POLISH PUBLIC PROSECUTOR’S OFFICE:

SELECTED CASES OF MALICIOUS PROSECUTION AND DERELICTION OF DUTIES SINCE 2015

February 2022
The Open Dialogue Foundation (ODF) was established in Poland in 2009 on the initiative of Ukrainian student and civic activist Lyudmyla Kozlovska (who currently serves as President of the Foundation). 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. The Foundation originally focused its attention primarily on Kazakhstan, Russia, Ukraine and - since 2016 - Moldova, but this area of interest was expanded in July 2017 due to the rapidly deteriorating situation in Poland and other EU member states affected by illiberal policies implemented by their populist governments.

The Foundation has its permanent representative offices in Warsaw and Brussels. ODF pursues its goals through the organisation of observation missions, monitoring especially individual human rights' violation cases. 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 Interpol and - more recently - the Schengen Information System (SIS), preventing their mechanisms from being used by authoritarian and hybrid regimes to persecute their opponents.

In 2013/14 the Foundation organised a mission to support Ukrainian civil society in their struggle for European integration during the Revolution of Dignity in Kyiv's Maidan square. Following the Russian aggression in 2014, ODF's humanitarian aid programme, started on Maidan, was expanded to help those affected by the war in the East. From 2014 to 2016 a large support centre was run by ODF in Warsaw under the name “Ukrainian World”, offering everyday life assistance for migrants and fostering Polish-Ukrainian integration.

Independently of its initial statutory objectives, since July 2017 the Foundation and its representatives have been vocal regarding the rule of law situation in Poland, where the current governing party repeatedly violated the country’s constitution. ODF is primarily concerned with the diminishing independence of the judiciary and separation of powers, which in turn weaken the protection of civil rights. 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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Preface

Since the Law and Justice (PiS)-led United Right coalition1 took power in 2015, we have witnessed an unprecedented level of politicisation of the public prosecution service, which has been transformed into a tool serving political and personal interests of the ruling camp and its members. This resulted in a growing number of politically motivated cases of investigations carried out primarily against those regarded as opponents of the government.

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

Below we list several, most notable examples of politically motivated abuses of power which can be attributed to the prosecution service in the years 2015-2021. More information on the prosecutors involved can be found at the www.panstwo-pis.pl website 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.

The report is divided into two main categories: malicious prosecution and dereliction of duty cases, respectively. Within the first part, to help the reader, the victims were divided by profession or by other features that could group them together. The latter part covers the cases not initiated or discontinued by the public prosecution due to their political dimension unfavourable to the ruling camp.

Finally, the report presents a list of the most prevalent, systemic issues eroding the prosecution since the United Right came to power and recommendations on how to prevent political abuses of the public prosecution service in the future, when rule of law in Poland is restored. In annexes we have included 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.

The information presented in the report has been collected from open sources (press articles, interviews, other reports etc.) and, in many cases (whenever a source is not provided), from information provided directly by the maliciously prosecuted individuals, their defence lawyers and other parties to the proceedings. The level of detail and length of each case description may differ depending on information availability as well as on how obscure the case may be to the reader (with less known cases requiring more background information and/or detail).

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 Jaraside (Jaroslaw Gowin’s Agreement)
2 https://lexso.org.pl/category/reporty/
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This report is an updated and extended version of our "Malicious Prosecution by the Polish Public Prosecutor's Office" report published on August 16, 2021, with numerous new cases and analyses added as well as all other cases updated.

Lastly, it is worth noting that the politicisation of the public prosecution isn't a completely new phenomenon unique to the current government. The first time PiS was in power (2005-2007), the public prosecution (also headed by Zbigniew Ziobro) also became known for political investigations used as a propaganda tool. These include, most infamously, the cases of Dr. Miroslaw Garlicki, former minister Barbara Blida and cases of allegedly corrupt judges and doctors.

All ended with no wins for the prosecution and often tragic consequences for the accused (e.g. Barbara Blida's suicide). Some of the targeted judges won large damages for breach of personal rights by the prosecution service. The abuses listed in this report seem to be a direct continuation of that dark period.

Current division and hierarchy 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 with in this report if there is more than one.

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8. Bogdan Święczkowski was appointed to the post of judge of the Constitutional Tribunal on February 8, 2022. His successor is unknown as of the date of the latest update of this report.
9. According to nomenclature applied by Eu Institutions or CoE, the "Prokuratura Regionalna" is translated as 'Provincial Public Prosecutor's Office', the "Prokuratura Określona" 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 Gądzikowski – 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

ABW: Internal Security Agency (Agencja Bezpieczeństwa Wewnętrznego)
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, 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
ZW: Military Gendarmerie (Zandarmeria Wojskowa)
1. Cases of malicious prosecution

1.1 Civil society

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. The charges came after the protests for women’s rights the movement had organised in late 2020 and early 2021 in response to the illegal Constitutional Tribunal’s abortion ban.¹⁰

The activists are accused (the indictment was presented in July 2021) of causing an epidemiological threat for organising protests during the 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 assembly¹¹), insulting a police officer (Art. 226 para. 1 kk) and “praising criminal behaviour” (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 offences: causing 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 some red paint on a police officer’s uniform.¹²

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

On October 6, 2021, Klementyna Suchanow was indicted for breaking into the grounds of the Constitutional Tribunal on January 28, 2021 and for splashing red paint onto the uniform of a police officer, as mentioned above. The police officer is represented by attorney Bartosz Lewandowski,¹³ a lawyer from the Ordo Iuris Institute - a catholic fundamentalist organisation that Suchanow exposed as being part of a Brazilian sect, linked to and funded by the Kremlin.¹⁴

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**Bartosz Kramek and the Open Dialogue Foundation**

Politically-motivated charges were brought against Bartosz Kramek, 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 international advocacy against the government’s policies undermining Poland’s democratic standards.

Following a series of failed legal attempts to shut down or silence the foundation, in June 2021 Kramek was detained by officers of the Internal Security Agency (ABW) at the request of the Regional Prosecutor’s Office in Lublin. He was presented with dubious criminal charges of “false declarations” when issuing invoices to his company’s clients in 2012-2016 (Art. 271 in relation to Art. 12 and Art. 65 kk), which allegedly were a money laundering scheme designed to finance his NGO (Art. 299 in relation to Art. 12 and Art. 65 kk). Kramek spent 3 weeks in pre-trial detention.

The charges are controversial considering there are no injured parties of the alleged crime, with the Treasury being its beneficiary due to paid taxes, and the investigation itself being started directly following Kramek publishing a Facebook article suggesting civil disobedience actions against the increasingly oppressive government. Also, Kramek’s company fully complied with all legal, accounting and anti-money laundering regulations with no irregularities being noted by supervisory bodies up to the time ODF’s conflict with the PiS authorities started.

The investigation was initiated on the basis of seeking an alleged crime 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.

As of August 2021, three prosecutor’s offices have been involved in the case. A memo issued by the ABW in 2019 found out that it was not possible to prove any laundered funds to be received by ODF. It was also revealed the investigation was heavily reliant on assistance provided by Moldova’s former authorities, controlled by the country’s most powerful oligarch and then-de facto leader Vlad Plahotniuc, whose actions were targeted by ODF’s advocacy efforts. The charges against Kramek, much like those against the Women’s Strike leaders, also seem to be aimed at inducing a chilling effect on Polish civil society opposing the government’s policies.

15 https://www.polityka.pl/tygodnikpolityka/akta/1275211/spowiedz-puczysty-jak-dobra-zmiana-walczy-z-aktywista.read
16 https://wiadomosci.onet.pl/tylko-w-onecie/kompromitacja-polski-w-sprawie-wyrzucenia-z-kraju-ludmily-kozlowskiej/93x8bx2
18 https://www.polityka.pl/tygodnikpolityka/akta/1275211/spowiedz-puczysty-jak-dobra-zmiana-walczy-z-aktywista.read
19 https://wiadomosci.onet.pl/tylko-w-onecie/kompromitacja-polski-w-sprawie-wyrzucenia-z-kraju-ludmily-kozlowskiej/93x8bx2
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Furthermore, the same factual basis for the allegations seemed to be used against Kramek’s wife, ODF president Lyudmyla Kozlovska in 2018 when an entry ban reported into the Schengen Information System (SIS) was imposed on her based on an opinion of the ABW, declaring her a “threat to state security.” She became a target for false accusations together with her brother, Petr Kozlovske. The ban was disregarded by four other EU states and Switzerland (with Belgium granting her permanent residence, leading to the SIS ban being lifted) and finally dismissed three times by the Voivodeship Administrative Court in Warsaw, which called the evidence collected by the ABW against her “insufficient”, “very vague”, mentioning “unreasonable conclusions” having been drawn.

Kramek’s case is handled by Lublin Provincial Prosecutor Jerzy Ziarkiewicz, known for handling politically-sensitive cases and promoted to the post personally 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).

On October 26, 2021 the District Court in Lublin reviewed the defence’s appeals against the two preventive measures, imposed on Kramek after leaving arrest, and ruled on their inadmissibility. The court stated that the prosecutor unjustifiably imposed restrictions, the measures were disproportionate and violated the principle of protection of family life. As a result Bartosz Kramek was free to leave the country, return to his wife in Brussels, and is free from police probation. During the court hearing, Prosecutor Kołodziejczyk claimed the exceptionally intrusive (five times a week) police probation was imposed at the personal demand of Prosecutor General Zbigniew Ziobro.

Activist Andrzej Majdan

The prosecution service has unsuccessfully attempted to charge activist Andrzej Majdan with assault and taking part in a brawl despite him clearly being the victim.

On June 24, 2017 Majdan, a mid-age member of the pro-democracy Committee for the Defence of Democracy (KOD) movement was severely beaten by far-right militants of the All-Polish Youth (Młodzież Wszechpolska) during a pro-democracy rally in Radom commemorating the 1976 anti-communist protests in that city. The event was disturbed by a group of nationalist militia which

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22 https://en.odfoundation.eu/a/9480,court-secret-services-conclusions-unreasonable-lyudmyla-kozlovska-should-have-stayed-in-poland/
23 https://en.odfoundation.eu/a/37075,30-for-odf-another-victory-in-court-for-the-foundation-against-pis/
24 https://en.odfoundation.eu/a/9329,court-finds-entry-ban-on-lyudmyla-kozlovska-unjustified/
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Marched in a military formation chanting racist slogans. The rally, as a registered gathering, should have been protected by the police, yet no officers were present.\textsuperscript{28}

Majdan was subsequently accused of assault and taking part in a brawl (Art. 158 kk), with the prosecution claiming he 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 he was himself severely beaten up by four nationalists and could only attempt to mount a self-defence action while lying on the ground.

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

Prosecutor Justyna Domagala-Szlaga of the District Prosecutor’s Office in Radom, a nominee of Prosecutor General Zbigniew Ziobro,\textsuperscript{29} is in charge of the case.\textsuperscript{30} Her political motivations became evident when she sat on the disciplinary panel of the Prosecutor General’s Office that punished retired prosecutor Beata Mik for publishing columns critical of the ruling Law and Justice party in the Rzeczpospolita daily. The disciplinary proceedings’ reasoning was that Mik didn’t inform her superiors of her cooperation with the daily, despite having done so for 16 years with a permission from the Prosecutor General.

During the court proceedings prosecutor Domagala-Szlaga requested that the testimonies of all 30 witnesses submitted by the defence be dismissed and declared unreliable. At the same time testimonies from the nationalists were seen by her as reliable.

In April 2021 prosecutor Domagala-Szlaga appealed the verdict, claiming a lack of objectivity on the side of the court and a lack of understanding of the case. 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 first instance court “baseless”. In December 2021 Prosecutor Małgorzata Witkowska from the Radom-East District Prosecutor’s Office filed an appeal against the verdict with the Criminal Chamber of the Supreme Court. In the appeal the prosecution claims that Majdan “provoked” the nationalists to beat him up. Prosecutor Domagala-Szlaga on the other hand seeks an annulment of the verdict which found the All-Polish Youth nationalists guilty of the assault.

\textbf{Activist Zbigniew Komosa}

Zbigniew Komosa is an activist known, among others, for laying a wreath on a monthly basis in memory of the victims of the 2010 Smolensk plane crash. He does so during the so-called Smolensk mensiversary, when the accident is commemorated in a semi-official ceremony by Jarosław Kaczyński and other PiS representatives at the Smolensk memorial in Warsaw.

\textsuperscript{28} \url{https://natemat.pl/244075/andrzej-majdan-z-kod-pobity-przez-nacjonalistow-uslyszal-zarzuty}
\textsuperscript{29} \url{https://www.panstwo-pis.pl/index.php/Justyna_Domagala-Szlaga}
\textsuperscript{30} \url{https://radom.wyborcza.pl/radom/7/4820/2683582/radom-sad-skazal-narodowcow-za-pobicie-dzialacza-kod-jego.html}
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The wreath, with a text reading "In memory of the 95 victims of Lech Kaczyński who, ignoring all procedures, ordered the pilots to land at Smolensk in extremely difficult conditions. Rest in peace. People of Poland. STOP CREATING FALSE HEROES!" is laid at the memorial by the activist and each time demonstratively removed and destroyed by representatives of the Polish armed forces.31

For the first two years the wreath was quietly removed by soldiers after Komosa had left. Since mid-2020 members of the Warsaw Garrison (regular soldiers of Military Police) tear it out of the activist's hands in front of cameras and often hundreds of witnesses, then demonstratively destroy it, taking its remains to the garrison building. Sometimes they drag activists clinging to Komosa’s property across the square during the forcible confiscation.

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

The activist won the case in the 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 this verdict accusing the court, among others, of "violation of substantive law, namely Art. 261 kk, through its incorrect interpretation leading to an inaccurate conclusion".

