-bezprawne.html>

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The merger of the roles of Prosecutor General and Minister of Justice is no doubt the leading factor enabling the current abuses. To remedy the situation these posts must be separated, and this division—together with the role of the public prosecution—must be enshrined in the Constitution, providing a constitutional guarantee of the prosecution's independence. The Lex Super Omnia prosecutors' association has therefore drafted a detailed, 18-point list of recommendations, published in May 2020,⁴⁰³ which we summarise below:

1. Constitutionalisation of the Public Prosecutor's Office, guaranteeing its independence and separation from the Minister of Justice.
2. Redefinition of the investigative role of the Prosecutor's Office: complete abolition of oversight of investigations and limiting itself to an accusatory role only if the case meets the conditions for an appropriate referral to court. The prosecution would screen cases already investigated by the appropriate law enforcement agency and refer them to court when appropriate, taking this burden off the service and simultaneously forcing police and other agencies to increase the professional level of investigative staff.
3. A six-year term of an independent, stand-alone PG; with no possibility of reappointment; with a guarantee of retirement or transition to Supreme Court adjudication if they meet the criteria.
4. PG elected in a general election from among four candidates nominated by the Sejm, the Senate, the NCJ, and the NCP.
5. Right of the PG to legislative initiative in the sphere of criminal law.
6. The public prosecutor's office provided with a separate budget (currently it is tied to the Justice Ministry's).
7. Tenure of office for heads and deputy heads of organisational units of the Public Prosecutor's Office (tenure equal to that of the PG).
8. A National Council of the Prosecutor's Office with the participation of common court judges and judges of the Criminal Chamber of the Supreme Court.
9. The Rules of Procedure of the Prosecutor's Office established by an ordinance of the Council of Ministers rather than the Minister of Justice.
10. Introducing the institution of an independent investigating prosecutor, with added guarantees of independence, to investigate cases of the highest importance.

⁴⁰³ <https://lexso.org.pl/2020/05/26/refleksje-nad-przyszloscia-prokuratury/>

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11. Potentially reorganising the Public Prosecutor's Office into one of four variants:
 - leave the current four-tier structure;
 - inclusion of district prosecution offices in the structure of regional prosecution offices as their local divisions (three tiers);
 - abolition of provincial prosecutor's offices, while regional and district prosecutor's offices remain (three tiers); or
 - abolition of provincial prosecutor's offices, with merger of district prosecutor's offices into regional ones (two tiers).
12. Leaving a separate organised crime division or, as a last resort, transferring organised crime divisions to provincial prosecutor's offices, or to regional prosecutor's offices in case of abolition of provincial prosecutor's offices, with a limitation of the organised crime department in the Prosecutor General's Office: the necessity to maintain uniform management—either a department or a provincial prosecutor. A substantial limitation of the personnel of the department and the range of cases (no more than about 5 prosecutors in the department, conducting max 2-3 investigations).
13. Restriction of the right to stand for election for retired prosecutors and a ban on candidacy in active service.
14. The possibility of delegation of prosecutors to another unit only with their consent.
15. Prohibition on removing cases from a prosecutor, subject to statutory exceptions.
16. A complete restructuring of disciplinary jurisdiction, including its integration into disciplinary courts at appellate courts (mixed panels - two prosecutors plus a judge).
17. The abolition of official supervision in favour of spot checks in cases provided for by law.
18. Restoring horizontal promotion. Extending the instruments of positive motivation for prosecutors (including the retention of financial awards with the introduction of commission rules for awarding them).

Until the rule of law in Poland is restored and it is possible to introduce those systemic changes, it is vital that the scale of the abuse of the public prosecutor's office for political reasons is closely monitored and limited. To do so, international institutions (especially the EU, the Council of Europe/PACE and OSCE), organisations, and governments of democratic states must keep a

4. Recommendations

close eye on the cases listed in this report and others as they emerge, focusing on the targeted individuals, providing vocal support to them and questioning Polish authorities.

Similarly, the names of prosecutors who enjoyed expedited promotions or bonuses and/or in any way abused their powers should be gathered for future lustration (and possible criminal liability), just as the prosecutors persecuted for their independence should receive international support and ultimately be reinstated to their posts. The LSO prosecutor's association proposes two ways of ensuring accountability: 1) a mass verification through signing declarations of not having broken the prosecutor's oath, which would permit the prosecutors to continue their duties and only expel them in case of a false statement, or 2) individual verification of prosecutors known to have abused their posts. The downside of the second option is a likely paralysis of the prosecutor's service and a potentially lengthy verification process.

In ODF's opinion, most of the prosecutors listed in the report, who carried out the political orders of their superiors, should be charged either under Art 231 kk (abuse of power) or - in some cases - Art 232 to 247 (crime against the justice system). Our sister project, the Halls of Shame (*Listy Hańby*, www.ListyHanby.pl) serves to list and document the individual abusers and facilitate any succeeding government in bringing them to justice.

Foreign governments, especially those of EU Member States, must pay special attention to any mutual legal assistance requests coming from Poland and other EU states found in breach of the fundamental rule of law principles, ensuring before they are executed that there is no political dimension to them. To address the challenge systemically those states, and the EU as a whole, should revise their policies and procedures concerning mechanisms such as the European Investigation Order, European Arrest Warrant, Schengen Information System alerts, INTERPOL notices, or extradition requests.

Most importantly, the principle of mutual trust, *"based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the Union is founded, as stated in Article 2 TEU"* (ECJ Opinion 2/13, pt. 168),⁴⁰⁴ must be put into question when states like Poland or Hungary cease sharing those values. As a result, no legal requests coming from those states should be processed automatically with the assumption of lawfulness.

A comprehensive set of five laws aimed at restoring the rule of law and rectifying the current disastrous situation in the Polish justice system has been proposed by pro-democracy NGOs and legal circles, to be implemented following the fall of the PiS-led government. Within it, the Lex Super Omnia prosecutors' association drafted a Law on the System of Public Prosecutors, presented in September 2023. The solutions and proposals it contains are a compromise between the

⁴⁰⁴ <https://curia.europa.eu/juris/document/document.jsf?jsessionid=15F31A14D2559109594FE20D7A07ECCC?text=&docid=160882&pageIndex=0&doclang=EN&mode=-lst&-dir=&occ=first&part=1&cid=761002>

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expectations of citizens, the prosecution community and international standards for the functioning and organisation of an apolitical prosecution service.⁴⁰⁵

⁴⁰⁵ <https://lexso.org.pl/2023/09/28/stowarzyszenie-prokuratorow-lex-super-omnia-przedstawia-projekt-prawa-o-ustroju-prokuratury/>

Annex I: Changes in the legal framework expanding the powers of the Prosecutor-General

Below is a list of changes to Polish law which increased the control of the Prosecutor General over the course of preparatory and judicial proceedings, including the possibility of influencing the use of pre-trial detention by courts.

1) Under the Law on the Public Prosecutor's Office of 28 January 2016 (which entered into force on March 4, 2016) the functions of Minister of Justice and Prosecutor General were merged, returning to the model that originated in the communist era. The personal union of the positions of Minister of Justice and Prosecutor General introduced by this law was accompanied by a significant reduction in the requirements to be met by a candidate for the post of Prosecutor General, which made it possible to cast an active politician in this dual role.

The deep embedding of the Attorney General's position in the political mainstream has been accompanied at the same time by a significant increase in his powers. In particular, the Prosecutor General is now able to request operational and exploratory activities in a specific case, which are directly related to the pending pre-trial proceedings (all this refers to surveillance activities such as controlling the content of correspondence, or the use of telephone tapping), as well as to familiarise himself with materials collected in the course of such activities. Moreover, since the Act on the Public Prosecutor's Office does not provide for any admissibility requirements, there are no limitations for undertaking such actions by the Prosecutor General, which gives rise to the risk of abuse.

The Prosecutor General also has the right to give instructions, including as to the content of specific procedural actions, in each individual case (Article 7 para. 2 and para. 3 of the Act), the right to overrule or change the decision of a subordinate prosecutor (Article 8 of the Act), as well as the right to take over cases conducted by subordinate prosecutors (Article 9 para. 2 of the Act), which makes him not only a supervisor of the prosecution service, but also a "*super prosecutor*" equipped with typically investigative powers.

Such powers of the current Minister of Justice - Prosecutor General Zbigniew Ziobro, who is also a member of the Polish Parliament, directly contravene Article 103(2) of the Polish Constitution, which provides that a prosecutor may not simultaneously hold a parliamentary seat.

The 2016 Law on the Public Prosecutor's Office also strengthened the powers of the Prosecutor General in terms of personnel policy, at the expense of the heads of the other prosecution levels. Namely, the Prosecutor General, on a proposal of the National Prosecutor, appoints and dismisses the heads of provincial, regional and district prosecutor's offices (Article 15 para. 1 of the Law on

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Prosecution), which is tantamount to abandoning the tenure requirement for a post in the prosecution service, allowing the Prosecutor General to make any changes to positions

in the prosecution service, thereby exposing prosecutors in managerial positions to the risk of being easily dismissed. Furthermore, although in principle under the new Act candidates for vacant posts in the district prosecutor's office are appointed after a competition, Article 80 of the new Prosecution Law gives the Prosecutor General the right, "*in particularly justified cases*", to appoint a candidate to that post without a competition.

The additional Act "*Implementing provisions of the Act on the Public Prosecutor's Office*" introduced the reorganisation of the public prosecutor's office, but in reality, apart from the abolition of military prosecutor's offices, the structure of the public prosecutor's office remained almost unchanged, except for changes in naming. The apparent reorganisation of the prosecution services carried out in this way was treated as a pretext for the re-appointment of prosecutors to individual units, the replacement of many heads of prosecutor's offices, and at the same time a justification for the transfer of "*inconvenient*" prosecutors to other official positions. In this manner, over 100 prosecutors holding managerial positions, e.g. in appeal and district prosecutor's offices, were transferred to regular positions in the lowest level (district) prosecutor's offices.

2) With the merger of the functions of Prosecutor General and Minister of Justice, at the highest level of the prosecution service, i.e. the National Prosecutor's Office, the Internal Affairs Department was created, which is to deal with 'the conduct and supervision of preparatory proceedings in cases of intentional crimes prosecuted by public indictment committed by judges, prosecutors or court or prosecutorial assessors'

The Department was created by the Minister of Justice-Prosecutor General, and, by placing this body at the highest organisational level of the prosecution service, the Minister not only has authority and supervision over it, but also a direct influence on the way it operates. Furthermore, prosecutors working for this unit are not permanently employed by the National Prosecution Office, but were seconded to it by decision of the Minister of Justice, who, at any time, by a single signature taken on the basis of his arbitrary decision, may dismiss them from this unit. This way of appointing people employed in the Department makes them fully dependent on politicians of the ruling faction.

The establishment of such a unit at the highest organisational level of the prosecutor's office seems to suggest that corruption among judges and prosecutors is a serious problem in Poland, which requires decisive organisational action. However, statistics undermine the claim that there was a need for such a specialised unit. As it turns out, in the initial 2 years of its functioning, this unit, after analysing over 1100 complaints, motions and grievances initiated only 7 proceedings against specific persons, out of which 5 concerned prosecutors and 2 judges. Taking into account that in Poland there are about 10,000 judges and more than 6,000 prosecutors, the number

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of proceedings should be considered marginal and insignificant, which confirms that there is no substantive justification for the creation of such a unit. Therefore, the creation of this unit can hardly be seen as anything other than an attempt to intimidate the prosecution and judicial communities.

3) The Act amending the Act on the system of common courts (entered into force on 12 August 2017) introduced new rules for the appointment of presidents of all levels of common courts, strengthening the position of the Minister of Justice - Prosecutor General in this regard.