In December 2021 the appellate court fully supported the first instance verdict, 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". The courts of both instances took the view that there was no offensive content in the inscription on the wreath and there is reliable information in public circulation which makes it possible to attribute moral responsibility for what happened to the late president. Commenting on the prosecution's appeal against the acquittal, judge Anna Szymacha-Zwolińska added that "if the law still included the concept of an obviously baseless appeal, this would be it".

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, i.e. the soldiers' committing theft each time.

In February 2022 a press investigation revealed that two prosecutors, Andrzei Piaseczny and then Bogumila Knap (highly experienced, was then about to retire), refused to file the appeal following

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the July 2021 verdict, explaining that there was no basis for one. They were then threatened by their superiors, department head Prosecutor Piotr Stasiak and criminal department manager Prosecutor Wiesław Kwiatkowski, with being demoted to district level. Prosecutor Knap wrote an official resignation letter to Prosecutor General Ziobro, using her right to an early retirement, and pointing to the threats as the reason.32

**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. From April until December 2021 he's been also heading SokzBuraka (Beetroot Juice), Poland’s largest on-line political community, vehemently opposed 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 against him 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 initiated following a private complaint by PiS Chairman Jarosław Kaczyński. In a 2-page statement, 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 by a tweet published in January that year by the satirical SokzBuraka (4 months before Mycielski became its editor-in-chief). The tweet asked why the Chairman had been vaccinated against COVID before his turn (as was then speculated by the press, considering he was often seen publicly not wearing a mask despite a mask-wearing mandate). The tweet’s location showed it had been published from the UK.

Despite it being a private complaint under Art. 212 kk (defamation), which would under normal circumstances be handled by the court without any involvement of the prosecution service, Warsaw regional prosecutor Konrad Gołębiowski initiated an ex officio investigation and decided to use European criminal cooperation mechanisms to question the two potential culprits mentioned by Kaczyński by name in his complaint, one of whom was Mycielski. According to LSO Prosecutor Ewa Wrózek, for the prosecution to take up such a case ex officio, there would normally have to be a strong public interest in supporting the victim, e.g., if the victim was disabled or without the means to defend himself.33

Right before Mycielski was questioned, all of his Belgian bank accounts were closed and other

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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 Gołąbiowski claimed in a private correspondence that he had not included orders to access banking records in his EIO.

The 13 activists from the Poland-Belarus border

Since August 2021, as the humanitarian crisis at the border between Poland and Belarus unfolded, with Alexander Lukashenko using migrants to destabilise the EU, the government of Poland has reacted by ignoring its commitments to the Geneva Convention and the European Charter of Fundamental Rights and sought to deny asylum seekers access to the country.34

The Polish authorities' behaviour runs against, i.a., 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 same convention forbidding collective push-backs, a principle also present in Art. 47 of the Charter of Fundamental Rights of the EU, as well as Polish law (Constitution, law on foreigners, Criminal Code - obligation to provide help).

After an initial idea of a possible civil disobedience action was suggested publicly by Obywatele RP civic movement co-founder Paweł Kasprzak,35 on August 24, Bartosz Kramek from the Open Dialogue Foundation, vocally opposing the government's inhumane actions and advocating for a human rights-based policy, published an article in Gazeta Wyborcza calling for bringing down the razor wire fence erected at the border.36

As in late August 2021 a group of refugees who fled the Taliban in Afghanistan was trapped on the border in Usnarz Górny, not being let into Poland by the Polish police and border guard, and there were reports of at least 3 deaths37, thirteen civic activists decided to symbolically damage the fence to send a public message against the illegal and gross mistreatment of asylum seekers.38 The thirteen activists involved 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.39

The act of civil disobedience was recorded and posted on social media by the activists themselves.

34 https://www.theguardian.com/commentisfree/2021/nov/15/the-guardian-view-on-the-eu-and-belarus-vacating-the-moral-high-ground
35 https://www.facebook.com/PawełKasprzak.OFF/posts/992244627969807
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The thirteen have faced charges of destruction of property as per Art. 288 kk, but the prosecutor’s office also wanted to have them arrested as they could “go into hiding”\(^40\). Such an accusation is particularly absurd as the activists had sought publicity for their act and did not shy away from the legal consequences of their actions in public.

The District Court of Sokółka rejected the local District Prosecutor’s office’s request to put the activists under pre-trial detention, arguing that there were no grounds for such a preemptive measure.\(^41\) The protest obtained remarkable media coverage and strong condemnation from the national government, members of which promised the activists would face dire consequences. The insistence of the prosecutor’s office to apply such preemptive measures may testify to the political nature of the move.\(^42\)

In January 2022, Polish MEP and founder of the Polish Humanitarian Action Janina Ochojska harshly criticised the authorities and the border guard, stating she hoped 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 prosecutor’s office of a possible crime, claiming Ochojska had defamed public officers.\(^43\)

Similar actions were taken with regard to Władysław Frasyniuk (anticommunist opposition figure), Marta Lempart (Women’s Strike leader), Bartosz Kramek (ODF’s activist), Michał Kobosko (Poland 2050 party chairman) i Piotr Maślak (TOK FM journalist).\(^44\)

In solidarity with them, on the initiative of Kajetan Wróblewski and Ewa Borguńska, the 13 activists notified the Warsaw Regional Prosecutor’s Office of their own “crime” after stating the same - that the border guard committed crimes and the authorities took part in them. Analogical notifications were made to various local prosecutor’s offices throughout the country by local activists.\(^45\)

The investigation into one of the charges (Art. 276 kk, incitement to the destruction of property), which was 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 which had not found any characteristics of a crime.\(^46\) The prosecution supported the decision. The decision was publicly criticised by far-right leader Krzysztof Bosak as “anti-Polish”\(^47\) and two days later, on January 9th, Prosecutor General Zbigniew Ziobro intervened himself, ordering in a

\(^{40}\) https://www.rp.pl/kraj/1087233-niszczenie-zasieki-na-granicy-czy-chuliganski-czy-nieposuzonym-sto-ozywatelskie
\(^{44}\) https://oko.press/police-przesluchuje-aktywistow-ktorzy-cizyli-autokarow-s-w-soldamosci-z-ochojska/
\(^{45}\) https://www.facebook.com/bartosz.kramek/posts/1059323602434772
\(^{47}\) https://twitter.com/krzysztopbosak/status/1479460331873793
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special statement an investigation into the discontinuation.\(^48\) This was the second documented, 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 similarly dropped.

The charge of destruction of property (Art. 288 para. 1 kk) remains in force for all 13 activists. On January 7th district prosecutor Artur Kuberski from Sokółka indicated that the activities conducted in the investigation were coming to an end.\(^49\)

**The Wrabec couple**

On October 27th, 2021, a married couple of civil activists from Wrocław, Paweł Wrabec and Justyna Wolniewicz-Wrabec (the former being a journalist and one of the founders of the Obywatele RP civic movement, the latter a graphic designer), was detained by police while transporting a couple of Iraqi migrants near the border town of Hajnówka.

The couple decided to take matters into their own hands seeing the mistreatment of migrants and refugees at the Poland-Belarus border, arguing that they were following Art. 162 kk which penalizes “failing to provide aid to a person or persons being threatened by loss of life or severe injury”.

Obywatele RP leader 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 in the border forest and were likely transported back (by the border guard following the so-called pushback procedure) after the arrest. At that point of the crisis 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).\(^50\)

Commenting on their motivation the police called the couple’s reasoning “frivolous”. An analysis of the Helsinki Foundation for Human Rights\(^51\) confirmed the legality of providing humanitarian (often live-saving) 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.\(^52\)

The couple spent nearly 24 hours in detention. They were 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 Prosecutor Jan Andrejczuk

\(^48\) https://twitter.com/PM_GOV_PL/status/1448001152163623337
\(^50\) This number could be higher due to the media and independent observers being excluded from the border zone
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of the District Prosecutor’s Office in Hajnówka,\(^{53}\) then transferred to the Warsaw Regional Prosecutor’s Office with the cooperation of the Lublin bureau of the ABW. The same ABW officer who is handling the investigation against Bartosz Kramek has been assigned to the Wrabec case.

1.2 Judges and Prosecutors

**Judge Beata Morawiec**

Judge Beata Morawiec is a former President of the Regional Court in Cracow and president of the Themis Association of Judges, 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 Święczkowski, see Annex II) has been trying to file charges against the judge ever since she won a personal rights court case against minister Ziobro.\(^{54}\)

According to the judgement, Ziobro had defamed her in his notification of her dismissal from her post in 2017 and was forced to issue a public apology, which he has not done yet, ignoring the court's ruling.\(^{55}\)

The prosecution has tried to strip away her immunity based on corruption allegations (misappropriation of public funds, acting against the public interest to gain a financial advantage, abuse of powers and acceptance of a financial advantage). The removal of Morawiec’s immunity was first approved by the illegal Disciplinary Chamber of the Supreme Court (in an October 2020 decision of a single judge),\(^ {56}\) but following Judge Morawiec’s appeal was revoked by a 3-person jury of the Disciplinary Chamber in June 2021.\(^ {57}\)

The allegations were highly doubtful, one based on a claim that Judge Morawiec had defrauded public funds when failing to deliver a legal opinion requested by another court in 2013 (an independent expertise confirmed she did in fact deliver it),\(^ {58}\) and the other alleging she received a bribe in the form of a mobile phone - a claim not supported by any evidence.

The prosecutor representing the National Prosecutor’s Office in these proceedings was Michał Walendzik, formerly of the District Prosecutor’s Office in Rawa Mazowiecka. The prosecutor is listed by OKO.press, a renowned independent media outlet, and LSO among the top prosecutors whose careers were advanced by Z. Ziobro (by 3 levels within 2 years)\(^ {59}\) and criticised for his abuse of power when issuing an unlawful decision for the Central Anticorruption Bureau (CBA) to search

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\(^{53}\) https://bialystok.wyborcza.pl/bialystok/7,35241,27743524,polsko-bialoruska-granica-aktywisci-zatrzymani-za-ludzki-odruch.html  
the house of Judge Morawiec in 2020 despite her being protected by immunity.\textsuperscript{60}

On September 28 Judge Morawiec was demoted from her post to a court of lower instance. The move followed a letter she signed, together with other judges, in which she stated she would refuse 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 ECHR of July 2021, in which the legality of the so-called neo-National Council of the Judiciary and its nominations were challenged.\textsuperscript{61}

**Judge Igor Tuleya**

As with the case of Judge Beata Morawiec, the National Prosecutor's Office is pursuing another judge widely known for his vocal opposition to the reforms eroding the independent judiciary, Judge Igor Tuleya of the District Court of Warsaw and former spokesperson for this court.\textsuperscript{62}

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, delegated there from the Regional Prosecutor's Office in Nowy Sącz, and himself only a prosecutor since 2018.\textsuperscript{63} Until then he was an attorney and mayor of a small municipality near Limanowa, known for its PiS sympathies. The prosecutor is charging Judge Tuleya for abuse of power through a criminal breach of the secrecy of the investigation (under Art. 231 kk).\textsuperscript{64}

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 December 16, 2016, the proceedings of the Sejm (lower chamber of the Polish parliament) had been moved from the plenary chamber to the smaller Columned Hall. During the proceedings MPs 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 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 representatives of the PiS party in connection with the pushing through of illegal proceedings in the Sejm.\textsuperscript{65}

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\textsuperscript{60} https://oko.press/sad-przeszukanie-domu-sedzi-morawiec-nielegalne-prokuratura-krajowa-naruszyla-jej-immunitet/


\textsuperscript{62} https://oko.press/igor-tuleya-zgoda-na-zatrzymanie/

\textsuperscript{63} https://www.policja.pl/nygolipolicja/kraj/21/4234/1/pis-ow-w-cessive-szczytu-wielkiego-zawieszenia-prokuratorki-poleca-scatanie-tylko_w_tzw-

\textsuperscript{64} https://tvn24.pl/polska/krakow-sedziowie-beata-morawiec-maciej-czajka-i-katarzyna-wierzbicka-przenie-si-dziwnie-do-innych-wydzialow-wczesniej-odmowili-orzekania-z-

\textsuperscript{65} https://serwis.gazetaprawna.pl/orzeczenia/artykuly/8147581/to-co-chodzi-w-sprawie-igora-tuleyi-wyjasnia-ja.html
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By discontinuing the proceedings, the prosecutor’s office 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.66

Stanisławczyk is the third 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) and Piotr Dąbrowski from the District Prosecutor’s Office in Gdynia (also delegated).67

**Judge Waldemar Żurek**

The prosecution service has played a major role in the ongoing persecution of Judge Waldemar Żurek - a former member and spokesperson of the National Judiciary Council, who in that role and ever since then openly opposed the ruling coalition’s assaults on the rule of law in Poland, including the unconstitutional dissolution of said council. An investigation into Judge Żurek (beginning with an audit of his asset statements) has been ongoing since 2016, handled by the Regional Prosecutor’s Office in Cracow, represented in this case 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 one was initiated in January 2017 by the Regional Prosecutor’s Office in Warsaw.68

The 5-year investigation included numerous abuses, including a spectacular and unlawful raid by CBA agents on the judge’s office, the unnecessary declassification of his assets declaration by Z. Ziobro, leaking of his divorce case to pro-government press and even questioning his wife when she was dealing with an endangered pregnancy.69 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, police and 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) of an allegedly-due civil law transaction tax (PCC) following the sale of a 37 year old tractor. As was quickly revealed, following the fiscal authorities themselves failing to claim the tax despite the Cracow prosecution office’s notification, the tax was not due at all as the transaction was exempted.

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from it. 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, September 14, 2021, Żurek submitted to the president of his court, Dagmara Pawelczyk-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 Judge Żurek of being fired.

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. Żurek was following a case concerning the annulment of a contract, when one of the parties appealed against one of his decisions. 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 to this position. Against all previously established practice, the prosecutor's office, led by Rafał Babiński, demanded the removal of Judge Żurek from the case with the following justification: "while 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".70

Mariusz Krasoń and other Lex Super Omnia prosecutors

Prosecutor Mariusz Krasoń (member of the Lex Super Omnia association, LSO), who initiated the May 15, 2019 resolution of Cracow prosecutors criticising the politicization of the prosecution service,71 has faced prosecution since 2019. As of 2021 he has faced more than a dozen cases, as have his colleagues from LSO.

Among others, a special team of disciplinary commissioners set up under Poland's new disciplinary regime for judges72 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, Krasoń was also questioned in connection to initiating the said resolution admonishing 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".73

The decisions regarding punitive transfers all stem, ultimately, from National Prosecutor Bogdan Święckowski.74

70 https://oko.press/waldemar-zurek-odmawia-sadzenia-z-neo-sedziami-to-kolejny-sedzia-ktory-wykonuje-prawo-ue/
71 https://en.odfoundation.eu/a/35396,a-breach-too-far-call-to-the-ec-on-the-assault-on-judges-adjudicating-on-prosecutor-krasons-case/
72 https://uleelaw.pl/half-a-million-for-prosecuting-defiant-judges/
74 https://www.rp.pl/zawody-prawnicze/art320151-niepokorni-prokuratory-jada-za-kare-w-polske
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Other independent prosecutors face similar arbitrary disciplinary proceedings and even criminal prosecution. Most notably, Prosecutor Ewa Wrzosek is being harassed for initiating an investigation into the presidential elections the government sought to organise during the rampaging Covid-19 pandemic and in the blatant breach of the Polish Constitution, originally scheduled for May 10, 2020 (and postponed only four days before the scheduled date). First, Prosecutor Wrzosek learned from the media that the disciplinary proceedings were initiated against her. Next, as it transpired in September 2021, despite the announcement of disciplinary proceedings, criminal proceedings were initiated against Wrzosek instead. She now faces charges of abuse of power (Article 231 kk), punishable by imprisonment of up to 3 years. 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 in order to ensure the legality of the new National Judiciary Council, 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 the National Prosecutor’s Office might instigate criminal proceedings against the Bydgoszcz judges who ruled in Juszczyszyn’s favour.

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

Krasoň, Wrzosek and five other independent prosecutors from LSO (Katarzyna Kwiatkowska, Jarosław Onyszczuk, Katarzyna Szeska, Dariusz Drapała, Artur Małkowski) were also subjected to punitive transfers. In January 2021, they were transferred far away from their previous postings and places of residence, having to move up to 411 km with less than 2 days notice in the midst of the COVID-19 pandemic.

The method in which it was done is 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

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76 https://tvn24.pl/polityka/przyles-dyscyplinarne-ewa-wrzosek-prokurator-ktora-wszczela-sledztwo-dotyczace-550232
78 Małkowski joined LSO after being subjected to the punitive transfer.
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and board member Jarosław Onyszczuk) already contested them before the Labour Court, with others aiming to do the same.80

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 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.81

The Regional Court in Cracow ruled in June 2021 that the delegations - ordered by National Prosecutor Bogdan Święczkowski - were unlawful and unsubstantiated. With this judgement Krasoń, together with six other prosecutors persecuted in the same way, can claim protection of their labour rights and try to hold the National Prosecutor to account.82

**Cracow judges who ruled in the Krasoń case**

In late 2020 investigations into seven judges from Cracow were launched (three of the court of appeal and four of the Regional Court) after they ruled favourably in the Krasoń case in labour code-based disputes, referring to Art. 106 of the Public Prosecutor's Office Act. After they demanded that Krasoń receive compensation from the State and be reinstated in his position, they were summoned by the National Public Prosecutor's Office to be interrogated by its Internal Affairs Department (WSW).83

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 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-Różyczka and Judge Dominika Augustyn of the District Court in Cracow, and Judge Aneta Tomasik-Zukowska 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, just as it had done two years earlier against dozens of Cracow judges who passed a resolution in protest against the degrading and inhuman treatment in prison of a former court of appeal president. The Polish Ombudsman for Human Rights also intervened in the

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matter, expressing deep concern that these actions may interfere with the independence of judges.\textsuperscript{84}

\textbf{Judge Wojciech Łączewski}

Wojciech Łączewski is a former judge of the District Court for Warsaw-Śródmieście. He put himself on the authorities' radar delivering rulings inconvenient to the government. Most notably, in March 2015, in a non-final judgement, Łączewski sentenced the former heads of the CBA and members of the top echelons of the ruling camp, Mariusz Kamiński and Maciej Wąsik (currently interior minister/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.\textsuperscript{85} After the PiS-controlled ruling coalition came to power, Judge Łączewski was presented with a series of criminal charges.

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

The case was picked up by the Regional Prosecutor’s Office in Cracow, specifically Prosecutor Marek Pubrat. Two proceedings were conducted in parallel. The first one concerned the impersonation of a judge and was discounted with the final decision being made by Deputy Prosecutor General, Krzysztof Sierak, associated with the government-friendly ultra-Catholic association of prosecutors “Ad Vocem” and a trusted man of National Prosecutor Bogdan Święczkowski. Importantly, it was Sierak who had overseen the investigation during its earlier stages, thus seriously breaching procedural rules, and putting in question the principle of the impartiality of the prosecutor’s office.

The second investigation was initiated against Łączewski himself. Cracow Prosecutor Marek Pubrat decided that there was no hacking attack into the judge’s Twitter accounts, and if so, the judge is guilty of submitting a fake notice of crime and providing false testimony, punishable by up to 3 years in prison. In order to present the judge with charges the prosecutor’s office made an unsuccessful attempt to waive his immunity. With Łączewski resigning 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

\textsuperscript{84} https://bip.bip.gov.pl/pl/content/hs-os-13-sedziov-wzywanych-przez-prokurature-spraws-prok-Krasonia-PK

\textsuperscript{85} 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’s visit to Kenya that resulted in the Smotereck air crash.
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against the former judge was submitted to the Warsaw-Mokotów District Court. The case is pending, no court hearing has been scheduled so far.

In a different case, Judge Łączewski faces charges of alleged disclosure of classified information (an offence under Art. 265 para. 1 kk) regarding two police officers in the justification attached to his judgement.\(^{86}\) In April 2016, the 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 Łączewski’s computer’s hard drive, which contained, inter alia, Łączewski’s notes from the case of Kamiński and Wąsik and from many other cases conducted by a judge - constituting a serious breach of the professional secrecy and secrecy of deliberation of judges.\(^{87}\)

The judge assures that he did not disclose any secret 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”.\(^{88}\) The investigation is led by Prosecutor Jacek Mikłuszka of the District Prosecutor's Office in Opole.

To summarise, Judge Łączewski sentenced Mariusz Kamiński and Maciej Wąsik, the former heads of CBA to 3 years of imprisonment for the abuse of power. At the time, Kamiński was an especially close person to PiS leader Jarosław Kaczyński. However, in November 2015, President Andrzej Duda granted pardon to Kamiński and three other individuals.\(^{89}\) 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 was the first case in the post-war history of Poland of a pardon being granted even though the judgement of the court of the first instance was not final and valid (and so the criminal responsibility of the given persons was not definitely settled).\(^{90}\) Moreover, the pardon decision was issued without following the procedure set out in the Code of Criminal Procedure, or even 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,

\(^{86}\) https://wisdomosc.wp.pl/slajd-mariusz-kaminskiego-teraz-ostarzarkcy-o-ujawnieniu-tajnych-informacji-6242766436710071a
\(^{87}\) https://wyzwanczy.pl/775898,24068342,ks-tym-w-sprawie-dzialan-cba-dotyczacych-sedziya-laczewskiego.html
\(^{88}\) https://natemat.pl/236077/sedzia-laczewski-sklal-mariusz-kaminskiego-cba-przyglada-mu-sie
\(^{89}\) https://www.reuters.com/article/uk-poland-president-pardon-idUSKCN0T62-16201117
\(^{90}\) One should point out now that a very general regulation, Article 39 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 XI, entitled “Procedure after the verdict is valid and final”.

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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.91

Łączewski also points out that the authorities' attacks on him have intensified after he had filed a civil lawsuit against Minister of Justice/Prosecutor General Zbigniew Ziobro in the autumn of 2019 for infringement of personal rights.92 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 very likely a member of the Themis association, Judge Maciej Czajka from the Regional Court in Cracow, are facing criminal charges93 for commenting in an OKO.press article94 how Poland should implement CJEU orders re. the illegal Disciplinary Chamber of the Supreme Court (interim measure of 14 July 2021 and judgement of 15 July 2021).

The investigation is handled by Prosecutor Łukasz Radke, appointed to the WSW from the District Prosecutor’s Office in Kolo 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 not to their liking.

As of the writing of this report it is unknown whether the National Prosecutor’s Office’s proceedings are on the stage of a preliminary examination or a proper investigation, 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 have to stem from a notification 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), under Art. 191 para. 1 kk (violence or unlawful threat) or under Art. 225 kk (influencing official acts) - the latter two prosecuted ex officio.

Prosecutor Radke has requested information from OKO.press on how the article was developed with the involvement of the judges. The request was refused by OKO.press, as the information is protected under journalistic confidentiality and revealing it would breach Art. 12 para. 2 point 2 of the press law.

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1.3 Opposition politicians, lawyers and self-government leaders

**Former transport minister Sławomir Nowak**

The case concerns the investigation since July 2020 into former Civic Platform transport minister Sławomir Nowak,\(^{95}\) suspected of 17 crimes (incl. creating an organised crime group, bribery and money laundering),\(^{96,97}\) used as a symbol of the corruption of the political opposition in general. The case is linked to the investigation conducted by the National Anti-Corruption Bureau of Ukraine while Nowak was the head of Ukraine's Ukravtodor (Ukraine's State Road Service) as well as his time as a close aide to the current opposition leader and former prime minister Donald Tusk.

The government propaganda conducted a wide-scale smear campaign against Nowak, while the prosecutor, Mariusz Dubowski of the Regional Prosecutor's Office in Warsaw, set a bail of PLN 1 mln (ca EUR 220,000). Once it was paid by his daughter, the prosecutor refused to accept the funds utilising a controversial provision the prosecution only received (with the changes to Art. 266, 281 and 156 of the KPK) after the bail was posted.\(^{98}\) Simultaneously Minister Ziobro threatened he would disclose the evidence - blackmailing the court and providing a one-sided point of view and discredited Nowak before the final sentence, showing the growing disproportion between the prosecution's powers and the rights of the suspect.\(^{99}\)

In August 2018 the court of appeal in Warsaw supported the complaint of Nowak's defence, repealing the pre-trial detention and ordering the return of the PLN 1 mln bail. The decision is final.\(^{100}\)

**Opposition attorney Roman Giertych**

The prosecutor's office launched an investigation into opposition attorney Roman Giertych, 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.\(^{101}\) 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 courts in Poznań 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.\(^{102}\)

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\(^{95}\) https://trojmiasto.wyborcza.pl/troj/miasto/7,3542,27290940,prokuratura-o-slawomirze-nowaku-zalozy-i-kierowal-grupa-przestepcza.html


\(^{97}\) https://wiadomosci.onet.pl/kraj/sprawa-slawomira-nowaka-prokuratura-kierowal-grupa-przestepcza/3dyx9b8


\(^{100}\) https://wiadomosci.onet.pl/kraj/sprawa-slawomira-nowaka-prokuratura-o-slawomirze-nowaku-zalozyl-i-kierowal-grupa-przestepcza.html

\(^{101}\) https://okopress.com/objazdowe-sledztwo-ws-giertycha/

\(^{102}\) ibidem
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The case is also used to paint a negative picture of the opposition (Giertych is, among others, an attorney to Donald Tusk\(^{103}\)). Giertych is being directly targeted by the National Prosecutor, Bogdan Święczkowski, 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 his close associate Jerzy Ziarkiewicz, 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).\(^ {104}\)

Following numerous irregularities and judgments in support of Giertych’s complaints, Poznań judge Sławomir Szymański sent a letter to Prime Minister Mateusz Morawiecki where he informed that the detention of Roman Giertych was unlawful, and that the services subordinate to the prime minister acted illegally.\(^ {105}\) The Ombudsman took a similar position.\(^ {106}\) 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 court, the prosecutor’s office had not been able to find any significant evidence against the suspect. Significantly, Lublin Provincial Prosecutor Ziarkiewicz sought to have the complaint moved to Lublin (where the court is managed by Ziobro’s appointee, previously employed at the Ministry of Justice and seen as loyal to the justice minister), although the decision about the seizure was still made by the prosecutor’s office in Poznań.\(^ {107}\)

### Niepolomice mayor Roman Ptak

The Mayor of Niepolomice, Roman Ptak and his deputy Adam Twardowski have been a target of the prosecution service since 2019. PiS wanted to install a figure linked to the party as the head of the wealthy town headed by Ptak, thus administering the considerable amount of EU funds that flows into it every year.