Until now, it was the Minister of Justice who was responsible for appointing presidents of district courts and courts of appeal, but in the case of a negative opinion of the general assembly, the Minister of Justice was not able to push through a candidate without a positive opinion of the National Judicial Council. In contrast, presidents of district courts (the lowest level of Polish courts) were appointed by presidents of courts of appeal after obtaining the opinion of both the general assembly of judges of the relevant district court and the president of the superior regional court. Under the current Act, the Minister of Justice is responsible for appointing presidents of all levels of common courts and does not need to seek the opinion of either the General Assembly of Judges or the National Judicial Council. This eliminates the judicial self-government bodies from the process of appointing presidents of common courts.

In addition, the draft Act extended the grounds for dismissal of presidents of courts by the Minister of Justice by adding a vague and undefined premise of *"persistent failure to fulfil professional tasks and responsibilities"*. Finally, an interim provision in the Act empowered the Minister of Justice to dismiss presidents of common courts at all levels appointed under the previous legislation, within six months of the entry into force of the new Ordinance, solely on the basis of his discretionary powers (the Minister not having to indicate any justification for such a decision).

It is clear that the main reason for this is not only to *"strengthen the administrative control of the Minister of Justice over the courts"* (as stated in the written justification of the bill), but also - or even mainly - to reduce the independence of the judiciary from the executive by appointing subservient presidents of courts. In this mode, 159 presidents and vice-presidents of courts were dismissed (mostly by fax) in the 6 months between August 2017 and February 2018.

4) The possibility was introduced for the prosecution to enter a case initiated by the wronged party with a subsidiary bill of indictment (i.e. despite the fact that the case had been discontinued twice before by the prosecution), probably used for the first time in the case regarding the death of Zbigniew Ziobro's father - Art. 55 para. 4 of the KPK (amendment entered into force on 15 April 2016):

Article 55 para. 4: The public prosecutor may at any time intervene in a case instituted on the basis of an accusation brought by an auxiliary prosecutor and become a

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public prosecutor. The proceedings shall then proceed on a public charge, and the victim who has brought the indictment shall enjoy the rights of an auxiliary prosecutor referred to in Article 54. Withdrawal of the indictment by the public prosecutor shall be permissible only with the consent of the victim who has brought the indictment, and in the case of joining of the victim referred to in para. 3 - also of that victim.

5) The possibility was introduced to withdraw to the prosecutor's office a case transferred to the court with the indictment under the famous Article 5 of the Act of 10 June 2016 (Dz.U.2016 pos. 1017). This provision was most likely used for the first time in the case of Daniel Obajtek, while, based on this provision, the case against Justyna Helcyk - a fascist from Wrocław - was also withdrawn from the court.

6) Powers have been granted to the Prosecutor General and heads of prosecution units to provide the media, without requiring the consent of the prosecutor in charge, with any information from the ongoing pre-trial proceedings, with the exception of classified information (Article 12(2) of the Prosecution Law). This is a powerful weapon in the hands of the Prosecutor General, which enables him to freely juggle information from pre-trial proceedings, which in principle is covered by the secrecy of the investigation, often leading to a breach of the presumption of innocence.

7) The possibility of the prosecutor's objection to a closed form of a hearing being binding on the court has been introduced (amendment of Article 360 para. 2 of the KPK, entered into force on August 5, 2016):

Article 360 para. 2: If the public prosecutor objects to the hearing being held privately, the hearing shall be held in public.

8) Introduced the possibility for pre-trial authorities to use illegally obtained evidence (except for evidence obtained by a public official through murder, intentional bodily harm, or deprivation of liberty) - this is an amendment to Article 168a of the KPK, which entered into force on April 15, 2016

Article 168a: Evidence may not be declared inadmissible solely on the grounds that it has been obtained in breach of the rules of procedure or by means of a prohibited act referred to in Article 1 para. 1 kk, unless the evidence has been obtained in connection with the performance of official duties by a public officer, as a result of: murder, intentional infliction of bodily harm or deprivation of liberty.

9) Rights have been granted to the prosecutor (instead of the court) to consent to the inclusion of persons other than those to whom the court's original consent applied in the subsequent inspections - addition of Article 168 b of the KPK (amendment entered into force on April 15, 2016):

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168 b: If, as a result of an inspection ordered at the request of an authorised body under specific provisions, evidence has been obtained of the commission of an offence prosecuted ex officio or a fiscal offence by a person with regard to whom the inspection was applied other than the offence covered by the inspection order or of an offence prosecuted ex officio or a fiscal offence committed by a person other than the person covered by the inspection order, the public prosecutor shall decide on the use of such evidence in criminal proceedings.

10) The possibility of the prosecutor's objection to the court's decision on changing the temporary arrest to a bail was introduced, which blocks the immediate release of the defendant from custody - Article 257 para. 3 of the KPK (the amendment entered into force on 5 October 2019). This amendment raises doubts as to its compliance with Article 5 of the ECHR, from which it follows that only an independent and autonomous court has the power to decide on the deprivation of liberty:

Article 257 para. 3: If the public prosecutor declares, at the latest at the meeting after the announcement of the order issued under para. 2, that he opposes the change of the preventive measure, this order, to the extent that it concerns the change of the temporary custody to a bail, shall become enforceable on the day it becomes final.

11) The possibility of bail by the family or acquaintances of the accused/suspect in order to waive the temporary arrest has been practically eliminated; the obligation to indicate the source of the bail has been imposed on the defendant - amendment to Article 266 of the KPK (the amendment entered into force on 22 June 2021):

Article 266 para. 1a: The bail shall not be based on a contribution made to the defendant or to another person providing surety for this purpose. The court or the public prosecutor may make acceptance of the bail conditional on the person paying it proving the source of the bail.

The introduction of the amendments described in para. 10 and 11 makes it possible that a frequently used and effective preventive measure, such as a bail, may be almost eliminated in favour of pre-trial detention, which would violate the principle of proportionality of preventive measures.

12) Making the issuance of a letter of indictment at the pre-trial stage conditional on the prosecutor's lack of objection - amendment to Article 281 2 of the KPK (amendment entered into force on 22 June 2021):

Article 281 para. 2: In pre-trial proceedings, a letter of indictment may be issued either at the request of the public prosecutor or in the absence of his objection.

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13) Although, by way of amendments to the Ordinance on the Offices of Common Courts, the random allocation of cases, by way of drawing judges by computer system, was introduced from the beginning of 2018, in practice the Rules of Procedure provide for numerous exceptions to the rules of allocation of cases (e.g. court presidents, who are currently politicised, may decide to periodically exclude judges indicated by them from the allocation, and in case of illness of a judge he may be replaced in the panel by another judge). Furthermore, with access to the on-call duty schedules of district court judges, prosecutors can in practice influence which judge will hear an application for pre-trial detention by having a suspect arrested on a specific day.

In December 2022, president Andrzej Duda signed eventually the amendment to the Law on the Public Prosecutor's Office. With new law, the National Prosecutor will have the exclusive authority to appoint and dismiss directors at the National Prosecutor's Office and their deputies. The same amendment removes the provision that says that a superior prosecutor can take over cases handled by subordinate prosecutors and carry out their activities. As a result, a possible change in the position of the prosecutor general after the parliamentary election in 2023 will not be able to affect the position of his previously appointed deputy - the national prosecutor - and the position of the directors and heads of the National Prosecutor's Office appointed by him.

On Thursday, September 28, 2023, the Sejm finally adopted regulations that transfer some of the powers of the Prosecutor General to the National Prosecutor. According to the opposition, the ruling PiS is thus securing its influence in an important institution in the event of losing the October parliamentary elections, as the National Prosecutor may now be dismissed only with the consent of the President. Independent press views the changes as intended to make it difficult or impossible to settle PiS-related pathologies when their rule is over.⁴⁰⁶

The change stems from an amendment to the Code of Civil Procedure, the Code of Criminal Procedure, provisions on the court system and the Law on the Public Prosecutor's Office, which, among others, transfers some of the key competences of the Public Prosecutor General to the National Prosecutor or limits them. They concern filling key positions, control over all levels of the prosecutor's office and issuing orders to subordinate prosecutors.⁴⁰⁷ However, the entry into force of the amendment does not mean the loss of influence in the prosecutor's office by Zbigniew Ziobro. Power will fall into the hands of the current National Prosecutor, Dariusz Barski, his close colleague, who even was the witness at Ziobro's wedding.⁴⁰⁸

According to the amendment, the National Prosecutor will decide on personnel matters in the prosecutor's office - appoint and dismiss heads of prosecutor's offices at all levels. It will also decide on the staffing of the National Prosecutor's Office, which is currently composed mainly of those "trusted" by the prosecutor's office heads. The National Prosecutor will decide on delega-

406 <https://wyborcza.pl/7,75398,30237007,dzis-wchodzi-w-zycie-wazna-zmiana-prokuratura-zostala-zabetonowana.html>

407 <https://www.rp.pl/prawnicy/art38969521-sejm-zwiekszy-wladze-prokuratora-krajowego-pis-betonuje-sie-w-prokuraturze>

408 <https://oko.press/pis-prokuratura-barski>

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ting prosecutors to work in other units, outside their place of residence, and on appointing the disciplinary spokesman. Such a spokesman can (and does) prosecute independent prosecutors who criticise Ziobro's prosecutor's office. The Prosecutor General will lose, and the National Prosecutor will gain, the right to make decisions on the use of surveillance against citizens by the police, the Central Anticorruption Bureau, the Border Guard or the Internal Security Agency.⁴⁰⁹

Additionally, an amendment to the Criminal Code, pushed by Zbigniew Ziobro, came to force on October 1st, 2023. It drastically strengthens many of the penalties, including removing the possibility of conditional release from a life sentence, higher punishments for serious crimes, higher fines, forfeiture of cars for DUIs and lowering the minimum age of adolescents being tried for murder as adults. The changes were protested as too draconian by criminal lawyers and human rights defenders alike.⁴¹⁰

409 https://orka.sejm.gov.pl/proc9.nsf/ustawy/3216_u.htm

410 <https://archiwumosiadynskiego.pl/wpis-w-debacie/szeryf-ziobro-drastycznie-zaostrza-kary-zmiany-w-kodeksie-karnym>

Annex II: Internal Affairs Department of the National Prosecutor's Office as a politicised tool of oppression of Polish judges and prosecutors

One of the newly created central bodies, which has the objective of handling proceedings against Polish judges⁴¹¹ is the Internal Affairs Department (Wydział Spraw Wewnętrznych, WSW) of the National Prosecutor's Office, which was established to "conduct and supervise preparatory proceedings in cases of intentional crimes prosecuted by public indictment, committed by judges, prosecutors, trainee judges or trainee prosecutors". Therefore, this department's task includes prosecuting judges for crimes. The Minister of Justice – Prosecutor General, Zbigniew Ziobro, who is also a member of parliament, and therefore, an active politician in the ruling camp, established the WSW, while the positioning of this department at the top of the prosecution service's organisational structure means that the Minister is not only its direct superior and supervisor, but also directly influences its operations.

This annex discusses the following issues:

1. Systemic position of the Internal Affairs Department and its membership;
2. No real and compelling reasons for creating the Department;
3. The Department's leading role in persecuting judges who defend the rule of law in Poland;
4. Internal Affairs Department in the light of the European law; and
5. Examples of questionable criminal proceedings conducted by the Department.