In late 2019 Ptak and Twardowski were detained by the CBA with vague allegations of dereliction of duties (Art. 231 para 2 kk) and making a false statement with regard to the law on public procurement (Art. 233 para 1 & 6 kk) - allegations denied by the two and with no proof presented by the prosecution as of yet. His place was then taken by PiS-linked Krystian Zieliński, with no form of electoral mandate. After 10 months, in September 2020 the District Court of Katowice-East

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\(^{104}\) https://naternat.pl/336445,prokuratura-cba-nadal-bedzie-prowadzilo-sledztwo-ws-giertycha-i-polnordu  
\(^{105}\) https://poznan.wyborcza.pl/poznan/7,36001,26859981,wydarzenie-bez-precedensu-sedzia-zawiadamia-premiera-ze-w.html  
\(^{106}\) https://wyborcza.pl/7,75398,2696295,ro-poprzedzenia-zatrzymania-giertycha-przypuszczenia-wszystko-ciekawostki.html  
\(^{107}\) https://poznan.wyborcza.pl/poznan/7,36001,27834764,30-porazek-prokuratury-w-sprawie-romana-gierty-cha-sad-bezlitosny.html
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reinstated the two, lifting the preventive measures in the form of a ban on holding official posts and cash bail, finding the reasoning for them "redundant".108

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.109

Speaker of the Senate Tomasz Grodzki

On March 22, 2021, the Senate received a motion in which the regional prosecutor in Szczecin demanded wavering of the immunity of the speaker of the Senate, Prof. Tomasz Grodzki, so that he can be prosecuted.110 According to investigators, in 2006-12, Grodzki, serving at the time as the head and director of the Clinical Department of Thoracic Surgery at the hospital in Szczecin-Zdunowo, 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 the autumn of 2019, i.e. shortly after the parliamentary elections in which PiS had lost the majority in the Senate, and exactly on the day Grodzki was elected Speaker of the Senate. Simultaneously, Grodzki became the face of the only institution capable of halting the law and the appropriation of the state by PiS with Senate's vetoes. Previously, in Grodzki's over 30-years long medical practice, he has 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 councilor of the city of Szczecin and finally a Senator (2015-2019) - had an impeccable reputation.

The investigation was officially initiated on December 4, 2019. It was based on a report submitted by a PiS councilor of the regional council of Pomorskie voivodeship, Karol Guzikiewicz. According to Guzikiewicz, witnesses of the corruption, which was supposed to take place several years prior, reported to him the alleged crimes. The prosecutor's office does not explain, however, why the victims did not submit their reports earlier. What's more, Guzikiewicz himself later apologized to Grodzki on Twitter: “for [his] false claims that the Speaker of the Senate Tomasz Grodzki took bribes”.111 Later he also claimed that it was just "satire".112

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

111 https://twitter.com/guzikiewicz/status/12028435229
112 https://wyborcza.pl/7,75396,26693478,uawniamy-szczegoly-wniosku-o-odebranie-immunitetu-marszałko-wi.html
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of 2020 after Prof. Agnieszka Popiela, a researcher at the University of Szczecin and a supporter of PiS, posted on social media an information that she had to pay USD 500 for a surgery of her dying mother. Soon afterwards she reversed her story. She also had to apologise to Grodzki for defaming him, as ruled by a court in a civil lawsuit case initiated against Popiela by Grodzki.113

But the authorities’ determination to prosecute one of the opposition leaders was perhaps best demonstrated by the Central Anticorruption Bureau (CBA) issuing in January 2021 an unprecedented announcement that anyone who bribed Grodzki will avoid punishment if they report the crime. CBA’s “appeal” was widely interpreted as a politically-motivated attempt to find evidence on the Senate’s speaker. Furthermore, CBA agents called patients operated on by 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 March 22, 2021 the national prosecutor’s office pressured it to file a motion to strip Grodzki of his immunity.114 It has been speculated that by doing so the authorities were hoping to divert the public’s attention from revelations of cronyism and graft by Daniel Obajtek, the PiS-appointed head of the largest state-owned company, Orlen. The prosecutor’s office’s motion was signed by Prosecutor Artur Maludy, the head of the Szczecin Regional Prosecutor’s Office (appointed by the Minister of Justice and Prosecutor General Z. Ziobro).

During a press conference on March 23, 2021, Grodzki stated that “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 emphasized 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 €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 dozens of 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.

113 https://www.wyborcza.pl/7,75398,26992,596сид-grodzki-zostal-znieslawiony-askarzeniami-o-korupcje.html
114 https://www.wyborcza.pl/7,75398,26934,786ujawniamy-szczegoly-wniosku-o-odebranie-immunitetu-marszalkowi.html
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As in many other cases mentioned in this report, Grodzki's case shows the dangerous collusion between the prosecutor's office, special services and pro-government media aimed at eliminating an opponent of the authorities; in this case, the country's third most senior official after the President and Speaker of the Lower House, Sejm. As has been demonstrated above, 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 redact 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 Act on the exercise of the mandate of deputy and senator, the Senate refused to consider the motion to waive Grodzki's immunity, ending the course of the case.115

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

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.116 Marchlewicz was a city councillor and regional board member of PiS in Gdańsk, but was then twice detained on the orders of the Provincial Prosecutor's Office in Gdańsk (in July 2018)117 and in Lublin (in May 2020)118 on the allegation of fiscal crimes (VAT fraud), with the court of appeal in Gdańsk ordering pre-trial detention with a PLN 200,000 bail and - if delivered - a ban on leaving the country and police custody. The case is handled by Prosecutor Jerzy Ziarkiewicz, currently heading the Provincial Prosecutor’s Office in Lublin.119

Marchlewicz claims the prosecution's actions have a political basis, stemming from him becoming too independent from PiS, which seem to have culminated in a leaked recording of a private conversation from 2016 where he called out the heads of the secret services as "an alcoholic and a closeted homosexual",120 which according to him could be used to blackmail them and thus compromise the institution.121

In November 2020 the court of appeal in Gdańsk revoked the prosecution's motion for detention,

121 https://trojmiasto.wyborcza.pl/trojmiasto/0,73562,26594987,byla-gwiazda-pis-u-na-pomorzu.html
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previously approved by another judge of the same court, ruling it was unnecessary. Since his first detention in July 2018 no indictment against Marchlewicz has been filed by the prosecution.122

Supreme Audit Office President Marian Banaś

There is an ongoing battle between the ruling camp and the current president of the Supreme Audit Office (NIK), former PiS finance minister Marian Banaś.123 Banaś fell out with the government after he was revealed in 2019 to have allegedly conducted fraud activities. 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).124 In response he, officials loyal to him and even his family members were targeted by the National Prosecutor’s Office.

Currently, Banaś faces over a dozen charges, including filing false asset and fiscal declarations (Art. 271 kk - false declaration), while his son and daughter-in-law face 7 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.125 The prosecutor’s office’s actions against Banaś are showcased by state media on a daily basis.

The detention of Banaś’s son, Jakub Banaś and his wife was conducted in a spectacular fashion (similar to that of Bartosz Kramek) by a team of 13 armed officers of the Central Anticorruption Bureau (CBA) - as if he was a dangerous criminal - acting on the request of the Provincial Prosecutor’s Office in Białystok.126 The head of the investigation, former CBA agent, now prosecutor Elżbieta Pieniążek, is often involved in political cases on the side of the authorities.127 Earlier, Jakub Banaś’s home had been searched by the CBA numerous times and he reported fake suicide attempt letters, allegedly written by him, received by NIK offices.128,129 The timing of the actions taken by the prosecution and the CBA coincided with subsequent audit reports being presented by the NIK and successive audits being initiated.

As of August 2021 the parliament is deciding if Marian Banaś should be stripped of his immunity, following a request by Prosecutor General Z. 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 which is renowned for supporting his party’s goals instead of serving the needs of crime victims.130,131

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122 https://tygier.psz.gov.pl/materialy/7356122/656038/porozycz_prokuratury_w_sprawie_przemyslaw_marzlewsicza.html
131 https://tygier.psz.gov.pl/materialy/7356122/656038/porozycz_prokuratury_w_sprawie_przemyslaw_marzlewsicza.html
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**KNF executives Andrzej Jakubiak and Wojciech Kwaśniak**

The case concerns the late-2018 detention of whistleblowers Andrzej Jakubiak and Wojciech Kwaśniak, respectively the former president of the Financial Supervision Commission (KNF) and his deputy, who revealed financial crimes in the PiS-linked SKOK financial institution, infringing the interests of PiS senator Grzegorz Bierecki.132

Kwaśniak, already as the deputy head of the KNF in 2014, barely survived a physical attack ordered by people from the management board of SKOK Wołomin.

Prosecutor Adam Goluch of the Provincial Public Prosecutor’s Office in Szczecin charged the two, together with 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 bln (EUR 300 mln) 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 unfounded.

1.5 Former security services chiefs

**Former heads of the SKW**

Brigadier general Piotr Pytel, a highly-decorated officer, served as the head of the Military Counterintelligence Service (SKW) from January 2014 until his dismissal after the United Right coalition took power in November 2015. In December 2017 he was detained by the Military Gendarmerie (ŻW) on the orders of the Military Affairs Division of the District Prosecutor’s Office in Warsaw (since April 2016 the military prosecution is part of the common prosecution service and not a separate, military structure).

Gen. Pytel, his predecessor Gen. Janusz Nosek and Col. 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), and in the case of Col. Dusza dereliction of duties following the 2010 Smolensk air disaster. The other FSB 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.133

The first charges were brought against Gen. Nosek134 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

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133 https://www.polityka.pl/program/polityka/kraj/1767356/wojewodzki-prokurator-nadzoru-uprawnien-sad-mia-zdzy-zatrzymanie-gen-pytla.read
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kk (espionage for foreign intelligence, disclosure of state secrets). The basis for the latter charge was the alleged disclosure of the 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 - there were contacts, not cooperation - and no permission for such contact is required. In his opinion the authorities want to use him to get to the then-Prime Minister Donald Tusk.

No preventive measures were taken against Nosek but, for example, he was denied access to files (which was motivated by the interest of the state). Highly worrying was how the prosecution tried to close the preliminary investigation. In February 2021, Nosek received a letter - once again signed by a desk officer not a prosecutor - that “the prosecutor has issued a decision to close the investigation” regarding all charges. The letter contained no reasoning. What is more, in violation of the provisions of the Code of Criminal Procedure, 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. And 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, promoted to the Warsaw prosecution from Lublin by defence minister Antoni Macierewicz. Lt. Col. Zarosa manages the investigation under the head of the military division of the Warsaw district prosecution, Lt. Col. Grzegorz Borys. Both are known for conducting the most high-profile, political cases regarding the military. Lt. Col. Zarosa gained recognition after his April 2017 nearly 9-hour interrogation of former Prime Minister Donald Tusk in relation to the FSB agreement, which he conducted hoping - and failing - to charge Tusk with dereliction of duty (Art. 231 kk).135

As part of the investigation conducted by Lt. Col. Zarosa and Lt. Col. Borys, a team of the ŻW, led by minister Macierewicz's right hand and rising PiS star - then 25-year-old defence ministry spokesperson Bartłomiej Misiewicz (currently facing i.a. 10 years imprisonment for corruption) - forcefully entered and searched the NATO Counter Intelligence Centre of Excellence (NATO CI COE) in December 2015. 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.

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Pytel was baseless and thus unlawful.

In April 2019 the District Court in Warsaw ruled that the NATO CI COE raid was unlawful, as the centre - being an international institution - 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.136

In June 2020 the Supreme Administrative Court upheld an October 2018 decision of the Voivodeship Administrative Court - appealed by the Prime Minister's Chancellery - and ruled that the actions taken against Col. Dusza as head of the NATO CI COE, including stripping him of security certificates, were unlawful.137

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 the FSB regarding the withdrawal from Afghanistan, upon a notification by PiS MP Tomasz Kaczmarek, was dismissed as meritless by the - then still independent - prosecution in 2013.138

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, a mobbing and sexual harassment victim, who was interrogated by Zarosa for 11 hours following surgery and refused food, drink or even toilet access. After three months the Poznań prosecution refused to initiate an investigation.139

On September 22, 2021, the Regional Prosecutor’s Office in Warsaw brought an indictment to the court 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 t 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 5 years of investigation so far.140

Former CBA head Paweł Wojtunik

Paweł Wojtunik141 was the head of the Central Anticorruption Bureau from 2009 until 2015.

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137 https://www.policja.pl/poligodnikpolicja/kraj/7067901,blyzy-officer-kontrowyjad-u-potraczono-mniejak-zbrodniczaread
138 https://www.rp.pl/kraj/5692041-prokuratura-umorzyla-sledztwo-w-sprawie-michala-tuska
139 https://wschodniorocet.pl/wolno-w-nociajak-prokurator-zarosa-narzucony-prawo-wobec-farya-molestowania-w-zandarmerii-kary-nieh5509c
141 For a detailed description of Mr. Wojtunik's case see a 2020 book by Robert Zelinski: "Słonimy. Jak dekoracyjne niszczyciele polskie sił podziemnej" (available only in Polish).
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In 2013, the CBA conducted arrests as part of the so-called “info-affair”, where a group of officials from various institutions were suspected of fraud, 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 then foreign minister Radosław Sikorski by warning him of the upcoming arrests, which included a mid-level official from his ministry.

Following a 3-year long investigation - which included interrogations of Wojtunik and Sikorski among others - in early 2017 the Regional Prosecutor’s Office in Gliwice discontinued the investigation, finding no reasonable suspicion of Wojtunik’s abuse.

In February 2017 the Provincial Prosecutor’s Office in Katowice re-initiated the investigation, calling the decision to close it “premature” and ordering the Gliwice office to continue it. 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 and managed by Prosecutor Zbigniew Gabryś (included in the “Państwo PiS” database for expedited promotions, vocal support of hand-steered investigations and violating prosecutorial independence, as well as openly supporting minister Ziobro in the case of his father’s death).142

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 immunity (since 2016 he serves as the EU High-Level Adviser on Anti-corruption in Moldova), which was waived by the prosecution despite - according to his defendants - not having the authority to do so.143

Wojtunik calls the accusations “missed and absurd”, claiming the entire case against him is politically motivated, a “witch hunt” serving as revenge for 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 soon 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.144

After a nearly 6-year legal battle, in March 2021 the Supreme Administrative Court ruled that

142 https://www.parstwo-pis.pl/index.php/Zbigniew_Gabry%C5%9B
144 https://www.money.pl/gospodarka/wiadomosci/artykul/afera-gruntowa-mariusz-kaminski-skazany-na,46,0,7,48526.html
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the 2016 actions against Wojtunik by the secret services and decision of then-Prime Minister Beata Szydło, who revoked his security certificates after him leaving his office, were groundless.145

In October 2021 Lublin Provincial Prosecution head 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.146

Former ABW head Krzysztof Bondaryk

Krzysztof Bondaryk147 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 December 20, 2007, Bondaryk issued a personnel order. Under it, a civilian employee of the ABW was admitted to service in the agency and appointed an officer in the permanent service as an advisor to the head of the Agency.

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

The proceedings were previously discontinued by the prosecutor's office in Ostrołęka. The case was resumed on the initiative of the National Prosecutor’s Office headed by Zbigniew Ziobro and transferred to the Białystok Provincial Prosecutor’s Office. Both proceedings are run by the same prosecutor - Dorota Bielicka,148 who in the meantime was promoted from Ostrołęka to Białystok. Other prosecutors involved in his case are Elżbieta Pieniążek and Ewa Białik.149150

Bondaryk could be facing the revenge of the current National Prosecutor, Bogdan Święczkowski, who was the head of the Internal Security Agency during the first PiS rule in 2006-2007. After his departure, Bondaryk conducted an audit at the Internal Security Agency and sent seven notifications to the prosecutor's office. Six cases were discontinued, and in one the prosecutor wanted to waive Święczkowski’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

147 For a detailed description of Mr Bondaryk’s case see a 2020 book by Robert Zelinski “Sztuczki. Jak dobrze zmiana niszczyla polskie sluzby specjalne” (available only in Polish).
149 https://www.panstwo-pis.pl/index.php/Ewa_Bialik
150 https://oko.press/general-bondaryk-uslysy-zarzuty-prokuratura-sciga-bylego-szefa-abw-w-radzie-polski-
I. Cases of malicious prosecution

officer associated with the opposition party Civic Platform.\textsuperscript{151}

1.6 Entrepreneurs and executives

\textbf{Leszek Czarnecki and GetBack}

The case concerns the investigation against billionaire Leszek Czarnecki linked to the “GetBack affair”, which led to the loss of PLN 2.7 bln (ca EUR 590 mn) by investors who bought fraudulent bonds of the GetBack debt collection company.\textsuperscript{152} The company seemed to be allied with the PiS party, financially supporting pro-government media, hence its pyramid-like scheme was allowed to operate until mid-2018 despite a whistleblower’s report delivered to the authorities back in 2017.

To redirect attention and blame from the government and its allies, the prosecutor’s office pursues the company’s founder, Czarnecki, despite him having sold the company before its fraudulent activities (and ties to the government) had begun. He was targeted by the prosecution service in late 2018 after he revealed a corruption offer he had received in March that year from then-president of the Financial Supervision Commission (KNF) Marek Chrzanowski, who promised the investigation into him would be dropped in return for a PLN 40 mln/year (ca EUR 8.7 mn) job for his colleague.\textsuperscript{153}

Despite the investigation being handled by a special team of prosecutors, including Przemysław Barański from the Warsaw provincial office and Marta Choromańska from the regional one (included in the “Państwo PiS” database for her likely political and unlawful actions),\textsuperscript{154} it is Prosecutor General Ziobro himself who publicly represents the prosecutor’s office 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]\textsuperscript{155} when its advisors supported the sale of GetBack bonds, despite no hard evidence of his knowledge of the criminal procedure and the fact that Czarnecki himself had informed the authorities about the potential irregularities.

The investigation is ongoing despite the court of appeal in Warsaw having ruled in April 2021 on the absence of a high likelihood of Czarnecki having committed any crime.\textsuperscript{156} 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 Commission, leading to 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 very

\textsuperscript{151} https://wyborcza.pl/7,75398,6603364,co-zrobia-z-bylym-szefem-slow.html
\textsuperscript{152} https://wyborcza.pl/7,75398,26403095,ujawniamy-co-prokuratura-ma-na-leszka-czarneckiego-to-jego.html
\textsuperscript{153} https://wyborcza.pl/7,75398,24167965,spokoj-za-40-milionow-bankier-leszek-czarnecki-oskarza-komisje.html
\textsuperscript{154} https://www.panstwo-pis.pl/index.php/Marta_Choromanska
\textsuperscript{156} https://wyborcza.pl/7,75398,26966630,dlaczego-sad-nie-zgodzi-sie-na-aresztowanie-leszka-czarneckiego-go.html
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poor condition of Idea Bank).\textsuperscript{157}

In November 2021, the Warsaw District Court overturned the decision of seizing Czarnecki’s assets and he gained full control of them again. 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.\textsuperscript{158} The Prosecutor’s Office, however, ignored the court decision and seized Czarnecki’s assets again in December 2021.\textsuperscript{159} The investigators also supplemented the allegation of alleged fraudulent activities, and added a new one.\textsuperscript{160} 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.”\textsuperscript{163}

**Jakub Karnowski and PKP Cargo**

The prosecutor’s office is attempting to prosecute five management board members and eight supervisory board members of the state-owned PKP Cargo railway freight carrier, following the company’s 2015 purchase of Czech rail freight operator AWT. The company’s former president, Jakub Karnowski, faces charges of mismanagement that led to the supposed loss of up to PLN 250 mln (EUR 54 mln) due to the transaction, despite no reliable expertise proving the loss. Two official evaluations, including one prepared by the consortium of PKO BP Brokerage House, EY and the Weil Gotshal & Manges law firm, which served as the basis for the transaction, prove the transaction was conducted properly.\textsuperscript{162}

In spite of the investigation (initiated on the request of the company’s first PiS-nominated president in 2016) being nearly dropped as meritless twice over the years, it was kept being transferred and rekindled by Ziobro-loyal prosecutors.

The investigation is handled by Lublin provincial prosecutor Bartosz Wójcik (included in the Państwo PiS database for an expedited promotion and politically-motivated investigations)\textsuperscript{163} and overseen by Prosecutor Jerzy Ziarkiewicz. Ziarkiewicz, a well-known Ziobro nominee heading the Lublin Prosecutor’s Office, is responsible for top political cases, such as of Roman Giertych or Bartosz Kramek (both in this report), and ones that would otherwise never be treated seriously, like that of a piece of art supposedly “insulting the Polish emblem”\textsuperscript{164}.

\begin{itemize}
  \item [\textsuperscript{157}] https://businessinsider.com.pl/wiadomosci/roman-giertych-komentuje-nowe-zarzuty-dla-leszka-czarneckiego/q8m80pq
  \item [\textsuperscript{158}] https://wyborcza.pl/775398,27820693,kolejne-leska-prokuratury-ziobro-czarnecki-odzyskuje-majatek.html
  \item [\textsuperscript{159}] https://wyborcza.pl/776398,27882391,prokuratura-kontratakuje-i-zajmuje-czesc-majatku-leszka-czarneckiego.html
  \item [\textsuperscript{160}] https://www.money.pl/gospodarka/hawowej-zarzuty-dla-leska-czarneckiego-w-sledztwie-dot-afer-get-back-671446258119660u.html
  \item [\textsuperscript{162}] https://www.panstwo-pisp/index.php/Bartosz.Wojcik
  \item [\textsuperscript{163}] https://warszawa.wyborcza.pl/warszawa/7,54420,26670025,prokurator-od-zadan-specjalnych-bedzie-broni-polnego-godla.html
\end{itemize}
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Z. Ziobro’s interest in keeping the investigation alive seems to stem from the fact that the purchase of AWT was done on the basis of an evaluation by the PKO BP state bank, 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.\(^\text{165}\)

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

Piotr Osiecki and Altus TFI\(^\text{166}\)

The case is an offshoot of Law and Justice’s largest financial scandal, the GetBack affair (see Leszek Czarnecki and GetBack). The GetBack company was a top player in Poland’s debt collection market. The affair led to the loss of PLN 2.7 bln (approx. EUR 590 mln) by thousands of individual investors who bought GetBack’s fraudulent bonds.\(^\text{167}\)

The company seemed to be allied with the PiS party, financially supporting pro-government media, hence its pyramid-like scheme was allowed to operate until mid-2018 despite a whistleblower’s report delivered to the authorities back in 2017 and lack of any supervision from Polish Financial Supervision Authority (KNF) despite the KNF licence having been granted in 2012.\(^\text{168}\) When GetBack found itself at risk of insolvency, the company sought support from the government.\(^\text{169}\)

Piotr Osiecki was the founder, largest shareholder and CEO (until 2018) of Altus TFI - an independent asset management company, which then managed approx. PLN 18 bn (EUR 4 bn) in assets. As the largest private investment fund in Poland and a competitor to state-owned PKO TFI\(^\text{170}\) and PZU TFI,\(^\text{171}\) it posed an obstacle to the state’s takeover and consolidation of the financial market. Among its successes, causing hostility from the ruling party, Altus was granted management of parts of Norway’s Oil Fund over its state competitors.

In late 2017, GetBack overpaid when acquiring almost all the bad debt held by state-controlled commercial banks.\(^\text{172}\) When the company’s losses and potential difficulties became evident, Konrad Kąkolewski, its CEO, asked PiS leaders for financial assistance,

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\(^\text{166}\) An extended version of this case is available on our website: https://enodfoundation.eu/2013/12/the-case-of-entrepreneur-piotr-osiecki-and-altus-tfi/
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reminding of the support GetBack gave to PiS and to government-friendly media.\(^{173}\) In his letters he stated that he “would not go down alone” and mentioned the risks to the government’s image if the scandal became public.\(^{174}\) Finally, in April 2018 he met with Kornel Morawiecki MP, father to PM Mateusz Morawiecki, who was allegedly recorded claiming to have secured a PLN 200 mln (ca €44 mln) public loan for the company.\(^{175}\) 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.

The scandal caused Kąkolewski to lose his post and GetBack to be suspended on the stock exchange by the Financial Supervision Commission (Komisja Nadzoru Finansowego, KNF), with the prosecutor’s office being notified. Yet, it was done only in April 2018, with much delay and with no relevant security agencies (CBA or ABW) showing any activities in the case.

This is when Piotr Osiecki was targeted with a fabricated criminal case to redirect the blame for the affair from PiS. Altus was a client of Get Back, 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 which was GetBack’s competitor.

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 to it. The prosecution service charged Osiecki with acting against GetBack’s interest by selling EGB for too high a price, despite Osiecki’s duty being to the shareholders of Altus and its clients, not to GetBack. It 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 fabrication of 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 any of these two entities. In reality, neither Altus TFI S.A. nor any investment funds managed by it offered any bonds issued by GetBack. The prosecution apparently “confused” the parties to 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 to this, Osiecki was himself one of the cheated bondholders of GetBack S.A. and suffered a loss of ca USD 2 mln.

\(^{173}\) 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).
\(^{174}\) https://biografia.warior.pl/biografia/1/3996/2366793/getback-o-co-chodzi-w-aferze-siec-powiazan.html
\(^{175}\) https://wyborcza.pl/7/75398,24037093,jak-getback-nagral-o-jaca-premiera-kornel-morawiecki-osiecki.html
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The CBA was unconventionally used to deliver a summons to Osiecki's wife, Anna, at 6 a.m., who also became a suspect in the case (formally managing an Altus subsidiary), having to post a bail of PLN 3 mln to avoid detention. Anna's last-minute questioning by the prosecution was specifically timed so that Osiecki would - supposedly coincidentally - see his wife at the prosecutor's office just before his own questioning there, thus feeling 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-high bail (not just in Poland) of PLN 108 mln (roughly USD 25 mln), higher than the alleged losses incurred by GetBack and despite having frozen Osiecki's assets. 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 having posted the bail.

In February 2019 the Polish Commissioner for Human Rights (ombudsman, Rzecznik Praw Obywatelskich, RPO) requested access to court decisions on Osiecki's detention, following 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".

In April 2019 the district court again ruled that Osiecki could be released from custody in exchange for a bail of PLN 110 mln (EUR 24 mln). The prosecutor's office appealed this ruling and in June 2019 Osiecki was again arrested by decision of the court of appeal, which extended his arrest for another three months from the date of arrest.

The two rulings by the court of appeal favourable to the prosecutor's office were made by district court judges appointed to the appellate court 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, which called it "lawless" and "an example of violation of the rule of law, civil liberties, dignity and fundamental human rights".

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 mln (EUR 6.5 mln). The court confirmed that Osiecki had no legal responsibility towards GetBack S.A. nor Idea Bank S.A.

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177 https://www.ppb.pl/po-przeglada-sie-aresztowaniu-piotra-osieckiego-952568
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A special team of prosecutors, currently in the Warsaw provincial office, is handling the GetBack case (and Osiecki’s within it), none with experience in such economic cases. These 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 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 camp. It also formed a striking example of a corporate raidership attempt 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 approx. PLN 1 bn to PLN 60 mln.

Ex-LOTOS Chairman Paweł Olechnowicz

Paweł Olechnowicz is the ex chairman of the company LOTOS. He was dismissed from this position in 2016. At the end of January 2019 he was arrested together with businessman Tomasz S., who was the assistant of a Civic Platform MP, by the Provincial Prosecutor’s Office in Gdańsk and the Central Anti-Corruption Bureau.

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 damage was estimated to reach almost PLN 246,000.