The annex is a part of a larger in-depth report prepared by Judge Dariusz Mazur of the Themis judges' association.⁴¹²

1) Systemic position of the Internal Affairs Department of the National Prosecutor's Office and its membership

It should be emphasised at this point that, pursuant to the Act on the Prosecution Service of January 28, 2016, the functions of the Minister of Justice and the Prosecutor General⁴¹³ were merged,

⁴¹¹ For more info about the new procedure of disciplinary proceedings see the in-depth report "Judges under special supervision": http://themis-sedziowie.eu/wp-content/uploads/2019/04/Judges_under_special_super-vision_second-publication.pdf

⁴¹² <http://themis-sedziowie.eu/materials-in-english/in-depth-report-internal-affairs-department-of-the-state-prosecution-service-as-a-politicized-tool-of-oppression-of-polish-judges-and-prosecutors-prepared-by-dariusz-mazur-press-o/>

⁴¹³ The personal combination of the offices of the Minister of Justice and the Prosecutor General took place when the Act on the Prosecution Service entered into force on 4 March 2016. The merger of these two offices alone, accompanied by awarding extensive supervisory and investigative rights to the Prosecutor General, means that, on the one hand, this same person becomes an active participant of all criminal proceedings through the subordinated prosecutors and, on the other, the authority supervising the courts, which became the basis of a complaint of the 'old' National Council of the Judiciary filed with the Constitutional Tribunal regarding the scope of the so-called 'administrative supervision'. Hence one of the motions of the extraordinary congress of judges of 3 September 2016 advocating for the ordinary courts to be supervised by the first President of the Supreme Court.

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thereby returning to the model from the times of the Communist regime. The personal combination of the offices of the Minister of Justice and the Prosecutor General that was introduced by this Act was accompanied by a significant reduction in the criteria required of the candidate to the office of Prosecutor General, which enabled the appointment of an active politician to this post.⁴¹⁴ It is significant that the deep positioning of the Prosecutor General in the political scene was accompanied by a significant increase in his investigative powers. In particular, the Prosecutor General currently has the authority to request operational and investigative procedures which are directly related to pending preparatory proceedings (this applies to the invigilation of the control of the content of correspondence and the use of phone tapping), as well as access to evidence obtained during those procedures. However, the Act on the Prosecution Service does not mention any conditions of admissibility and therefore no restrictions on such activity by the Prosecutor General, which gives rise to the risk of abuse.⁴¹⁵ The Minister of Justice also has the right to issue orders, including those referring to specific procedural steps in each case (Article 7 para. 2 and para. 3 of the Act), the right to revoke or change a decision of a subordinate prosecutor (Article 8 of the Act),⁴¹⁶ as well as the right to take over cases from subordinate prosecutors of any level (Article 9 para. 2 of the Act), which makes him not only become the supervisor of the prosecutors but also a super-prosecutor equipped with typically investigative powers.

The 2016 Act on the Public Prosecutor's Office also strengthens the power of the General Public Prosecutor in matters of the staffing policy, at the expense of weakening the positions of the heads of other levels of the Public Prosecutor's Office. Specifically, the Public Prosecutor General, at the request of the National Public Prosecutor, appoints and dismisses chief prosecutors of high regional, regional and district prosecutor's offices (Article 15 para. 1 of the Act on the Public Prosecutor's Office), which is tantamount to withdrawing the requirement for tenure of the official positions of the Prosecutor's Office, which allows the Prosecutor General to introduce any arbitrary changes in official positions in the Prosecutor's Office, and thus exposes official prosecutors to the risk of availability.⁴¹⁷ When discussing the newly introduced possibilities for almost uncontrolled and arbitrary changes in the development of the personnel policy in the Public Prosecutor's Office by the Prosecutor General it is impossible not to mention the secondary regulations to the Act on the Public Prosecutor's Office titled "Regulations implementing the Act on the Public Prosecutor's Office".⁴¹⁸ The provisions of these regulations seemingly introduced a reorganisation of the Public Prosecutor's Office, in fact – apart from the elimination of the military Prosecutor's Office – the structure of the Public Prosecutor's Office is almost unchanged, with the exception

⁴¹⁴ In particular, the Act of 2016 abandoned the requirement that a candidate to the post of Prosecutor General should have at least 10 years of experience as a prosecutor or an adjudicating criminal law judge. Consequently, the requirements regarding the qualifications of the Prosecutor General are currently lower than with respect to a prosecutor of the lowest level or even a trainee prosecutor.

⁴¹⁵ This is allowed by Article 57, para. 3 of the Act on the Prosecution Service of 2016.

⁴¹⁶ The literature on the subject rightly states that the provision of such extensive rights to the Prosecutor General to interfere with pending proceedings means that he becomes a 'super-prosecutor' equipped with extensive investigative powers. Consequently, the powers of the current Minister of Justice – Prosecutor General, Zbigniew Ziobro, who is simultaneously a member of the Polish Parliament, formulated in this way constitute a breach of Article 103, para. 2 of the Polish Constitution, which provides that a prosecutor cannot simultaneously hold the office of a Member of Parliament.

⁴¹⁷ Based on the 2009 Act on the Public Prosecutor's Office, the heads of the Appellate and Regional Public Prosecutor's Office were appointed for six-year terms and the heads of District Public Prosecutor's Office were appointed for four-year terms, while they could only be dismissed before the expiry of their term in the cases exhaustively specified in the Act (e.g. in the event of the permanent incapacity to perform duties due to illness)

⁴¹⁸ Promulgated in the Journal of Laws (Dziennik Ustaw) of 2016, item 178.

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of changes in terminology. When carried out, in fact the apparent reorganization of the Public Prosecutor's Office units has been treated as a pretext for re-appointing prosecutors to individual units and replacing many superior prosecutors and an excuse for transferring "unwelcome" prosecutors to different official positions. In this way, the Public Prosecutor General transferred more than 100 prosecutors in managerial positions, e.g. in the Appeal and Regional Prosecutor's Offices, to ordinary posts in the lower Public Prosecutor's Offices (at district level). In order to avoid humiliation and politicization, about 400 prosecutors, who were expecting demotion, decided to take advantage of early retirement entitlements.⁴¹⁹

Prosecutor-General/Minister of Justice Zbigniew Ziobro and his deputy Bogdan Świączkowski ruthlessly use their powers against their subordinate prosecutors in an attempt to force them into absolute obedience. Prosecutors, who in any way express their opposition to their orders, are demoted, transferred to other official positions or even relocated for up to six months a year to prosecution units hundreds of kilometres away from their places of residence as punishment.⁴²⁰

The degree of political control by Minister of Justice/Prosecutor General Zbigniew Ziobro over the prosecution service is so significant that it enables him, on the one hand, to initiate groundless proceedings against opponents of the ruling camp and, on the other hand, to refuse to conduct proceedings in criminal cases, the circumstances of which suggest the possible involvement of politicians from the ruling camp.⁴²¹

As for the current structure of the Polish prosecution service, it has four tiers, with the lowest level being made up of district prosecution offices (there are 342 of these), the next being the regional prosecution offices (there are 56 of these), the next being the high regional prosecution offices (there are 11 of these) and finally the highest being the National Prosecution Office. The WSW is therefore the highest level of prosecution, reporting directly to Minister of Justice/Prosecutor General Zbigniew Ziobro, and, like the Ministry of Justice, is based in Warsaw.

What distinguishes the way the WSW operates compared to other units of the prosecution service is not only its direct subordination to the Minister of Justice/Prosecutor General, who has the right to issue binding orders to the prosecutors of this department, but also the extremely weak position of the prosecutors employed in this body. According to information appearing in the media, prosecutors who work in this department are not employed there on a permanent basis, but are temporarily delegated there from lower-level prosecution service units, and can therefore be dismissed by the Minister of Justice/Prosecutor General at any time.⁴²² Their precarious position certainly does not make it easier for them to resist official pressure and favours

⁴¹⁹ More information about the so-called reform of the prosecution office is contained in chapter III of the in-depth report "So called 'Good change' in the Polish justice administration system" available at: https://www.jura.uni-bonn.de/fileadmin/Fachbereich_Rechtswissenschaft/Einrichtungen/Lehrstuehle/Sanders/Dokumente/Good_change_-_7_October_2017_-_word.pdf

⁴²⁰ <http://themis-sedziowie.eu/materials-in-english/prosecutors-office-under-a-dictatorship-by-ewa-siedlecka-polityka/>

⁴²¹ http://themis-sedziowie.eu/wp-content/uploads/2021/08/Malicious-prosecution-by-the-Polish-Public-Prosecutor%E2%80%99s-Office_final.pdf

⁴²² <https://oko.press/to-oni-scigaja-niezaleznych-sedziow-i-prokuratorow-lista-16-ludzi-ziobry-w-prokuraturze-krajowej/>

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submission to an active politician like the Minister of Justice. Journalists also pointed out that, in some particularly sensitive cases, such as the case of Judge Tuleya described below (subchapter VI.1), the prosecutors in charge of the case are frequently replaced, which is probably intended to blur their responsibility.

The full list of prosecutors employed by the WSW is something of a secret, as the National Prosecutor's Office refuses to provide information on this to the media. 16 prosecutors are most probably employed by the WSW. Partial information on some of the prosecutors employed there is known from their procedural decisions, which are served to the repressed judges and prosecutors, so the following can be established:

1. Prosecutor Adam Gierk, who has been in charge of the WSW since 2018 and comes from the Voivodship Prosecutor's Office in Łódź;
2. Prosecutor Marcin Rosiak, who has been Deputy Head of the WSW since February 2021, was delegated there from the Regional Prosecutor's Office in Konin, and is known, among other things, for having handled the case against Judge Beata Morawiec (see subsection VI.2 below) and for representing the WSW in that case before the Disciplinary Chamber of the Supreme Court;
3. Prosecutor Jolanta Kędziora comes from the Radom-Zachód District Prosecutor's Office (so she was delegated to the Department, which is at the top of the prosecution service, from a unit located at the lowest level in the hierarchy, bypassing the two intermediate levels). In the WSW, she heads coordination and supervision, and she herself is directly supervising the investigation regarding Judge Waldemar Żurek (see subsection VI.4 below);
4. Prosecutor Kamil Kowalczyk was delegated to the WSW from the District Prosecutor's Office in Malbork; it was he who pressed criminal charges against Prosecutor Justyna Brzozowska (see subsection VI.10 below), and he also handled the case of Judge Andrzej Sterkowicz (see subsection VI.5 below);
5. Prosecutor Piotr Myszkowiec is a former military prosecutor who was delegated to the WSW from the Regional Prosecutor's Office in Poznań; he is known to have unjustifiably interrogated 13 Cracow court judges who were handling the case of reinstatement of Prosecutor Mariusz Krasoń to his previous position (see subsection VI.8 below);
6. Prosecutor Michał Walendzik (delegated to the WSW from the Regional Prosecutor's Office in Łódź), prepared the motion to lift Judge Irena Majcher's immunity (see subsection VI.6), and took part in the search of Judge Beata Morawiec's home and workplace (see subsection VI.2);
7. Prosecutor Czesław Stanisławczyk (delegated to the WSW from the Regional Prosecution

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Office in Nowy Sącz), is probably the prosecutor who had the fastest career in the history of the Polish prosecution service. This is because he only became a prosecutor of the District Prosecutor's Office (i.e. the lowest level) in 2018;

8. Prosecutor Dariusz Ziomek (delegated to the WSW from the Regional Prosecutor's Office in Gdańsk) was one of the prosecutors who handled the case of Judge Igor Tuleya (see subsection VI.1).