The arrest of Olechnowicz was abrupt and illegal, as the prosecutor was not granted the permission to conduct it. Olechnowicz was not notified about the Prosecutor’s Office intention to interrogate him. He was arrested in his own house in Wadowice, while participating in a family gathering and directed for the investigation to Gdańsk. The prosecutor responsible for the case was Bartosz Grabowski. The investigation started at 9 am, however only at 9 pm the prosecutor decided to fill in a request for a permission for arrest. It is worth noting though that Prosecutor Grabowski, as it turned out, requested Olechnowicz’s arrest following an order of his superiors from the Gdańsk Provincial Prosecutor’s Office, himself opposing it. He left the case only a week later.

180  http://www.panstwo-pis.pl/index.php/Bartosz_Grabowski
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Shortly after these events, Olechnowicz’s lawyer, Janusz Kaczmarek, who used to be a public prosecutor, brought a complaint to the Regional Court in Gdańsk, which was considered positively by the Court in June, who ruled that Olchnowicz should have been brought to investigation in a regular manner, instead of the abrupt arrest. In addition, Olechnowicz brought another claim and demanded financial compensations for his unjustified arrest.

In March 2021, the Court issued a decision which entitled Olechnowicz to a PLN 45,000 compensation and stated that there were no grounds for a special investigation procedure, as he could have been simply called to face investigations. 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. The decision was confirmed in October 2021.

Real estate mogul Przemysław Krych

Griffin Real Estate was a key player in the real estate industry in Poland at the time of the arrest of one of its co-founders, Przemysław Krych, in December, 2017. His case is connected to a former Law and Justice senator and the Chair of the Senate Infrastructure Committee, Stanislaw Kogut. Senator Kogut was suspected to be accepting bribes, which cost him the support of the Law and Justice party. An investigation, which started at Kogut’s Foundation for People with Disabilities, led to a charity donation from Przemysław Krych.

The relationship between Krych and Senator Kogut started when they met in Kuwait more than 15 years ago. Senator Kogut on multiple occasions sought support from Krych in finding investors for his foundation. Eventually the entrepreneur decided to support it himself personally. The foundation received around PLN 2 mln from Krych as a result.

On December 19, 2017, Krych was detained by the Central Anti-Corruption Bureau (CBA) under the charge of offering a bribe to the former senator. The bribe was allegedly meant to support a new investment in the location of hotel “Cracovia” in Cracow. With the bribe Kogut was supposed to arrange for the Lesser Poland Voivodeship Monument Conservator to remove the hotel from the register of historic monuments, which would allow Krych’s company to construct a shopping centre in its place. Przemysław Krych pledged not guilty to any of the charges. The Regional Prosecutor’s Office in Katowice decided not to accuse Krych of any criminal offence, however it requested to put him under arrest. By a decision of the court he was detained in the Sosnowiec detention centre for 6 months. While there, he was reportedly approached on multiple occasions by inmates with offers and sometimes threats. He was asked to provide information that would

182 ibidem
183 https://wiadomosci.wp.pl/stanislaw-kogut-zatrzymany-przez-cba-radna-prawa-i-sprawiedliwosci-rowniez-6467574652262529a
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be disadvantageous to the opposition. They threatened him with the possibility of having his wife arrested for financial fraud or placing child pornography on his computer if he didn’t comply. Krych believes that some of those people only posed as other inmates.

Furthermore, before his arrest, Krych was offered a deal from a well-known businessman – Krzysztof Porowski, who was charged at the beginning of the 2000s with, among others, the extortion of over PLN 6 mln. The deal was supposed to protect Krych from the consequences awaiting him from the CBA in Poland. Porowski asked for PLN 1.5 mln for this protection. The offer was later on repeated during Krych’s time in detention. This time the payment was meant to get him out of detention.

He was released after 6 months when the court changed Krych’s preventive measures from detention to a bail set for PLN 4 mln. He was not charged for the next 1.5 years.

Initially the prosecution refused to comment on the case, however in September 2019 the Regional Prosecutor’s Office in Katowice released a statement, explaining that he is facing charges of offering a bribe and his detention was decided by an independent court based on evidence. The supposed evidence in that case was, among others, bank statements and court-approved wiretaps.

Krych’s case is believed to be part of justice minister Zbigniew Ziobro’s ploy to gain influence in the Lesser Poland voivodeship by trying to decrease the importance of senator Kogut’s work in the region, with Przemysław Krych becoming an unfortunate casualty of this political play.

The case is ongoing, however there is still no indictment against Przemysław Krych.

**Former PKN Orlen President Jacek Krawiec**

Jacek Krawiec is the former president of state-owned oil giant PKN Orlen in the 2008-2015 period. He was fired in 2015 as PiS ascended to power. Krawiec was critical, in private statements then leaked to the press, of some figures of the Law and Justice government and has since faced prosecution.

The Central Anti-Corruption Bureau, acting on orders from the District Prosecutor’s Office of Lodz, detained Krawiec for a first time in February 2019 and then again in September 2019. He was then accused of having caused PLN 3.3 mln (EUR 700,000) of property damage to the company he managed during the organization of the Verva Street Racing - Dakar event at the National Stadium.

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According to the investigators, Krawiec and the other directors were to pay the company organising the event inflated invoices and not settle the sale of tickets. The court then applied the so-called conditional arrest with a PLN 1 mln (EUR 200,000) bail.190

In 2020, Krawiec was also involved in the government’s campaign against Sławomir Nowak (see case). The Regional Prosecutor’s Office in Warsaw claimed that in 2012-2016 Krawiec gave Sławomir Nowak, then Minister of Transport, property benefits in the total amount of almost PLN 200,000 (EUR 44,000). The sum was intended, according to the Prosecutor’s Office, to convince Nowak to grant Krawiec very favourable contractual conditions.191

Krawiec, an experienced manager, was promptly replaced by Daniel Obajtek, a relatively obscure figure close to PiS who quickly rose to important managerial positions after the party obtained power in 2015. The prosecution of Krawiec suggests an interest on the side of the government to obtain full control of state-owned enterprises and have loyal men in relevant positions within them.

1.7 The unfortunates

Doctors caring for Prosecutor General Zbigniew Ziobro’s father

The case concerns the 2006 death of Z. Ziobro’s father Jerzy Ziobro, where the prosecution seemingly abused power under pressure from Ziobro, who demanded punishment for four doctors who cared for the father, including renowned cardiologist prof. Dariusz Dudek and prof. Jacek Dubiel, despite no proof of malpractice.

The case was filed by Ziobro’s family during his first time in office in 2006. Following his departure, the - then independent - prosecution twice closed the case as having no merits, paving the way for Ziobro’s family to file a subsidiary indictment with the court in 2011. In February 2012 the District Court in Cracow dismissed the indictment and closed the case. Following a request of the family an extraordinary cassation appeal was filed by the Prosecutor General with the Supreme Court, which in March 2013 redirected the case back to the Cracow district court.

After Ziobro returned to his post as Prosecutor General in 2015 the prosecution opened a series of new investigations in 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”.192

192 https://wiadomoscionet.pl/tylko-w-onciekcordowo-dluga-apelacja-w-procesie-lekarze-konna-ziobro38fry
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In 2017 Ziobro's family appealed the 2017 court verdict - this time with Ziobro personally serving as an auxiliary prosecutor in the case. In November that year 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 was nominated as president of the court. Judge Pawełczyk-Woicka is a close friend of Ziobro's (both attended school together), expressly promoted despite negative assessments of her work and known to directly follow his orders.\(^\text{193}\) The request was denied by the - then still independent - Supreme Court.

At various stages of the case Ziobro - who initially stated he would not interfere in it - either through his prosecution service, or personally, attempted to influence it, 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 the judge for allegedly abusing her powers (Art. 231 para. 1 kk).\(^\text{194}\) In December 2015, with an order of the Appellate Prosecutor’s Office in Katowice, the CBA was used to try to intimidate the wife of Prof. Dudek, Prof. Dominika Dudek - also 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.

Finally, during the April 2018 appeal hearing of the case, Prosecutor Paweł Baca of the Cracow division of the National Prosecutor’s Office requested for the testimony of experts, who were questioned by the prosecution as part of a parallel investigation into them, to be included as proof in the court proceedings - a situation which would go against the law.

Furthermore, the fact that there even was a parallel investigation initiated in a case with an ongoing investigation is against the law.\(^\text{195}\)

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

Former MP and sport manager Cezary Kucharski

Cezary Kucharski is mostly 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

\(^\text{193}\) https://krakow.wyborcza.pl/krakow/744425,26440032,przeszuki-2-evansem.html


46
Lewandowski’s income not to be taxed in Germany. The two later developed strong disagreements, which exploded in August/September 2020.

On September 11, 2020, Kucharski filed a lawsuit, demanding PLN 39 mln (EUR 8.5 mln) as part of the settlement for shares in RL Management. He sued RL Management, accusing his former partner of misusing the funds of the company and depleting them, e.g. on a luxurious vacation Lewandowski paid for with the company’s money.¹⁹⁶

On October 7, 2020, the National Prosecutor’s Office received a notification by Lewandowski of a potential crime addressed to National Prosecutor Bogdan ŚwięcZkowski. This is not normal, and the usual path would be going to the police, as threats are a common misdemeanour.

On October 27, Kucharski was arrested in a spectacular way (six policemen showed up at his house at 6 am) and charged, his personal belongings being taken by the police. Kucharski was put on an enormous bail of PLN 4.6 mln (EUR 1 mln), 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 (ca EUR 109,000).¹⁹⁷

The prosecutor’s office in charge of the case is the Warsaw Provincial Office, and the prosecutor seems to be Dawid Hieropolitański, expeditiously promoted to his post through a special promotion without the required length of service.¹⁹⁸

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 the Lewandowskis’ alleged tax frauds that he was supposed to keep for himself. The footballer recorded Kucharski during some phone calls.¹⁹⁹

An investigation has been underway since then, which has been extended until March 31, 2022. The prosecutor’s service operates on the basis of a transcription of phone talks between Lewandowski and Kucharski which, according to the prosecution, prove that Kucharski was threatening Lewandowski. However, according to independent experts, there are some issues with them: the transcription of the prosecutor’s office is the same, even with the same small typos, as Lewandowski’s transcription, showing they just used his version and it seems that the record was taken out of context, trimmed and is not unaltered.²⁰⁰

Kucharski’s lawyer claims that he requested a phonoscropy expert opinion but was not successful, and that the prosecutor’s office withdrew any access to the case files in Kucharski’s defence.

¹⁹⁶ [https://www.polsatnews.pl/wiadomosci/2020-09-18/cezary-kucharski-psywa-roberta-lewandowskiego-w-tul-wielomilionowe-odszkodowanie/]
¹⁹⁸ [http://www.panstwo-pis.pl/index.php/Dawid_Hieropolita%C5%84ski]
I. Cases of malicious prosecution

The defence's complaints about the lack of access to the files have been laying in court since the beginning of April unprocessed, as they were submitted to the desk of Judge Marta Pilśnik, who was suspended in October by Ziobro over her decision to apply an ECJ ruling.201

This case was given remarkable attention, but as of now there has not been any hearing, apart from those related to appeals against the bail and the ban on leaving Poland.

Several elements of this case seem to indicate suspicious conduct by the prosecutor’s office. The case went way faster than it would be normally expected, resulting in a first arrest in only 20 days. While one would generally go to the police for such a matter, Lewandowski’s attorneys were able to directly contact National Prosecutor Bogdan Święczkowski, who, after the seizure of the judicial system, holds extremely vast power.

It is also suspicious that further examinations of the recordings are not being allowed, and that the prosecutors are using the very same transcription as Lewandowski’s lawyers, while 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 to tarnish the reputation of its adversaries.