The constitutional position of the WSW described above gives an active politician from the ruling camp (the Minister of Justice) full control, both personal and operational, over the department. In this situation, it is hardly surprising that, in politicized cases involving judicial activists defending the rule of law, such as the cases of Judge Morawiec or Judge Tuleya, the reliability and independence of the actions of prosecutors from the Internal Affairs Department raises serious doubts. WSW prosecutors exceptionally frequently receive additional financial awards from the Minister of Justice.⁴²³

2) No real and compelling reasons for creating the Department

Experience shows that the employees of the new unit can go to some lengths to justify its existence, especially if the employer provides a 'motivational' remuneration system. Therefore, there have already been numerous attempts to initiate criminal proceedings against judges, the legitimacy of which is questionable, and more should be expected in the future. The instigation of such proceedings will be all the easier that the so-called official offences of overstepping official rights or the failure to perform official duties (Article 231 PC) is evaluative in nature and exposed to broad interpretation.⁴²⁴ However, in order to secure convictions in such 'forced' proceedings, extensive political control by the ruling party is required over the judiciary, which, despite the great efforts, has not yet been achieved.

The fact that the new body, the WSW, has been placed at the top level of the organizational structure of the prosecution service appears to suggest the existence of a serious issue with corruption among judges and prosecutors in Poland, which requires decided organizational measures. However, the argument that a specialized body of this type needed to be formed is undermined by the statistics. It transpired in 2018 that during more than 2 years of its operation, having examined over 1100 complaints, requests and grievances, only 117 have given grounds for formally registering cases, whereby just 38 of these cases were pending at that time, although there were only 7 proceedings against specific individuals, 5 of which applied to prosecutors and 2 to judges.⁴²⁵ Given that Poland has approximately 10,000 active judges and over 6,000 prosecutors, such a number of proceedings should be considered marginal and insignificant, which confirms that

⁴²³ As evidenced in the report prepared by 'Lex Super Omnia' entitled: "The stick method": https://medelnet.eu/images/2021/THE_STICK_METHOD.pdf

⁴²⁴ For more detailed info in this respect see subchapter V.3 of the report "Judges under special supervision, namely ...": http://themis-sedziowie.eu/wp-content/uploads/2019/04/Judges_under_special_supervision_second-publication.pdf

⁴²⁵ Data from the beginning of August 2018, <https://prawo.gazetaprawna.pl/artykuly/1206379.patologie-wsrod-sedziow-i-prokuratorow.html>

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the establishment of such a body, just as the special task force described above within the office of the Minister of Justice, lacks substantive justification. Therefore, the mere fact of its establishment could not be regarded as anything but an attempt to harass judges and prosecutors.

The assertions of general corruption in the Polish justice administration, which are raised by some "Law and Justice" party politicians, are simply unfounded. First, according to the written information obtained by the Association of Judges 'Themis' from the Supreme Court over the 10 years from January 1, 2008 to December 31, 2017, there was only one disciplinary action against a judge, based on a charge of corruption. This judge was removed from office as a disciplinary penalty.⁴²⁶ Second, according to GRECO reports, of all the countries in the former Soviet bloc, the Polish judiciary is the least corrupt, not being far behind the countries of the old "Western Europe" in this respect. It can therefore be concluded that there was no real and compelling need to create a special prosecution unit dedicated to prosecuting judges.

3) The Department is taking a leading role in persecuting judges who defend the rule of law in Poland

At this point, it should be emphasized that, since April 2020, the WSW which was slowly taking over from the central disciplinary commissioners is taking priority in the politically motivated legal persecution of judges. This is because, since the CJEU applied an interim measure on April 8, 2020⁴²⁷ involving freezing the activities of the Disciplinary Chamber of the Polish Supreme Court, this authority essentially stopped examining typical disciplinary cases against judges. At the same time, the adjudicators in the Disciplinary Chamber adopted the interpretation, which the author of this document considers incorrect, that this Chamber, despite being frozen by the CJEU, can still pursue cases of lifting the immunity of judges and prosecutors, which enables criminal proceedings to be conducted against them. Applications for lifting the immunity of judges are being prepared by the Internal Affairs Department of the National Prosecutor's Office. Examples of just such cases include those of Judges Igor Tuleya (see subchapter VI.1) and Beata Morawiec (see subchapter VI.2). From a legal point of view, the question of the admissibility of the Disciplinary Chamber's adjudication on WSW motions to lift the immunity of judges was settled by the CJEU's interim measure of July 14, 2021 (C-204/21 R)⁴²⁸ suspending the activities of that Chamber in ruling on judicial immunity, as well as the judgment of the Grand Chamber of the CJEU of July 15, 2021 (C-791/19),⁴²⁹ which unequivocally stated that the Disciplinary Chamber does not constitute an independent and impartial court under European law. Despite this, on September 23, 2021, the Disciplinary Chamber of the Supreme Court, acting on the motion of the WSW, lifted the judicial immunity of one of the "old" judges of the Supreme Court, Marek Pietruszyński, in direct breach of European law (see subsection VI.3).

⁴²⁶ http://themis-sedziowie.eu/wp-content/uploads/2018/02/IMG_2899-e1519303114485.jpg

⁴²⁷ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62019CO0791\(01\)&from=GA](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62019CO0791(01)&from=GA)

⁴²⁸ <https://curia.europa.eu/juris/document/document.jsf?sessionid=F8F2135D07F4CBD58DBD44B971AF8428?text=&docid=244199&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=5163535>

⁴²⁹ <https://curia.europa.eu/juris/document/document.jsf?text=&docid=244185&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=5163875>

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4) Internal Affairs Department of the National Prosecutor's Office in the light of European law

In a state governed by the rule of law, judges cannot make decisions regarding civil rights and freedoms with a pistol pointed at their heads in the form of criminal proceedings, triggered by politicians of the ruling camp. Such methods of forceful control over the administration of justice are typical of authoritarian regimes. Until now, they were unthinkable in a country of the EU which, according to Article 3(2) TEU, is to constitute an area of freedom, security and justice. According to the point 5 of the decisive part of the judgment of the Court of Justice of the European Union (Grand Chamber) of 18 May 2021 in joined cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19, and C-397/19:

“Article 2 and the second subparagraph of Article 19(1) TEU and Decision 2006/928 must be interpreted as precluding national legislation providing for the creation of a specialized section of the Public Prosecutor's Office with exclusive competence to conduct investigations into offences committed by judges and prosecutors, where the creation of such a section

– is not justified by objective and verifiable requirements relating to the sound administration of justice, and – is not accompanied by specific guarantees such as, first, to prevent any risk of that section being used as an instrument of political control over the activity of those judges and prosecutors likely to undermine their independence and, secondly, to ensure that that exclusive competence may be exercised in respect of those judges and prosecutors in full compliance with the requirements arising from Articles 47 and 48 of the Charter of Fundamental Rights of the European Union”.

In the light of the above, it seems obvious that it is possible for the European Commission to start new infringement procedures against Poland for a breach of EU Law, regarding the WSW.

5) Examples of questionable criminal proceedings conducted by the Internal Affairs Department

1. Judge Igor Tuleya, one of the icons of judicial resistance

The WSW is accusing Igor Tuleya of abusing his powers. His only “*fault*” is that he ordered the prosecutor's office to restart an investigation in 2018 into the so-called “column chamber voting” by the parliament. By discontinuing the proceedings, the politicized prosecutor's office tried to sweep irregularities under the carpet that had taken place during the voting on the 2017 budget. Furthermore, the judge reported about 230 “Law and Justice” deputies to the prosecutor's office as being suspected of giving false testimony.

The criminal prosecution in this case is in conflict with the law. The WSW accused the judge that

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the decision to reopen proceedings and its motives were announced in an open session so the journalists informed the public about the case. It was classified as the unlawful disclosure of information.

The problem is that, according to the law, the judge has the discretionary right to decide whether or not the court session is public. Tuleya decided that it would be public in order to protect the public interest. The materials from the investigation were not classified and the prosecutor who was present in the courtroom did not object to the openness of the hearing. The judge's only "fault" was that he showed the dirty parliamentary dealings to the public, thereby undermining the feeling of impunity of the policymakers.

Such an indictment would not stand up in any independent court, but, in line with the motion of the WSW, on November 18, 2020, the politicized Disciplinary Chamber lifted Judge Tuleya's immunity.⁴³⁰

It is, however, characteristic that, when Judge Tuleya, who did not recognize the decision of the Disciplinary Chamber to lift his immunity because it was made by an unauthorized body, refused to appear after having been summoned by the WSW in the criminal case against him, another panel of the Disciplinary Chamber refused to agree to bring him in by force on the grounds that the judge's conduct did not constitute an offence.

2. Beata Morawiec – President of the Association of Judges "Themis".

Her story began in 2017, when the current Minister of Justice removed her from the position of President of the Regional Court in Cracow. This was a part of the national purge of 159 court presidents. Her name was groundlessly linked to an alleged corruption scandal in the Cracow Court of Appeal on the ministry's official website.

Beata Morawiec was the only former court president in Poland who sued the Minister of Justice for the protection of her reputation and won the civil case in the first and second instances.⁴³¹

The pro-government media made an announcement on September 15, 2020 that an investigation was being conducted by the WSW against Judge Morawiec. On the same day,

the WSW requested the Disciplinary Chamber to lift her immunity. The judge was charged with allegedly extorting money from the Court of Appeal in 2013 on the basis of a fictitious contract to prepare a written opinion, as well as allegedly accepting a mobile phone in 2012 as a bribe for passing a sentence in a defendant's favour. The charges are based exclusively on the slander of a person detained in the case of a financial scandal at the Cracow Court of Appeal.⁴³²

⁴³⁰ https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/igor-tuleya.pdf

⁴³¹ <https://oko.press/ziobro-przegral-proces-z-sedzia-beata-morawiec-i-ma-ja-przeprosic/>

⁴³² <http://themis-sedziowie.eu/materials-in-english/public-prosecutor-enters-the-home-of-a-judge-fighting-for-free-courts-in-poland-by-mariusz-jaloszewski/>

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As Ms Morawiec was not given any official opportunity to comment on the allegations, on September 17, she published the report she had prepared in 2013 for the Court of Appeal, which completely undermines one of the charges. The judge also denied she ever accepted any bribe.

On the next day, shortly after 6 a.m., a prosecutor entered Judge Morawiec's house and took her official laptop containing sensitive data. According to the legal authorities, issuing it was disproportionate to issue a search warrant after the judge had voluntarily released evidence to the media.⁴³³

3. Three judges of the Supreme Court (Marek Pietruszyński, Włodzimierz Wróbel and Andrzej Stępką)

On September 23, 2021, the illegal Disciplinary Chamber of the Polish Supreme Court, acting in direct breach of the CJEU judgement of July 15, 2021 (C-791/19), lifted the immunity of an "old" judge of the Criminal Chamber of the Supreme Court, Marek Pietruszyński. The bench of the Disciplinary Chamber consisted of 3 former public prosecutors (who were directly subordinated to the Minister of Justice not long before), namely Ms Małgorzata Bednarek, Mr Jarosław Duś and Mr Jacek Wygoda. The Disciplinary Chamber was acting on the motion of politicized WSW, which pressed absurd charges on Judge Pietruszyński of alleged judicial misconduct. The misconduct was allegedly the failure to release suspects from custody at the end of a case. The problem is that this was not a failure on the part of the judge's ruling in the case, but on the part of the office staff, who have already been disciplined for this. The same absurd charges are raised against two other "old" judges of the Criminal Chamber: Włodzimierz Wróbel and Andrzej Stępką. Their cases are pending before the Disciplinary Chamber.