**Sebastian Kościelnik and the car accident of Prime Minister Szydło**

In February 2017, then-20-year-old student Sebastian Kościelnik participated in a road collision with a Government Protection Bureau (BOR) motorcade transporting then-Prime Minister Beata Szydło.202

According to the statements of 20 witnesses, the motorcade rode without sound signals, meaning it did not have privileged status, committed several traffic offences and it was the BOR drivers who were ultimately responsible for the accident.203

Nevertheless, a team of three prosecutors from the Regional Prosecutor’s Office in Cracow conducted an investigation (despite traffic incidents normally falling under the district office level) under the supervision of the office’s head, Prosecutor Rafał Babiński.204 Babiński is a university colleague of Zbigniew Ziobro’s right hand, National Prosecutor Bogdan Święczkowski. He is included in the Państwo PiS database for expedited promotions and suspicious decisions.205

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204 https://www.rp.pl/kraj/201805201-sprawa-wypadku-szydlo-trafi-do-sadu
I. Cases of malicious prosecution

According to press sources Babiński hand-steered the investigation and insisted on not investigating the possible fault of the BOR officers, permitting it to exceed the statute of limitations.\textsuperscript{206} Among the possible abuses committed by him are: dispatching his deputy to the scene together with an expert, who turned out to be the prosecutor’s husband, making his expertise inadmissible; the exclusion of public hearings of witnesses testifying to the guilt of BOR officers; and requesting that witnesses are submitted to psychological examinations.\textsuperscript{207}

The sole potential hard evidence of the BOR motorcade riding without sound signals - a CD with CCTV recordings - was broken by an undetermined individual before being delivered to the court by the prosecutor’s office.\textsuperscript{208}

In July 2020 the District Court in Oświęcim conditionally discontinued the proceedings. Judge Agnieszka Pawłowska found that Sebastian 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 endangerment. The prosecution refused to initiate the investigation.\textsuperscript{209}

In March 2021 an appeal trial in the case began in the court of appeal of Cracow. Two days before the first proceedings, a judge promoted by Zbigniew Ziobro, Maciej Prągowski, 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.\textsuperscript{210}

In December 2021 one of the BOR officers who took part in the accident came forward and in an interview for Gazeta Wyborcza admitted that, upon pressure of their superiors, both him and other officers filed false testimony when they claimed during the investigation that the motorcade rode with sound signals.\textsuperscript{211}

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 claims to have been followed for 3-4 months. Directly after the accident witnesses reported their phones 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 was used to keep evidence of the accident from leaking. The prosecution service refused to follow up on any reports of possibly-illegal surveillance.\textsuperscript{212}

\textsuperscript{206}https://www.rp.pl/kraj/artyki/2088921-sprawa-wypadku-szydlo-trafi-do-sadu
\textsuperscript{210}https://www.krakow24.pl/ktojak/344425,26842,448,nsd-fara-nagla-zmiana-w-skladzie-sedziowskim-ktory-rozstrzygnie-apelacje.html
\textsuperscript{211}https://wyborcza.pl/753982792606/Sebastian-Koscielnik-to-wolno-wyjuco-to-economicznie-1107842
\textsuperscript{212}https://www.gazeta.pl/wiadomosci/714884,28600956,sebastian-koscienik-twierdze-ze-po-wypadku-szydlo-by-podsynkowany.html
II. 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 those inconvenient for the authorities, the public prosecution service is known for not initiating or discontinuing multiple investigations inconvenient for the current ruling elites, e.g.:

**Failed presidential election**

Although PLN 70 mln (EUR 15 mln) were squandered by Deputy Prime Minister Jacek Sasin\(^\text{213}\) and other abuses by the government\(^\text{214}\) were noticed 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 of the District Prosecutor’s Office in Warsaw-Mokotów, initiated in April 2020 towards Art. 165 kk (introduction of a public hazard), was quashed three hours later by her supervisor in the same office, Prosecutor Edyta Dudzińska, without even having read 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 from home in January 2021 by National Prosecutor Święczkowski as penalty 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). The case is another example of criminal prosecution for issuing a procedural decision on the basis of the law but not in accordance with the wishes of those in power (similarly to Judge Tuleya).\(^\text{215}\)

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, incl. the Polish constitution, the Electoral Code, the Code of Administrative Procedure, the Law on the Council of Ministers and the anti-COVID act.\(^\text{216}\)

In May 2021 the Supreme Audit Office (NIK) filed a notification with the prosecution against the Prime Minister and three ministers, citing serious violations of the law during the preparation

\(^{213}\) https://hatemut.pl/334375,wybory-i-pakiet-sasina-zm-70-mln-zl-prokuratura-odmawia-sledztwa

\(^{214}\) https://wiodomosci.net.pl/tylko-w-one-ochrzczenie-nie-bezpieczne-sledztwo-po-doniesieniach-nik-w-sprawie-wybory-kopertowych/3q84f5

\(^{215}\) https://www.rp.pl/brawnowiadl/1893111-chca-posiec-prokurator-wrzezok-do-wiezienia-za-sledztwo-ws-wybory-kopertowych

\(^{216}\) https://www.rp.pl/ustroj-i-kompetencje/bart82331-wyrok-ws-bezprawne-wybory-kopertowe-10-maja-2020-roku?ref=login_required&state=6691ce05-00a0-47a4-9274-8d3922f9f3
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of the 2020 election, claiming from PLN 70 mln up to PLN 133 mln (EUR 15 mln to 29 mln) of state budget funds could have been spent unlawfully.\[27\]

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 (OMZiRK, 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 Maryła 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 PiS”\[218\] and LSO’s databases\[219\] for “expedited promotion and conducting political investigations”.

A complaint against the refusal was filed on 9 December 2020 and was 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 in the course of the proceedings.

**Abuses during the procurement of COVID-19 equipment**

In 2020 during the COVID-19 pandemic, the Health Ministry, headed by minister Łukasz Szumowski, failed to procure, in possibly corrupt\[220\] tenders, ventilators (PLN 250 mln contract, bought from an arms dealer and the vast majority never delivered) and masks (PLN 5 mln contract, roughly EUR 1 mln, bought from a skiing instructor and friend of the minister, turned out to be faulty).

An investigation into the purchases was initiated on the notification of the Health Ministry 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 one in 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
II. Cases of politically-motivated dereliction of duty

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.221

**Jarosław Kaczyński’s “two towers”**

Srebrna, a company linked to and de-facto controlled by PiS Chairman Jarosław Kaczyński, failed to build two skyscrapers in Warsaw nicknamed the “two towers”. A crime notification was filed in January 2019 by 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 a failure to pay for an order submitted to the Austrian businessman, related to preparations for the construction. Birgfellner was questioned by the Warsaw 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)222 refused to initiate an investigation. In the course of handling the case Prosecutor Śpiewak reportedly tried to induce Birgfellner to retract his statement, which was 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 same prosecutor’s office, noted that the prosecution refused to initiate the investigation on October 11, 2 days before the planned elections, thus ensuring that the news was not revealed until after the elections.223

**Orlen president Daniel Obajtek**

The investigation into numerous abuses by the chairman of Poland’s largest state-owned company, oil refiner PKN Orlen, Daniel Obajtek, a 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 Pcim - was handled by the Regional Prosecutor’s Office in Ostrów Wielkopolski, then transferred to its counterpart in Piotrków Trybunalski.

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221 https://businessinsider.com.pl/wiadomosc/prokuratura-umorzyia-sledztwo-w-sprawie-zakupu-respiratorow/hmyek?h
222 https://www.panstwo-pis.pl/index.php/Renata,%C5%A9piewak
II. Cases of politically-motivated dereliction of duty

In 2016 the parliamentary majority changed the law allowing the prosecution to exclude Obajtek’s indictment from the case, then the case was handed in March 2017 to Prosecutor Tomasz Dudek (delegated to the National Prosecution Office from the Regional Prosecutor’s Office in Cracow), who promptly, in June 2017, discontinued the case against Obajtek and three other defendants, all of whom testifying against Obajtek.224

In September 2019 the Regional Public Prosecutor’s Office in Łódź concluded that the reasoning for discontinuing the investigation in 2017 was not valid, which under normal circumstances would result in its reinitiation. Nonetheless the National Prosecutor’s Office to this day has not done so, 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 close to PLN 1 mln (EUR 200,000) in assets.

The prosecution discontinued the case finding Obajtek’s errors “unintentional”, merely the results of his "carelessness and negligence". The conclusions were based on the testimony of Obajtek himself and the 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, including PLN 800,000 (EUR 174,000) of state aid received for the renovation of his mansion or 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/month range (EUR 260-326). The public prosecution has not initiated any investigation into these matters.225

MEPs hung from gallows

The case concerns an event organised by a far-right nationalist group in Katowice in November 2017. Its participants hung on symbolic gallows pictures of six Civic Platform Members of the European Parliament (Danuta Jazłowiecka, Danuta Huebner, Barbara Kudrycka, Julia Pitera, Róża Thun and Michal Boni), depicting them as traitors receiving their punishment. The six MEP’s “crime” was to have voted in favour of the first European Parliament resolution on the rule of law in Poland.226

The Regional Prosecutor’s Office in Katowice initiated an investigation based on a notification by the six MEPs. The investigation lasted three years, despite a video recording from the event and

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all witnesses having been long questioned.\textsuperscript{227} In January 2019 the unexplained delay in the case was formally criticised by then-Ombudsman Adam Bodnar, together with 29 other investigations of hate crime discontinued, not initiated or delayed by the public prosecution.\textsuperscript{228}

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”.\textsuperscript{229} 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.\textsuperscript{230} 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 Giwice court, Jakub K. was delegated to the Justice Ministry under Zbigniew Ziobro.\textsuperscript{231}

### 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 not been investigated by the prosecution service. A mini-report on 19 selected cases, attached to a joint appeal by seven Polish NGOs to stop the brutality of police against protesters, was published by the Open Dialogue Foundation on July 13, 2021.\textsuperscript{232}

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;\textsuperscript{233} Katarzyna Augustyniek, 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;\textsuperscript{234} in April 2021 Dominika Dobosz had to experience an unreasonable use of force by the police which almost suffocated her;\textsuperscript{235} Bartosz Kramek, in January 2021, had a policeman kneeling on his neck after being sprayed with tear gas.\textsuperscript{236}

\textsuperscript{227} [Link to the source]
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In all the cases the public prosecution refuses to initiate an investigation or quickly discontinues it. 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 it was revealed that a group operates within the Justice Ministry, tasked with conducting black PR operations targeting judges critical of the government. The group was headed personally by deputy minister Łukasz Piebiak, who resigned following the exposure of the affair. 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 - headed by Ziobro-loyal prosecutor Jerzy Ziarkiewicz.

The investigation kept being extended every six 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 it interrogated any of the culprits like Łukasz Piebiak or his close associate Judge Jakub Iwaniec.

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, the head of the “Ad Vocem” association of prosecutors, formed by the top prosecutors from Ziobro’s first term in 2005-2007 and now again loyal to him.237

PiS MEP Ryszard Czarnecki

PiS MEP Ryszard Czarnecki was involved in the misappropriation of EU funding 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 obstructs it by investigating in rem, refusing to initiate an investigation against Czarnecki.

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.238

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Solidarna Polska party congress
A junior member of the ruling United Right coalition, Minister of Justice and Prosecutor General Zbigniew Ziobro's Solidarna Polska party, 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). The investigation was discontinued in October 2019 by the Regional Prosecutor’s Office in Warsaw, described by the press as “Ziobro’s strategic unit”.

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.239

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 on which racist content was disseminated. An example: a photo of a woman in a burka next to two rubbish bags, 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 two investigations were merged by the prosecution on 17 October.

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 justice minister and general prosecutor 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.

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Jarosław Kaczyński’s and Krystyna Pawłowicz’s insults

On July 18, 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, murdered” his late brother Lech, the former President of Poland.

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 July 19, 2017.240

The Warsaw regional prosecutor’s office, however, in October that year 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 of a Warsaw district, but temporarily delegated to the regional prosecutor’s office.241

Prosecutor Jerzy Ziarkiewicz

This dereliction case is an offshoot of the wider case of attorney Roman Giertych (see Opposition attorney Roman Giertych case in part 1 of the report). Prosecutor Jerzy Ziarkiewicz, close associate of Minister of Justice Zbigniew Ziobro and usually tasked with handling political cases, including Giertych’s, unlawfully tried to get access to Giertych’s phone.

The phone, being the property of an attorney, contained legally protected information from 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 2022.242

Tolerating racism and hate speech

While seeking support further right on the political scene and wishing to eliminate competition in the form of the far-right Konfederacja party, the Law and Justice government has been increasingly lenient towards racism, xenophobia and hate speech. Numerous cases of hate speech, prevalent e.g. during the annual “Independence March” and other events organised by the far-right, are seldom investigated. The most notorious organisation known for inciting hate

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is the National-Radical Camp (Obóz Narodowo-Radykalny, ONR), a fascist (as per the Supreme Court ruling of 28 February 2021) organisation with roots in a Nazi-sympathising 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 - Żoliborz was discontinued for the first time on 26 June 2018. Rafał Gawel, 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, as a consequence of which, by a decision of 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 manual 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 Ziolkowski of the District Prosecutor’s Office in Warsaw issued a decision not to accept the appeal and to uphold the aforementioned 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 prosecutor of the District Prosecutor’s Office Warsaw - Żoliborz asked the Regional Prosecutor’s Office in Białystok 8 times for access to police recordings of the course 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 the reconstruction of the recordings by a police laboratory, it turned out that there were recordings of the entire gathering, from the beginning to the end, but 10 minutes of the gathering, when the slogans which are the subject of the trial were chanted, were missing.
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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, 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 terrify the 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 of 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 aforementioned order. In view of the above, Rafał Gawel appealed against the decision to discontinue the investigation, as a result of which, by a decision of 10 March 2020, the District Court for Warsaw - Mokotów repealed the decision on discontinuance of the investigation and transferred the case for further proceedings.

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 Gawel (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 Gawel) 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 in the case in question, a decision which was again appealed by Rafał Gawel. On 11 October 2021 the Public Prosecutor of the Regional Prosecutor’s Office in Warsaw did not accept the complaint against the decision of...
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5 May 2021. On 15 October 2021 a notification was sent to Rafał Gawel that the decision of 5 May 2021 was upheld.

Rafał Gawel, 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 Błaszczyk, Tomasz Poręba and Paweł Szefernaker.

Activist Aleksandra

The prosecutor’s office has discontinued the investigation into a possible abuse of power by a policeman who broke the arm of Aleksandra, a 19 year-old activist.

On December 9, 2020, a joint demonstration for the climate of the 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 ill-treatment.245

Activist Małgorzata Farynowska

Since Law and Justice came to power the authorities have been increasingly favourable to the far-right, which includes enabling and supporting the annual “Independence March” in Warsaw, organised by nationalist and neo-fascist organisations the All-Polish Youth and the National-Radical Camp (see the Tolerating racism and hate speech case for more information). Analogous events are being held every November 11th in several Polish cities. Due to the numerous racist, xenophobic and supremacist slogans chanted and displayed during the events, they are actively opposed by pro-democratic movements, who organise blockades and counter-demonstrations.

One such counter-demonstration, held on November 11, 2018 in Wrocław, saw mid-age activist

of the Obywatele RP (Citizens of the Republic of Poland) movement, Małgorzata Farynowska, 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 having obtained multiple video recordings and questioned persons identified as 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.