It seems clear that the real objective of initiating these groundless criminal proceedings by the WSW is to remove three 'old' judges of the Supreme Court from the Criminal Chamber in order to replace them with new, submissive judges chosen by the neo-NCJ. This reason is the most obvious with respect to Judge Włodzimierz Wróbel, who is seen as the leader of the judicial resistance among the 'old' judges of the Supreme Court. He was one of the five candidates of the Supreme Court's General Assembly for the position of the First President of the Supreme Court on May 23, 2020 (as Professor Gersdorf's successor), obtaining the highest level of support among the judges participating in the General Assembly of the Supreme Court Judges (50 votes out of 95). Despite this, the Polish President nominated Ms Małgorzata Manowska as the First President of the Supreme Court (who received 25 votes, all from neo-judges of the Supreme Court) who was not properly elected to the position of a Supreme Court judge, but who guarantees unconditional loyalty to the politicians of the ruling camp.⁴³⁴ In June 2020, Judge Wróbel published a widely publicized critical commentary in the media about the obstruction of the Supreme Court assem-

⁴³³ <http://themis-sedziowie.eu/materials-in-english/public-prosecutor-enters-the-home-of-a-judge-fighting-for-free-courts-in-poland-by-mariusz-jaloszewski/>

⁴³⁴ <http://themis-sedziowie.eu/materials-in-english/position-of-the-board-of-the-themis-judges-association-of-28-may-2020-regarding-the-appointment-of-the-first-president-of-the-supreme-court/>

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bly by Małgorzata Manowska and the judges elected by the neo-NCJ.⁴³⁵ Professor Wróbel was also the judge rapporteur who prepared the famous resolution of the joint chambers of the Polish Supreme Court of January 23, 2020, implementing the CJEU judgement of November 19, 2020. In this resolution, 59 judges of the Supreme Court assessed that the Disciplinary Chamber is not a court, in the meaning of either the Polish Constitution or EU law.⁴³⁶ As early as in January 2019, professor Wróbel published an excellent article in which he described the Disciplinary Chamber as a “kangaroo court”, the establishment of which is in conflict with the Polish Constitution.⁴³⁷

4. Judge Waldemar Żurek

Judge Waldemar Żurek is the most persecuted of the Polish judges, which has to do with the fact that he was the press officer of the “old”, legal NCJ for 8 years, from the membership of which he was illegally removed in 2018. Both then and now, being a member of the board of the Association of Judges “Themis”, Judge Żurek has been consistently criticizing the pseudo-reform of the judiciary intended to politically subordinate it in the independent media. At least 14 groundless disciplinary proceedings are currently pending against him, mainly due to media statements or rulings that are inconvenient for the ruling camp.⁴³⁸

The WSW has also decided to take action against Judge Żurek, the pretext for which was a workplace accident suffered by the judge in November 2018. The accident took place when a heavy cleaning machine ran into him as he was leaving the toilet, as a result of which he suffered a serious knee injury that required surgery, which resulted in his absence from work for several months. When Judge Żurek wanted to claim compensation for the accident at work and asked for the video recording of the incident from the CCTV system, the administrative director of the court, appointed by the Minister of Justice, refused to give him the recording, while the President of the Regional Court in Cracow, Dagmara Pawełczyk-Woicka, appointed by the Minister of Justice, refused to accept the commission's report which assessed the incident as an accident at work and appointed her own new commission to investigate the circumstances of the incident. In this situation, the Regional Prosecutor's Office in Kielce initially investigated the crime of “endangering an employee's life and health by the employer” (Article 220 kk), but the case was then taken over by the WSW and it then became apparent that Judge Żurek had gone from being a victim of an accident at work to a suspect. The WSW started to investigate the case in order to prove that Judge Żurek had given false testimony when reporting the accident at work.⁴³⁹ This is

435 <http://themis-sedziowie.eu/materials-in-english/the-position-of-prof-wlodzimierz-wrobel-judge-of-the-criminal-chamber-of-the-supreme-court-regarding-the-obstruction-of-the-sc-assembly-on-june-12-2020-by-persons-appointed-with-the-participation/>

436 https://forumfws.eu/bsa-i-4110-1_20_english.pdf

437 http://themis-sedziowie.eu/wp-content/uploads/2020/01/Włodzimierz-Wróbel_Disciplinary-Chamber-as-exceptional-court_def.pdf

438 A number of publications in English describe the legal repression applied against Judge Żurek, including: - <http://themis-sedziowie.eu/materials-in-english/wholesale-disciplinary-proceedings-for-judge-zurek-two-hearings-in-one-day-by-magdalena-galczyńska-onet-pl/>
<https://ruleoflaw.pl/the-prosecutor-general-goes-for-judge-zurek-he-is-digging-into-his-private-affairs/>
<https://www.google.pl/amp/s/amp.theatlantic.com/amp/article/605623/>
https://www.google.pl/amp/s/www.latimes.com/world-nation/story/2020-02-27/poland-government-judges-nationalism%3f_amp=true

439 <https://oko.press/prokuratura-krajowa-poluje-na-sedziego-zurka/>

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despite the fact that the independent TV station, TVN, came into possession of the recording and broadcast it on national television. The recording clearly shows the moment the machine ran into the judge.⁴⁴⁰

5. Judge Andrzej Sterkowicz

The criminal proceedings that the WSW is pursuing against the judge of the Civil Division of the Regional Court in Warsaw, Andrzej Sterkowicz, also give rise to serious doubts. This judge had previously, in 2013 and 2014, issued unfavourable judgments in lawsuits regarding the protection of personal rights against journalists favoured by the current government, namely Dorota Kania, a journalist from the weekly *“Wprost”*, as well as from Tomasz Sakiewicz from *“Gazeta Polska”*, on the grounds that they had failed to observe journalistic integrity in their harassing articles. In response, *“Gazeta Polska”* embarked on a black press campaign against the judge, describing him, among other things, as a “killer of right-wing journalists”. The media attacks on the judge intensified in 2016, after the “Law and Justice” party came to power, and the same *“Gazeta Polska”* slandered Judge Sterkowicz’s 80-year-old father for allegedly cooperating in the past with the communist regime, without providing any evidence of this. Shortly after the publication of this article, Judge Sterkowicz’s father died of a heart attack.⁴⁴¹ Then, in early November 2017, Dorota Kania published an article in which she described Judge Sterkowicz’s private affairs related to his divorce and disputes with his ex-wife over child custody. The journalist published information from the case before the family court, which was held in camera. The ex-wife had filed actions against Judge Sterkowicz with the prosecutor’s office regarding their family disputes, including for slander and insults. Although, according to the Criminal Procedures Code, such cases are, as a rule, prosecuted on the basis of a private indictment, in this case they were taken over by the WSW, which took over the prosecution ex officio (which only happens in exceptional situations in such cases). The department next applied to the Disciplinary Court at the Cracow Court of Appeal in 2018 for Sterkowicz’s immunity to be lifted. However, the disciplinary court of first instance refused to lift Judge Sterkowicz’s immunity, finding that there was no evidence that he had committed an offence in his disputes with his wife. The UAD filed an appeal against this decision with the Disciplinary Chamber of the Supreme Court, which lifted the judge’s immunity on June 25, 2019 allowing the criminal case against him to proceed. This case has not yet ended.⁴⁴²

6. Judge Irena Majcher from the District Court in Opole

Irena Majcher is a judge of the National Court Register in Opole and a member of the Association of Polish Judges *“Iustitia”*, which is critical of the pseudo-reform of the justice system. In 2009, Judge Irena Majcher decided to ban (remove from the register of associations) the Radical-National Camp (ONR) based in Brzeg. In her justification, the judge stated that this organization

⁴⁴⁰ <https://tvn24.pl/go/programy/7/czarno-na-bialym-odcinki,11367/odcinek-1647,S00E1647,565919>

⁴⁴¹ <https://oko.press/prokuratura-bada-sedziego-ktory-podpadl-gazecie-polskiej-wydajac-wyroki-niekorzystne-dla-doroty-kan/>

⁴⁴² <https://oko.press/prokuratura-ziobry-nie-daruje-prywatnych-spraw-sedziemu-ktory-sadzil-gazete-polska/>

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"openly refers to the ideology of the ONR Camp – an extreme right-wing and anti-Semitic organization – founded in 1934".⁴⁴³ Perhaps it was this decision of the judge from many years ago that led to the attempt to institute criminal proceedings against her by the current authorities, which more or less openly support nationalist organizations.⁴⁴⁴

Judge Majcher's case has to do with legislation passed almost 20 years ago obliging companies to register with the National Court Register, which replaced the former Commercial Register established in 1919. Companies were given a certain amount of time to re-register, with the final deadline expiring at the end of 2015. Failure to comply with this obligation would result in the loss of assets, which by law passed to the State Treasury. However, one of the companies from Opole did not re-register within the deadline imposed by the Act and, as a result, lost ownership of its property. The authorities of the company therefore filed a notice to the prosecutor's office, which identified Judge Majcher as the guilty party.

The case was taken up by the WSW. Its prosecutor assumed that the judge should conduct proceedings to compel the company to re-register with the National Court Register, and if the company still failed to do so, she should fine it. Despite the unanimous opinion of the lawyers that Judge Irena Majcher had interpreted the law correctly, the WSW took the view that the judge had committed a clerical offence under Article 231 kk involving the failure to fulfil her official duties, and decided to prosecute her for her ruling. Accordingly, the prosecutor of this Department requested the disciplinary court to lift the judge's immunity, which is necessary in order to take criminal proceedings against her.⁴⁴⁵

In the first instance, the motion of the WSW was examined by the Disciplinary Court at the Court of Appeal in Wrocław, which refused to lift Judge Irena Majcher's immunity, stating that her action did not satisfy the elements of a criminal offence. The WSW appeals against this decision. The Disciplinary Chamber of the Supreme Court rejected the prosecution's complaint on October 21, 2020 and upheld the decision of the Disciplinary Court of the Court of Appeal in Wrocław refusing to lift the judge's immunity.⁴⁴⁶

7. In theory, the prison authorities; in practice, the judges of the Regional Court and the Court of Appeal in Cracow

In practice, the WSW is also used by the political authorities when the Minister of Justice considers it useful to collectively persecute a larger group of judges. This is probably inspired by the belief that such actions can have an intimidating effect on the judiciary, becoming a real "chilling effect generator".

⁴⁴³ <https://www.gazetaprawna.pl/wiadomosci/artykuly/360417,pierwszy-nielegalny-oboz-narodowo-radykalny.html>

⁴⁴⁴ <http://themis-sedziowie.eu/materials-in-english/investigations-discontinued-indictments-withdrawn-that-is-how-ziobro-is-helping-hooligans-racists-and-fascists-by-jacek-harlukowicz-gazeta-wyborcza/>

⁴⁴⁵ <https://oko.press/prokuratura-sciga-sedzie-z-opola/>

⁴⁴⁶ <https://oko.press/kompromitacja-prokuratury-ziobry-izba-dyscyplinarna-nie-uchylila-immunitetu-sedzi-majcher-z-opola/>

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The oldest example of such a dubious evidentiary activity conducted by the WSW was the questioning of several dozen judges of the Regional Court and the Court of Appeal in Cracow as witnesses in a case regarding the degrading and inhumane treatment of Krzysztof S., the former President of the Court of Appeal in Cracow. Krzysztof S. has been temporarily arrested in connection with a major investigation that was pending against the Director of the Court of Appeal and other administrative employees of the courts of the Cracow region, regarding the embezzlement of funds intended for the administrative activities of the courts. During this investigation, starting from June 2017, Krzysztof S. was held in pre-trial detention for nearly 9 months, the last 5 months of which were in a prison in Rzeszów. There, for unclear reasons, he was classified as a 'dangerous prisoner', which involved daily personal searches (combined with strip searches and the visual inspection of all his bodily orifices), and cell searches. He was also denied dental treatment in that detention centre after losing his teeth, as well as access to a hairdresser before his first court hearing and the opportunity to wear a suit. After the treatment of Krzysztof S. was written up in the popular weekly magazine "*Polityka*",⁴⁴⁷ and the Assembly of Judges of the Regional Court in Cracow⁴⁴⁸ and the Assembly of Judges of the Court of Appeal in Cracow in May 2018 passed resolutions condemning the treatment of Krzysztof S. in the prison in Rzeszów, considering it degrading and inhuman, WSW took up an investigation to clarify whether the treatment of the former president of the Court of Appeal in Cracow constituted an abuse of power by prison officials. As it soon transpired, the main subject of the WSW investigation was not the evidentiary proceedings at the prison in Rzeszów, but the questioning of the judges of the Regional Court and the Court of Appeal in Cracow who had voted in favour of resolutions condemning the treatment of Krzysztof S. in prison. During the interrogations, the judges were only asked how they had learned about the treatment of Krzysztof S. in prison, to which each of them replied that from an article in the weekly "*Polityka*" magazine. If it is accepted that potentially criminal activity of the prison guards took place at the state prison in Rzeszów, which is located almost 200 kilometres from Cracow, the procedures applied by the prosecutors, involving the groundless questioning of judges, were lacking any evidentiary significance. This was negatively assessed by Resolution no. 6 of the Representatives of Judges of the Court of Appeal in Cracow of October 12, 2018,⁴⁴⁹ which took the position that: We assess the questioning of approximately 100 judges of the Court of Appeal and the Regional Court in Cracow by the Internal Affairs Department of the National Prosecutor's Office to be an unacceptable waste of public funds, as we consider this to be a retaliation for the adoption of resolutions by the judges of these courts in meetings of judges condemning the degrading and inhumane treatment of Judge Krzysztof S. in the prison in Rzeszów. As the actions of the Prosecutor's Office are irrelevant to the resolution of the case, we consider them to be a politically motivated attempt to intimidate the Cracow judiciary.

⁴⁴⁷ <https://www.polityka.pl/tygodnikpolityka/kraj/1747486,1,ponizanie-sedziego.read>

⁴⁴⁸ Resolution no. 4 was adopted on 24 May 2018 by the Assembly of Judges of the Regional Court in Cracow in this case: <http://themis-sedziowie.eu/wp-content/uploads/2018/05/Resolutions-of-24-May-2018-ENG.pdf>, followed by resolution no. 1 of the Assembly of the Appeal Court in Cracow of 28 May 2018.

⁴⁴⁹ <http://themis-sedziowie.eu/materials-in-english/resolutions-of-the-assembly-of-the-representatives-of-the-krakow-appellate-judges-of-12-october-2018/>

*Annex II: Internal Affairs Department of the National Prosecutor's Office as a politicised tool of oppression of Polish judges and prosecutors***8. Thirteen judges of Cracow courts**

Another act of the WSW, this time intended not only to intimidate the entire judicial community, but also to exert a direct influence on judges adjudicating in specific cases, took place in December 2020.⁴⁵⁰ This act involves summoning 13 judges of the district, regional and appellate courts in Cracow, who heard the main case and the auxiliary proceedings related to the reinstatement of prosecutor Mariusz Krason to his former position, for questioning. Although the judges were summoned to hearings formally only as witnesses, the case handled by the WSW applies to the alleged abuse of powers and the failure of public officials to fulfil their obligations (Article 231 para. 1 kk), and therefore, within the scope of the case specified in this way, criminal charges may subsequently be pressed against each of the summoned judges. At this point, it should be reiterated that Prosecutor Krason is not only a member of the independent Lex Super Omnia Association of Prosecutors, which is fighting for the return to the model of an independent prosecutor's office, but also the author of a critical resolution adopted in May 2019 by the Assembly of Prosecutors of the Regional Prosecutor's Office in Cracow, indicating the exertion of political pressure on prosecutors. These actions resulted in him becoming an inconvenient person for the authorities of the politicized prosecutor's office and harassment resulted in his unjustifiable move to a place of work located 200 kilometres from his place of residence.⁴⁵¹ The decision to transfer him was taken personally by the Deputy Prosecutor General, Bogdan Świączkowski, and contained no justification. Prosecutor Krason challenged this transfer decision in court. As the judges of the Cracow courts were summoned to hearings after they had made procedural decisions that were favourable for Prosecutor Krason during the proceedings (but also before the main case was settled), there is no doubt that their unfounded summons to hearings was an attempt to exert pressure on them by the politicized prosecutor's office.⁴⁵² Judges Marzena Henrych, Sabina Czech-Śmiałkowska, Katarzyna Rozwoda, Paweł Cyran, Aneta Tomasik and Sławomir Folusz (from the District Court), Jarosław Łukasik, Grażyna Baran, Urszula Pałkowska-Różycka and Dominika Augustyn (from the Regional Court), as well as Agata Pyjas-Luty, Monika Kowalska and Iwona Łuka-Kliszcz (from the Court of Appeal) were questioned in this procedure.

This questioning appalled both the Cracow judicial community, which manifested itself in demonstrations in defence of the persecuted judges,⁴⁵³ and encountered a strong negative opinion of the judges' associations, including the *"Themis"* Judges Association, whose

management board stated in its resolution of December 29, 2020:⁴⁵⁴ In a state governed by the rule of law, judges cannot make decisions regarding civil rights and freedoms with a pistol at their heads in the form of criminal proceedings, with politicians of the power camp holding the trigger.

⁴⁵⁰ <https://ruleoflaw.pl/the-national-public-prosecutors-office-is-prosecuting-seven-judges-for-taking-decisions-which-favour-an-oppressed-prosecutor/>

⁴⁵¹ <https://ruleoflaw.pl/law-and-justices-concentrated-power-over-polish-prosecutors>

⁴⁵² <http://themis-sedziowie.eu/materials-in-english/resolution-of-the-board-of-the-themis-judges-association-of-29-december-2020-on-unlawful-pressure-on-krakow-judges-in-connection-with-the-proceedings-in-the-case-of-prosecutor-mariusz-krason/>

⁴⁵³ <https://www.iustitia.pl/en/disciplinary-proceedings/4071-a-short-account-on-protest-prosecutor-krason-s-case-cracow-29-12-2020>

⁴⁵⁴ <http://themis-sedziowie.eu/materials-in-english/resolution-of-the-board-of-the-themis-judges-association-of-29-december-2020-on-unlawful-pressure-on-krakow-judges-in-connection-with-the-proceedings-in-the-case-of-prosecutor-mariusz-krason/>

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Such methods of forceful control over the administration of justice are typical of authoritarian regimes.

The Ombudsman, Adam Bodnar, intervened in this case, indicating that the actions of the National Prosecutor's Office may interfere with the exercise of judicial authority in a manner that

oversteps the principle of independence of judges by making judges fear negative consequences for acting in accordance with their own convictions and knowledge in deciding on cases for the examination of which they are responsible. He added that this, in turn, constitutes a necessary element of the full implementation of the right to a trial, as referred to in Article 45 para.

of the Constitution of the Republic of Poland, Article 6 of the European Convention on Human Rights, Article 47 of the Charter of Fundamental Rights of the European Union and Article 19(1)(2) of the Treaty on European Union.⁴⁵⁵

9. Trawling through the case files of Judges of Supreme Court and the Regional Court in Olsztyn

Another manifestation of collective and politically motivated persecution of judges is the so-called 'trawling of files' of judges of specific courts. This consists of the WSW securing files of cases handled by judges, or their personal files, in order to find evidence of possible breaches of procedural regulations by judges in the course of proceedings, which in turn may become the basis for raising criminal charges against them. This method is not far removed from the doctrine attributed to one of the most famous communist prosecutors, Andrei Vyshinsky: "Give me a man and I will find the crime".

In mid-April 2021, the Deputy Prosecutor General demanded that the illegally acting First President of the Supreme Court, Małgorzata Manowska (who has the status of a neo-judge), hand over to the WSW the files of 25 disciplinary cases against lawyers that had been heard by the Criminal Chamber of the Supreme Court since April 2020. These files had been transferred to the Criminal Chamber by the previous legal First President of the Supreme Court, Małgorzata Gersdorf, after the CJEU awarded an interim measure on April 8 2020 suspending the adjudicatory work of the Disciplinary Chamber (pending the determination of the case regarding its status). Consequently, Małgorzata Gersdorf froze the work of this Chamber and transferred the cases referred to it to the Criminal Chamber and the Labour Chamber. In addition, lawyers participating in disciplinary proceedings themselves bypassed the Disciplinary Chamber of the Supreme Court and submitted appeals in disciplinary case directly to the Criminal Chamber. The Attorney General/Minister of Justice did not comply with the interim measure of the CJEU by repeatedly expressing the view that the Disciplinary

⁴⁵⁵ <https://monitorkonstytucyjny.eu/archiwa/16811>

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Chamber is legal and should continue to operate without interruption. Therefore, it is to be expected that the file is to be transferred to the WSW in order for it to handle criminal

proceedings regarding the alleged overstepping of powers (Article 231 kk) by several 'old' judges of the Criminal Chamber of the Supreme Court, who – bypassing the Disciplinary Chamber – issued rulings in the above 25 disciplinary cases (including in the case of the current President of the Criminal Chamber of the Supreme Court, Michał Laskowski).⁴⁵⁶ According to information published in the "Dziennik Gazeta Prawna" daily newspaper, Deputy Prosecutor General, Bogdan Świączkowski was also supposed to have requested a number of files from the Labour Chamber regarding cases in which ordinary court judges (including Monika Frąckowiak, Krystian Markiewicz, Paweł Juszczyszyn, Bartłomiej Starosta and Waldemar Żurek) challenged the legal status of a number of Supreme Court judges illegally appointed to their positions with the participation of the incorrectly elected, new NCJ.⁴⁵⁷

On an even larger scale, the WSW "trawled case files" of 121 judges of the District Court and the Regional Court in Olsztyn, demanding that the WSW obtain personal files and other information about the judges from the President of the Regional Court in Olsztyn. The action is related to a conflict between these judges and the current acting President of the Olsztyn Regional Court, Judge Maciej Nawacki.

Maciej Nawacki is one of the judges who had not previously stood out, but who experienced rapid "career progression" during the term of the current Minister of Justice/Prosecutor General, Zbigniew Ziobro. First, after the purge among the presidents of the Polish courts in late 2017 and early 2018, Maciej Nawacki was appointed the President of the Regional Court in Olsztyn by Zbigniew Ziobro, and then – in March 2018 – was elected by the Sejm as a member of the new NCJ in breach of the Constitution. Since then, he has taken numerous repressive actions against judges of the Regional Court in Olsztyn who defended the independence of the judiciary, the most notorious of which was the calling of the police in April 2019 against judges legally protesting outside the court building against unjustified disciplinary proceedings,⁴⁵⁸ or his demonstrative tearing up of a draft resolution prepared by the judges during the assembly of the Olsztyn District Court Judges.⁴⁵⁹ However, the conflict escalated to its greatest intensity when, in November 2019, Maciej Nawacki suspended Paweł Juszczyszyn, a judge of the District Court in Olsztyn, from his judicial duties after the judge, in implementing the CJEU's decision of November 19, 2019 (AK case),⁴⁶⁰ requested that he be given access to lists of support of the judges who were candidates to the neo-NCJ. The lists of support had been the most closely

⁴⁵⁶ <http://themis-sedziowie.eu/materials-in-english/prosecutors-office-takes-over-supreme-court-files-the-start-of-an-offensive-against-the-judges-by-lukasz-woznicki-gazeta-wyborcza-20-march-2021/>

⁴⁵⁷ <https://serwis.gazetaprawna.pl/orzeczenia/artykuly/8126361,prokurator-chce-zajrzec-w-akta-izby-pracy-sn.html>

⁴⁵⁸ <https://oko.press/maciej-nawacki-prezes-sadu-w-olsztynie-z-nominacji-ziobry-naslal-policje-na-swoich-sedziow/>

⁴⁵⁹ <https://oko.press/sedzia-nawacki-publicznie-drac-uchwaly-popełnil-przestępstwo/>

⁴⁶⁰ <https://curia.europa.eu/juris/document/document.jsf?text=&docid=220770&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=5170552>

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guarded state secret for more than 2 years, and the Sejm authorities had refused to disclose them despite final rulings by administrative courts ordering them to do so. When these lists were disclosed on February 14, 2020 (this happened, probably not by chance, on the day the famous “Muzzle Act” entered into force, which prohibits judges from questioning the legal status of the neo-NCJ and the judges appointed with its participation, under threat of expulsion from the profession), it transpired that, by removing Judge Juszczyszyn from the profession, Maciej Nawacki was defending himself from the illegality of his appointment to the neo-NCJ, which is the case, even in the light of the new, unconstitutional legislation. In other words, after the disclosure of the lists of support for the neo-NCJ, it turned out that Maciej Nawacki was illegally appointed to it, as he failed to collect the 25 signatures of judges required for his candidature.