**Activist Zbigniew Komosa**

Zbigniew Komosa is known, among others, for laying a wreath on a monthly basis in memory of the victims of the 2010 Smolensk plane crash, which is then regularly 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 June 10, 2018. Despite multiple witnesses and proof of the theft taking place, 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, following press reports revealing serious irregularities during President Andrzej Duda’s flight from Zielona Góra in July 2020, Komosa filed a notice of a possible criminal offence with the public prosecutor’s office in Warsaw. It concerned: “endangering the life of the president by failing to supervise the flight”, as for 4 minutes it was conducted 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 prosecution transferred the case to the District Prosecutor’s Office in Zielona Góra, which after 3 months opened an investigation. It was then transferred back to Warsaw, to 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.246

**Fascist and antisemitic slogans on Obywatele RP headquarters**

As a result of the Obywatele RP movement’s active stance against the far-right, the facade
II. Cases of politically-motivated dereliction of duty

of the building where the movement’s headquarters are located in Warsaw was defaced several times by fascist and antisemitic slogans and imagery.

In one of those instances, in 2019, the movement filed a notification with the District Prosecutor’s Office in Warsaw - Żoliborz. As the images included a Star of David hung from gallows and a celtic cross (white supremacy symbol), an investigation was initiated into potential crimes under Art. 256 para. 1 kk (propagating fascism) in concurrence with Art. 257 kk (displaying racism in public).

The investigation was discontinued just months later by the Warsaw - Żoliborz prosecution without providing a reason.

“Women from the Bridge”

During one of the annual “Independence Marches” organised by the far-right, on November 11, 2017, a group of 14 women stood in their way on the Poniatowski bridge in Warsaw with a homemade banner reading “Stop fascism”. The activists peacefully opposed the abuse of the Polish Independence Day by nationalists to promote fascist and hateful slogans. The women were brutally assaulted, both verbally and physically, by the nationalists.247

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 assaulted verbally (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, in fact, the beating was not an act of aggression, but merely a “show of displeasure” that the women were on the route of the march.

The victims appealed the decision and the court ordered the prosecution to conduct an investigation. 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 claiming the perpetrators had not been identified, and in the case of the lighter beating, which she called a “violation of bodily organs”, she argued that there was no public interest in the prosecution of the perpetrators, whom the victims should prosecute themselves.248

Counter-mensiversary

During many of the monthly mensiversary commemorations of the 2010 Smolensk plane crash, organised in Warsaw by officials from the ruling PiS party (see Activist Zbigniew Komosa case in

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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 as well as granting Jarosław Kaczyński’s rallies the official privileges of a “religious ceremony”.

One of those “counter-mensiversaries” was organised by the Obywatele RP movement on March 10, 2017 in front of the Presidential Palace. The event was registered and granted permission as a public gathering. Despite its legal status, 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).

In the course of the investigation several of the activists were questioned. Nevertheless, in December the same year the investigation was discontinued by Prosecutor Dariusz Ziolkowski of the District Prosecutor’s Office for Warsaw Żoliborz. In the justification for the cancellation the prosecutor argued, i.a., 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.

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. Brejza claimed that the messages were forged and finally, in December 2021, the Canadian organisation Citizen Lab was able to confirm that his phone had been hacked 33 times with Pegasus, a notorious spyware used by various illiberal governments, including during the parliamentary and European elections.

Brejza was not the only victim of state-sponsored Pegasus-enabled spying. As of late December 2021, it is known that opposition attorney Roman Giertych and independent prosecutor Ewa Wrzosek were also subjected to it.

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, from there it went to the National Prosecutor’s Office, which in turn forwarded it to Łódź.

250 https://wyborcza.pl/7,75398,27944252,brejza-pegasus-podsluchy-giertych.html
251 ibidem.
IV. Recommendations

Ultimately, the case ended up in the Regional Prosecutor’s Office in Ostrów Wielkopolski and it was there that the preparatory proceedings were initiated.

Brezza was finally interviewed only in mid-December, after the 90 days 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”.252

Not trusting the Polish prosecution service, Giertych notified the public prosecutor’s office in Italy, where he resides.253

**Surveillance of Prosecutor Ewa Wrzosek**

Prosecutor Ewa Wrzosek of the Lex Super Omnia association, already a target of the authorities for her fight in support of the rule of law, reported in late 2021 that her phone was hacked with the notorious Pegasus spyware, based on a notification received from Apple and subsequently confirmed by Citizen Lab. As the highly-specialised software is only sold to government law enforcement and intelligence agencies by its Israeli producers, NSO Group, the likelihood that the Polish government is behind this is reasonably high.254

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 on one hand no crime could be proven, and that there could be an “accidental hacking attack” or an “unspecified operational control” being carried out on the other. Wrzosek appealed against this decision in January 2022.255

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III. Systemic issues eroding the public prosecution

3. Systemic issues eroding the public prosecution

Regardless of the validity of the allegations brought by the prosecution, or lack thereof, the systemic, prevalent 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 in the person of one of the leaders of the ruling coalition;

- **The selective and instrumental nature of the investigations, motivated by political and propaganda goals of the ruling camp**, as well as personal animosities of its leading representatives. Even if some charges from the list above may seem to possess some grounds, they remain the fruit 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 progressing 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/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, arbitrarily decided at the political level;

- **The violation of the right to a fair and just trial**: significant undermining of the independence of the judiciary through systematic removal and destruction
III. Systemic issues eroding the public prosecution

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),\(^\text{256, 257}\) with 92% of cases where pre-trial detention was used until the final conviction.\(^\text{258}\) 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, ultimately leading to an increase in persons being unlawfully deprived of their freedom.\(^\text{259}\) 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.\(^\text{260}\)

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 as a means of pressure on suspects and defendants (so-called extractive custody),\(^\text{261}\) with no actual control of the court (see e.g. cases of Slawomir 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.”\(^\text{262}\) 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.\(^\text{263}\) In the face of increasing control over the judiciary (not least through the new disciplinary system for judges),\(^\text{264}\) 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

\(^{256}\) https://courtwatch.pl/wp-content/uploads/2020/02/Tymczasowe-aresztowania-w-Polsce-Raport-pog%C5%82%24%99biony.pdf
\(^{258}\) https://www.prawo.pl/prawnicy-sady/tymczasowe-aresztowania-w-Polsce-niebezpieczny-wzrost,510515.html
\(^{259}\) https://courtwatch.pl/wp-content/uploads/2020/12/Tymczasowe-aresztowania-w-Polsce-Raport-pog%C5%82%24%99biony.pdf
\(^{260}\) ibidem
\(^{261}\) https://bip.brpo.gov.pl/pl/content/panel/prezentacja-bada%C5%82%24%99dzenia-tymczasowych-aresztowa%C5%82-w-polsce
\(^{262}\) po, "areszt wydobywczy"
\(^{264}\) https://courtwatch.pl/wp-content/uploads/2020/12/Tymczasowe-aresztowania-w-Polsce-Raport-pog%C5%82%24%99biony.pdf

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III. Systemic issues eroding the public prosecution

... illustrating the philosophy as “Let’s not interfere with the prosecutor prosecuting criminals as he sees fit.”

- **A deepening lack of faith in the certainty of court rulings** 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).
4. Recommendations

As Piotr Buras, director of the Warsaw office of the European Council For Foreign Relations, pointed out in the Rzeczpospolita daily, 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:

“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 Slawomir Jęksa of the Regional Court in Poznań. 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 states that “the prosecution service is politically steered” and “the sphere of cases uncomfortable to the authorities is practically outside the realm of law”. He adds that independent prosecutors face repression from the Minister of Justice, Zbigniew Ziobro, who is also the Prosecutor General.

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IV. Recommendations

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 should be separated, and this division - together with the role of the public prosecution - could 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 2020,269 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 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.

269 https://lexso.org.pl/2020/05/26/refleksje-nad-przyszloscia-prokuratury/
IV. Recommendations

11. Potentially reorganising the Public Prosecutor's Office into one of 4 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),
   - 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 close eye on the cases listed in this report and others as they emerge, focusing on the targeted
IV. Recommendations

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. Two ways of ensuring accountability are proposed by the LSO prosecutors’ association: 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.

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’re executed that there is no political dimension to them. To address the challenge systemically those states, as well as 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), 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.

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 January 28, 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 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...
Annex I: Changes in the legal framework expanding the powers of the Prosecutor-General

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 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 August 12, 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 fulfill 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 April 15, 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 public...*
Annex I: Changes in the legal framework expanding the powers of the Prosecutor-General

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 June 10, 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 Wroclaw - 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):

168 b: If, as a result of an inspection ordered at the request of an authorised body
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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 October 5, 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 June 22, 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 June 22, 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.
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.
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 judges is the Internal Affairs Department (Wydział Spraw Wewnętrznich, 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.

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 General were merged, 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.274 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.275 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),276 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 prosecutors’ 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.277 When discussing the newly introduced possibilities for almost uncontrollable 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”.278 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 of changes in terminology. When carried out, in fact

274 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.

275 This is allowed by Article 17, para. 3 of the Act on the Prosecution Service of 2016.

276 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 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.

277 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 exclusively specified in the Act, e.g. in the event of the permanent incapacity to perform duties due to illness.

Annex II: Internal Affairs Department of the National Prosecutor’s Office as a politicised tool of oppression of Polish judges and prosecutors

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.279

Prosecutor-General/Minister of Justice Zbigniew Ziobro and his deputy Bogdan Święczkowski 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.280

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.281

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.282

Their precarious position certainly does not make it easier for them to resist official pressure and

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279 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_Rachswissenschaft/Ernst-W-Wahl/Didaktik/Dokumente/Good_change_-_7_October_2017.pdf
favours 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 Ziómek** (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.283

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 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.284 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.285 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

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that 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. 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, 2020 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) 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), 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).

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.
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The criminal prosecution in this case is in conflict with the law. The WSW accused the judge that 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.290

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.291

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.292

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290 https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/igor-tuleya.pdf
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.293

### 3. Three judges of the Supreme Court (Marek Pietruszyński, Włodzimierz Wróbel and Andrzej Stępka)

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 Wygodzka. 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 Stępka. 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.294 In June...
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2020, Judge Wróbel published a widely publicized critical commentary in the media about the obstruction of the Supreme Court assembly by Małgorzata Manowska and the judges elected by the neo-NCJ. 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. 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.

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.

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 Pawelczyk-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

297  A number of publications in English describe the legal repression applied against Judge Żurek, including:
the accident at work.\textsuperscript{299} This is 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.\textsuperscript{300}

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.\textsuperscript{301} 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.\textsuperscript{302}

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 “lustitia”, which is critical of the pseudo-reform of the justice system. In

\textsuperscript{299} https://oko.press/prokuratura-krajowa-poluje-na-sedziego-zurka/
\textsuperscript{301} https://oko.press/prokuratura-krajowa-poluje-na-sedziego-zurka/
\textsuperscript{302} https://oko.press/prokuratura-zobry-nie-daruje-prywatnych-spraw-sedziemu-ktory-sadzi-gazete-polska/
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 “openly refers to the ideology of the ONR Camp – an extreme right-wing and anti-Semitic organization – founded in 1934”. 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.

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.

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.

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”.

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”, and the Assembly of Judges of the Regional Court in Cracow 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, 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
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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.

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 2020.310 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 Krasoń 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 Krasoń 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.311 The decision to transfer him was taken personally by the Deputy Prosecutor General, Bogdan Święckowski, and contained no justification. Prosecutor Krasoń 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 Krasoń 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.312 Judges Marzena Henych, Sabina Czech-Śmiałkowska, Katarzyna Rozwoda, Paweł Cyran, Aneta Tomasik and Sławomir Fulusz (from the District Court), Jarosław Łukasik, Grażyna Baran, Urszula Pałkowska-Różyczka 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,313 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:\textsuperscript{314} 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. 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. 1 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.\textsuperscript{315}

**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 cases.

\textsuperscript{314} https://monitorkonstytucyjny.eu/archiwa/16811

\textsuperscript{315} https://monitorkonstytucyjny.eu/archiwa/16811
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 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). According to information published in the "Dziennik Gazeta Prawna" daily newspaper, Deputy Prosecutor General, Bogdan Święczkowski 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, Bartomiej 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.

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, or his demonstrative tearing up of a draft resolution prepared by the judges during the assembly of the Olsztyn District Court Judges. 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), 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

317 https://serwisy.gazetaprawna.pl/orzeczenia/artykuly/8126361
319 https://okopress/sejdzia-nawacki-publicznie-drac-uchwaly-popolnil-przestpwstwo/
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.321 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.322

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

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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 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”, in 2015, acting under the nickname “jorry 123”. According to Gazeta Wyborcza, “jorry/123” 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 media and encountered a strong negative reaction from the Israeli embassy in Poland, as well as the Polish Ombudsman, Adam Bodnar.

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 Jaroslaw 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. 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

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Piebiak. The proceedings in this case have also been going on for a disproportionately long time without any effect, with the 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, 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

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328 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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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 Brzozowska’s immunity, against whom criminal proceedings are now pending before the Regional Court in Warsaw.330

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).331 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.332

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 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 fulfill 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

332 Ibidem
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, including:

- there was a change in the regulations on criminal procedures, which made it possible for 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),
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- 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,

- 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 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 documentation (however, no such evidence was found).

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334 https://www.polityka.pl/tygodnikpolityka/krakow/17/22/59/1;zwrot-w-procesie-ws-smierci-ojca-ziobry-krakowski-sad-nie-chce-sie-zajmowac-ta-sprawa.read
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- 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.336

Despite all the actions described above, the case before the court of the first instance ended with the acquittal of all the accused doctors.337 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.

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 “Malicious Prosecution by the Polish Public Prosecutor's Office” report published on August 16, 2021. 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 prosecution service in the years 2015-2021, divided into two main categories: malicious prosecution and dereliction of duty.

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.