Following Judge Paweł Juszczyszyn's unjustified and illegal suspension, judges of the Olsztyn courts have repeatedly held demonstrations in front of the court building in his support, and the assemblies of judges of these courts have passed resolutions that are critical of President Maciej Nawacki's actions. In addition, it was the judges from Olsztyn who drafted the text of a historic appeal in July 2021 calling on the Polish authorities to implement the CJEU judgments of July 14 and 15, 2021, which was subsequently signed by more than 4,200 judges and prosecutors from across Poland.⁴⁶¹ It is significant that, despite the CJEU's interim measure of July 14, 2021 and the final judgment of the Olsztyn Regional Court ordering the reinstatement of Judge Paweł Juszczyszyn, President Nawacki has still not issued a decision to reinstate the judge, claiming that he is still bound by the ruling of the CJEU's outlawed Disciplinary Chamber. As a result, a group of 49 judges of the Olsztyn courts reported Maciej Nawacki to the prosecutor's office regarding the possibility of his commitment of the crime of failing to fulfil official duties (Article 231 kk).

In response, Maciej Nawacki reported an alleged false accusation against him to the prosecutor's office. It is probably no coincidence that it was the personal files of the 49 judges who reported Nawacki that were secured by the WSW. It is to be expected that the objective of the group trawling through the personal files of the judges of the Olsztyn courts is to initiate criminal proceedings under any pretext in order to have a chilling effect on them, which is to pacify the community of the Olsztyn judges and prevent them from continuing to support the unlawfully suspended judge, Paweł Juszczyszyn.⁴⁶²

10. Judge Jarosław Dudzicz

Jarosław Dudzicz is one of the judges who previously did not stand up for anything, but as he fully cooperated with the ruling camp in order to destroy the independence of the Polish judiciary, his career has progressed rapidly in recent years. In the last 3 years, he was promoted from the lowest position in the ordinary judiciary (district court judge) to the position of regional court president

⁴⁶¹ <https://oko.press/wielki-historyczny-apel-polskich-sedziow-w-obronie-prawa-ue-ostateczna-lista-4219-nazwisk/>

⁴⁶² <https://oko.press/prokuratura-krajowa-zada-informacji-o-wszystkich-sedziach-z-olsztyna/>

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and, in 2018, he also became a member of the new, politicized National Council of the Judiciary in which he assumed the position of deputy press officer.

This career progression was not hindered by the original sin of making a number of public online posts insulting the Jewish people, including "A despicable filthy nation, they do not deserve anything",⁴⁶³ in 2015, acting under the nickname "jorry 123". According to *Gazeta Wyborcza*,⁴⁶⁴ "jorry123" also posted other hateful comments. He commented on an article about historian Jan Tomasz Gross, who writes about Polish complicity in the Holocaust, as follows: "Jewish and German liars against Poland and Poles". He called the Kielce pogrom "a communist provocation" and said that, since most Jews were communists, "these Jews stood against other Jews to justify further war". When information about the investigation was leaked to the press in 2019, it resounded with the foreign media⁴⁶⁵ and encountered a strong negative reaction from the Israeli embassy in Poland, as well as the Polish Ombudsman, Adam Bodnar.⁴⁶⁶

Although shortly after these publications, both the neo-NCJ and the Disciplinary Commissioner of the Judges of the Ordinary Courts announced that they would take decisive action against Judge Dudzicz, he has continued to serve as a member of the NCJ and president of the court to this day. According to press reports, after a criminal complaint was filed by an unidentified person in 2015, the police established that the entries had been made from Jarosław Dudzicz's computer, who subsequently admitted during questioning that he was the author. Although later, the Prosecutor's Office explained that it was waiting for an expert linguist's opinion to assess whether the entries had the nature of "hate speech", the fact that the investigation of such a simple matter has lasted more than six years is completely incomprehensible. The investigation into Judge Dudzicz's anti-Semitic comments is probably the longest-running of the simplest investigations conducted by the Polish prosecution service.

Finally, when it was no longer possible to come up with further pretexts to prolong the proceedings, the case was taken over by the WSW and all talk of it disappeared.⁴⁶⁷ Independent media revealed in 2019 that Dudzicz was also a member of a group running an online hate speech campaign against independent judges, the so-called "Troll Farm at the Ministry of Justice" since 2018. According to media reports, the group also allegedly included 3 other members of the neo-NCJ, two central disciplinary commissioners for judges, one of the members of the Disciplinary Chamber of the Supreme Court, and the Deputy Minister of Justice, Łukasz Piebiak.⁴⁶⁸ The proceedings in this case have also been going on for a disproportionately long time without any effect, with the

⁴⁶³ <https://wiadomosci.onet.pl/tylko-w-onecie/antysemickie-wpisy-dudzicza-profesor-safjan-komentuje/lxx83bt>

⁴⁶⁴ <https://wyborcza.pl/7,75398,25182479,jaroslaw-dudzicz-sedzia-dobrej-zmiany-o-zydach-podly-parszywy.html>

⁴⁶⁵ <https://www.timesofisrael.com/polish-judge-called-jews-a-despicable-filthy-nation-in-online-forum/>

⁴⁶⁶ <https://wyborcza.pl/7,75398,25182479,jaroslaw-dudzicz-sedzia-dobrej-zmiany-o-zydach-podly-parszywy.html>

⁴⁶⁷ <https://wroclaw.wyborcza.pl/wroclaw/7,35771,27885206,kasta-stoi-w-miejscu-dziwne-sledztwo-w-sprawie-afery-hejterskiej.html>

⁴⁶⁸ <http://themis-sedziowie.eu/materials-in-english/onet-investigation-troll-farm-at-the-ministry-of-justice-or-we-do-not-put-in-jail-for-doing-good/>
<http://themis-sedziowie.eu/materials-in-english/troll-farm-at-the-ministry-of-justice-part-3-judges-organize-smear-campaign-against-the-president-of-the-supreme-court/>
https://view.officeapps.live.com/op/view.aspx?src=http%3A%2F%2Fthemis-sedziowie.eu%2Fwp-content%2Fuploads%2F2019%2F10%2FHow-a-member-of-the-NCJ-Puchalski-helped-EML_wer.docx&wdOrigin=BROWSELINK
<http://themis-sedziowie.eu/materials-in-english/appeal-of-the-themis-association-of-judgesof-26-august-2019-regarding-the-so-called-piebiak-scandal/>

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case first being moved from Warsaw to Lublin and then from Lublin to Świdnica. It appears that the objective of transferring the case between prosecution units is to prolong the proceedings. It is to be expected that this case, too, will finally end up in the WSW, which will make it possible to "sweep it under the carpet".

11. Public Prosecutor Justyna Brzozowska

Although the main objective of this paper is to present the WSW's repression of judges who are inconvenient to the authorities, it should be remembered that the WSW was also created to prosecute prosecutors. It is therefore hardly surprising that the WSW, which is politically subservient, is particularly active against prosecutors who are members of the independent "Lex Super Omnia" Association of Prosecutors,⁴⁶⁹ which is highly critical of the pseudo-reforms in the judiciary and prosecution system. The WSW conducted criminal proceedings against two of these prosecutors, i.e. Justyna Brzozowska and Jacek Gacek, for the alleged failure to fulfil their professional duties in connection with the investigations they were handling (Article 231, paragraph 1 kk).

It is significant that, in the past, Justyna Brzozowska, as a prosecutor in the Warsaw Regional Prosecutor's Office, issued two decisions which were very unfavourable to the ruling camp. The first was to initiate criminal proceedings about the government's refusal to publish the judgment of the "old" Constitutional Tribunal of December 3, 2015. The government refused to publish it because it was during a period when it was seeking to politically subordinate the Tribunal in breach of the Constitution. Shortly after it was opened, the investigation was taken away from Prosecutor Brzozowska and assigned to a prosecutor who was sympathetic to the ruling camp, who promptly discontinued it. Another of Prosecutor Brzozowska's decisions which was inconvenient for the current government camp was the discontinuation of the proceedings against former Prime Minister Donald Tusk for allegedly committing "diplomatic treason" in connection with the decisions he made as prime minister after the Smolensk crash, in which, among others, the President of Poland, Lech Kaczyński, died.

The official reason why the WSW initiated the investigation against Prosecutor Brzozowska was the fact that she refused to initiate the investigation into the so-called "reprivatisation scandal" regarding a number of tenement houses in Warsaw because of the failure of the Central Anticorruption Bureau to provide her with appropriate evidence. The fact that the accusation against Prosecutor Brzozowska is dubious and may be politically motivated is evidenced by the fact that, when the WSW submitted a request to the local disciplinary court to lift Prosecutor Brzozowska's immunity in order to instigate criminal proceedings against her, the court twice refused to waive her immunity. It was only the politicized Disciplinary Chamber of the Supreme Court, hearing an appeal against the decision of the disciplinary court of the first instance, which lifted Prosecutor

⁴⁶⁹ The various methods used by the ruling camp to intimidate independent prosecutors, including moving them to distant prosecution units, have been described in a report prepared by 'Lex Super Omnia' entitled: 'The stick method', https://medelnet.eu/images/2021/THE_STICK_METHOD.pdf

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Brzozowska's immunity, against whom criminal proceedings are now pending before the Regional Court in Warsaw.⁴⁷⁰

On 31 August 2023, the Warsaw Regional Court ruled that prosecutor Justyna Brzozowska of the Warsaw Regional Prosecutor's Office could not be charged because there was no effective consent to prosecute her. This was because her immunity had been waived by the Disciplinary Chamber, which was not a court. The court referred to the judgments of the CJEU and a historic resolution of the Supreme Court from January 2020, which challenged the legality of the Chamber.⁴⁷¹

12. Public Prosecutor Józef Gacek

Another of the prosecutors, members of Lex Super Omnia, being investigated by the WSW, Jacek Gacek, also made decisions in the past which were unfavourable to the ruling camp. First of all, he resigned from his position as head of department of the Regional Prosecutor's Office in Warsaw in protest of the dismissal of another prosecutor his department, who was punished for having initiated an investigation into the government's refusal to publish another verdict of the "old" Constitutional Court (of March 9, 2016).⁴⁷² However, the reason why the WSW accused Prosecutor Gacek of allegedly failing to perform his official duties (Article 231 para. 1 kk) was that he had decided that there were no grounds for accusing the former head of the Government Protection Bureau of contributing to the Smolensk disaster taking place. The fact that this charge is dubious and may be politically motivated is evidenced by the local disciplinary court also refusing to lift prosecutor Gacek's immunity, which only happened on July 22, 2020 as a result of the decision of the illegal Disciplinary Chamber of the Supreme Court.⁴⁷³

On 31 August 2023, the Warsaw Regional Court ruled that prosecutor Justyna Brzozowska of the Warsaw Regional Prosecutor's Office could not be charged because there was no effective consent to prosecute her. This was because her immunity had been waived by the Disciplinary Chamber, which was not a court. The court referred to the judgments of the CJEU and a historic resolution of the Supreme Court from January 2020, which challenged the legality of the Chamber.⁴⁷⁴

13. Public Prosecutor Waldemar Pionka

Another of the criminal proceedings conducted by the WSW which led to the lifting of a prosecutor's immunity applied to Waldemar Pionka, the former head of the Ostrowiec Świętokrzyski District Prosecutor's Office. The incident is related to the asset declarations (which are submitted each year by Polish judges and prosecutors) that prosecutor Pionka submitted in 2015–2016, in which he did not include one of the assets of his wife, with whom he was in conflict and who only informed him that he had additional funds in a separate bank account in 2018. Immediately after

⁴⁷⁰ <https://archiwumosiadynskiego.pl/wpis-w-debacie/prokuratura-ziobry-oskarza-niezalezna-prokuratorke-to-precedens-ktory-ma-zastraszyc-sledczych/>

⁴⁷¹ <https://oko.press/zwyciestwo-prokurator-brzozowskiej>

⁴⁷² <https://wiadomosci.onet.pl/tylko-w-onecie/prokurator-gacek-utracy-immunitet-teraz-komentuje-sprawe-to-dla-mnie-kuriozum/cc0xg0r>

⁴⁷³ Ibidem

⁴⁷⁴ <https://oko.press/zwyciestwo-prokurator-brzozowskiej>

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receiving this information, in 2018, Prosecutor Pionka filed a supplementary asset declaration for 2015–2016, which seemed to settle the matter.

Despite this, the prosecutor's office opened an investigation into the prosecutor's failure to fulfil his duties when filing the asset declaration (Article 231 kk), which was subsequently taken over by the WSW. However, the Prosecutor's Disciplinary Court of the first instance set aside the WSW's request to waive Prosecutor Pionka's immunity in May 2019 stating that the error in his asset declaration was not culpable. The WSW appealed against this decision to the Disciplinary Chamber of the Supreme Court, which reversed the first instance decision on December 19, 2019, lifted the prosecutor's immunity allowing him to be prosecuted on criminal charges and suspended him from his duties indefinitely in order to be able to conclude the criminal proceedings. Waldemar Pionka filed a complaint with the ECtHR on July 15, 2020 (application no. 26004/20), in which the main allegation is that Article 6 of the ECHR was breached by the fact that the decision to allow him to be held criminally liable was taken by a body which, due to its dependence on the executive and legislative authorities, does not constitute a court in the light of the case-law of the Polish Supreme Court and the CJEU.

It seems that the real reason for Prosecutor Waldemar Pionka's current legal problems is the fact that, in 2007–2011 the District Prosecutor's Office in Ostrowiec Świętokrzyski, which he managed, conducted an investigation against 4 doctors (the main defendant is Doctor Dariusz Dudek), whom the then Minister of Justice, Zbigniew Ziobro, accused of an alleged medical error that led to the death of his father, Jerzy Ziobro, in 2006. In 2011, the prosecution office led by Waldemar Pionka discontinued the investigation into the cause of Jerzy Ziobro's death, citing the opinion of a team of expert doctors, who unequivocally stated that no medical error had been made during his treatment. Zbigniew Ziobro and his family appealed against the decision to discontinue the proceedings and, when the prosecution once again discontinued the proceedings, Zbigniew Ziobro filed a so-called private indictment in court, this time without the participation of the prosecution service.

Subsequently, after the functions of Minister of Justice and Prosecutor General were merged in April 2016, Zbigniew Ziobro, who is a party to the criminal proceedings (who currently, in addition to his function as Minister of Justice, also holds the position of Prosecutor General and member of the Sejm, namely the lower house of Parliament), began to fully and ruthlessly abuse the scope of his powers to achieve a favourable outcome for himself in the pending proceedings.

In particular, in a short period of time and in a manner correlating with the course of the proceedings, back in 2016, several timely changes in the law were introduced which strengthened Zbigniew Ziobro's position as a party in the pending proceeding,⁴⁷⁵ including:

- there was a change in the regulations on criminal procedures, which made it possible for

⁴⁷⁵ <https://tvn24.pl/polska/proces-ws-smierci-ojca-ziobry-jak-zmienialo-sie-prawo-ra/717991-2489978>

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the prosecutor's office headed by him to join the case on his side (whereby, importantly, the case was not joined by the level of the prosecutor's office which had the statutory competence to handle this type of case, but by the highest level, which reports directly to Zbigniew Ziobro),

- there was a change of procedure, which completely exempted the prosecutor from paying the court costs, even if he were to lose the case,
- at the time, when Zbigniew Ziobro, as a party to the proceedings, demanded an additional oral hearing of the medical experts who issued an opinion in the case, the upper limit of the penalty for the offence of filing an unreliable opinion was increased from 3 to 10 years' imprisonment,
- when Zbigniew Ziobro, as a party to the proceedings, demanded the admission of evidence from foreign experts, the fees of foreign experts were doubled.

The prosecution service led by Zbigniew Ziobro also undertook a number of other non-standard actions intended to intimidate and discredit the expert doctors who issued an opinion in the criminal case which was unfavourable to Zbigniew Ziobro, intimidated and removed the judge presiding over the case in the first instance from the case, and intimidated the judges of the appeal court who examined the case. These actions included:

- the initiation of criminal proceedings against the expert doctors who issued an opinion that was unfavourable to Zbigniew Ziobro in the case, for allegedly inflating the costs of preparing the opinion; searches were conducted at the same time in these proceedings, at 6.00 a.m., at the homes of 15 doctors with professorial titles (such coordinated actions are usually undertaken against members of organized criminal groups),
- criminal proceedings were initiated just before the end of the proceedings of the court of the first instance, in early 2017, against the judge presiding over the case, Agnieszka Pilarczyk, for allegedly paying an excessive fee to the expert doctors, and the initiation of these proceedings became the basis for the prosecution's request to remove the judge from the case (however, no charges have been raised against the judge to date),
- 2 days before the first hearing date in the court of appeal, Zbigniew Ziobro dismissed Beata Morawiec, the direct supervisor of the judges presiding over the proceedings, from her position as President of the Regional Court in Cracow, which was clearly perceived as an attempt to intimidate the judges hearing the case in the court of appeal,⁴⁷⁶
- according to media reports, the National Health Fund inspected 15,000 medical records of patients of the hospital run by Dr Dariusz Dudek in 2017, on the order of the Cracow

⁴⁷⁶ <https://www.polityka.pl/tygodnikpolityka/kraj/1729584,1,zwrot-w-procesie-ws-smierci-ojca-ziobry-krakowski-sad-nie-chce-sie-zajmowac-ta-sprawa.read>

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prosecutor's office, and the police conducted searches at the hospital, all in order to look for either evidence of medical errors or irregularities in the hospital's documentation⁴⁷⁷ (however, no such evidence was found),

- in December 2016, the medical surgery of Dr Dariusz Dudek's wife, who is unrelated to the case, was also searched, in an unsuccessful attempt to initiate criminal proceedings against her as well, on charges of her allegedly embezzling funds for prescriptions for reimbursed medicines.⁴⁷⁸

Despite all the actions described above, the case before the court of the first instance ended with the acquittal of all the accused doctors.⁴⁷⁹ The case has now been pending since 2017 before the court of the second instance.

The course of the proceedings in this case, in the context of all the circumstances surrounding it, compromises the Minister of Justice/Prosecutor General as a high state official and simultaneously a person of public confidence, because the fact that he is using the power vested in him to obtain a favourable outcome in his own case and the scale of the activities undertaken for this purpose breaches the standards of a law-abiding state. In the light of the circumstances described above, it seems certain that the absurd criminal proceedings due to non-culpable errors in asset declarations is the price which Prosecutor Waldemar Pionka is paying for discontinuing proceedings in 2011 in the case of an alleged medical error which led to the death of the father of the current Minister of Justice/Prosecutor General.

⁴⁷⁷ <https://wiadomosci.onet.pl/tylko-w-onecie/skazany-na-wyrok-jak-polskie-panstwo-osacza-lekarza-ktory-leczyl-ojca-zbigniewa/wjg4yg3>

⁴⁷⁸ <https://lekarski.blog.polityka.pl/2016/01/11/dobierzemy-sie-do-twojej-rodziny-wracaja-brunatno-czerwone-demony/>

⁴⁷⁹ <https://www.polityka.pl/tygodnikpolityka/kraj/1693856,1,sprawa-smierci-ojca-ministra-sprawiedliwosci-zbigniewa-ziobry-sad-uniewinnil-lekarzy.read>

Since the United Right coalition, led by Law and Justice (PiS), took power in 2015, the prosecution service has been turned into a tool in the hands of the government, primarily used to persecute its opponents and protect its allies.

This report is an updated and extended version of our previous reports from 2021 and 2022. Building on open source material and information provided directly by the maliciously prosecuted individuals, it lists the most notable - as well as some less known - cases of politically motivated abuses of power which can be attributed to the state prosecution service in the years 2015-2023, divided into two main categories: malicious prosecution and dereliction of duty.

Cases of malicious prosecution are further classified according to groups of victims: civil society; judges and prosecutors; opposition politicians, lawyers, and local government leaders; former allies; former security services chiefs; entrepreneurs and executives; journalists, writers and artists; and the unfortunates.

The report also presents a list of the most prevalent, systemic issues eroding the prosecutor's office, as well as recommendations on how to prevent political abuses of the public prosecution service in the future. The report's annexes offer an analysis of the legal changes that expanded the powers of the Prosecutor General and prosecution service overall as well as an overview of the activities of the Internal Affairs Department of the National Prosecutor's Office.

"In Europe, too little importance is still given to the issue of the independence of the prosecution service.

Meanwhile, it is free prosecutors, independent of ruling party politicians, who are the condition for maintaining democracy and the rule of law. The ODF report vividly illustrates the decline of the rule of law through the politicisation of the prosecution service at every level."

- Judge Monika Frąckowiak, Vice-President of MEDEL (Magistrats Européens pour la Démocratie et les Libertés) European association of judges and prosecutors

"An independent prosecution service is an essential element of any democratic legal order. Only a prosecutor free from political influence guarantees fair, impartial and effective justice. So that power can never be abused with impunity."

- Prosecutor Ewa Wrzosek, Lex Super Omnia Prosecutors Association

"Discussions on the rule of law in Poland still don't pay enough attention to the extreme politicisation of prosecutors under the rule of Law and Justice. This much-needed report shows how the prosecutor's office has become a tool for implementing the political agenda of one party in Poland, harming the rule of law, democracy and the economy."

- Marek Tatala, economist and Vice President of the Economic Freedom Foundation

"The current state of the Public Prosecutor's Office falls significantly short of Council of Europe standards. The Parliamentary Assembly of the Council of Europe, stressing that the current statutory changes introduced in Poland undermine the independence of the office and politicise the prosecutor's office, calls for the immediate separation of the functions of Minister of Justice and Prosecutor General. The pressure on prosecutors and disciplinary proceedings are evidence of the politicisation of this office and the elimination of its role of upholding the rule of law."

- Prof. Hanna Machińska, Deputy Polish Commissioner for Human Rights 2017-2022

