



In-depth report:
‘Internal Affairs Department of the State Prosecution Service as a politicized tool of oppression of Polish judges and prosecutors’

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I. Introduction.

The independence of the judiciary in Poland has been systematically dismantled over the last six years, during which previously independent bodies being called fuses of democracy have been brought under political control by the ruling camp (such as the Constitutional Court or the National Council of the Judiciary). At the same time, the ruling camp has set up several central bodies, even specialized in repressing judges, with the aim of generating a chilling effect on them. These bodies include the Disciplinary Chamber of the Supreme Court, and central disciplinary commissioners both of which conduct politically motivated disciplinary proceedings against defiant judges.

One of the newly created central bodies, which has the objective of handling proceedings against Polish judges¹ is the Internal Affairs Department of the State Prosecution Service (IAD), 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 IAD, while the positioning of this department at the top of the prosecution service’s organizational structure means that the Minister is not only its direct superior and supervisor, but also directly influences its operations.

II. Systemic position of the Internal Affairs Department of the State Prosecution Service and its membership.

It should be emphasized at this point that, pursuant to the Act on the Prosecution Service of 28 January 2016,² the functions of the Minister of Justice and the Prosecutor General³ 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.⁴ 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

¹ Alongside with the 3 central disciplinary commissioners and the Disciplinary Chamber of the Supreme Court who have competence in disciplinary proceedings, for more info about the new procedure of disciplinary proceedings see the in-depth report ‘Judges under special supervision, namely ‘The Great Reform’ of the Polish justice system’, posted at: http://themis-sedziowie.eu/wp-content/uploads/2019/04/Judges_under_special_supervision_second-publication.pdf

² Act on the Prosecution Service of 28 January 2016 (Journal of laws 2017, item 1767 as amended).

³ The personal combination of the offices of the Minister of Justice and the Prosecutor General took place when the Act on the Prosecution Service entered into force on 4 March 2016. The merger of these two offices alone, accompanied by awarding extensive supervisory and investigative rights to the Prosecutor General, means that, on the one hand, this same person becomes an active participant of all criminal proceedings through the subordinated prosecutors and, on the other, the authority supervising the courts, which became the basis of a complaint of the ‘old’ National Council of the Judiciary filed with the Constitutional Tribunal regarding the scope of the so-called ‘administrative supervision’. Hence one of the motions of the extraordinary congress of judges of 3 September 2016 advocating for the ordinary courts to be supervised by the first President of the Supreme Court.

⁴ 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.

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.⁵ The Minister of Justice also has the right to issue orders, including those referring to specific procedural steps in each case (Article 7 § 2 and § 3 of the Act), the right to revoke or change a decision of a subordinate prosecutor (Article 8 of the Act),⁶ as well as the right to take over cases from subordinate prosecutors of any level (Article 9 § 2 of the Act), which makes him not only become the supervisor of the prosecutors but also a super-prosecutor equipped with typically investigative powers.

The 2016 Act on the Public Prosecutor's Office also strengthens the power of the General Public Prosecutor in matters of the staffing policy, at the expense of weakening the positions of the heads of other levels of the Public Prosecutor's Office. Specifically, the Public Prosecutor General, at the request of the National Public Prosecutor, appoints and dismisses chief prosecutors of high regional, regional and district prosecutor's offices (Article 15 § 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.⁷ When discussing the newly introduced possibilities for almost uncontrolled and arbitrary changes in the development of the personnel policy in the Public Prosecutor's Office by the Prosecutor General it is impossible not to mention the secondary regulations to the Act on the Public Prosecutor's Office titled 'Regulations implementing the Act on the Public Prosecutor's Office'.⁸ The provisions of these regulations seemingly introduced a reorganization 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 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, 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

⁵ This is allowed by Article 57, para. 3 of the Act on the Prosecution Service of 2016.

⁶ The literature on the subject rightly states that the provision of such extensive rights to the Prosecutor General to interfere with pending proceedings means that he becomes a 'super-prosecutor' equipped with extensive investigative powers. Consequently, the powers of the current Minister of Justice – Prosecutor General, Zbigniew Ziobro, who is simultaneously a member of the Polish Parliament, formulated in this way constitute a breach of Article 103, para. 2 of the Polish Constitution, which provides that a prosecutor cannot simultaneously hold the office of a Member of Parliament.

⁷ Based on the 2009 Act on the Public Prosecutor's Office, the heads of the Appellate and Regional Public Procurator's Office were appointed for six-year terms and the heads of District Public Procurator's Office were appointed for four-year terms, while they could only be dismissed before the expiry of their term in the cases exhaustively specified in the Act (e.g. in the event of the permanent incapacity to perform duties due to illness).

⁸ Promulgated in the Journal of Laws (Dziennik Ustaw) of 2016, item 178.

politicization, about 400 prosecutors, who were expecting demotion, decided to take advantage of early retirement entitlements.⁹

Prosecutor-General/Minister of Justice Zbigniew Ziobro and his deputy Bogdan Świączkowski ruthlessly use their powers against their subordinated 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.¹⁰

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.¹¹

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 IAD 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 IAD 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.¹² Their precarious position certainly does not make it easier for them to resist official pressure and 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 IAD 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 IAD. Partial information on some of the prosecutors employed there

⁹ More information about the so-called reform of the prosecution office is contained in chapter III of the in-depth report 'So called 'Good change' in the Polish justice administration system' available at: https://www.jura.uni-bonn.de/fileadmin/Fachbereich_Rechtswissenschaft/Einrichtungen/Lehrstuehle/Sanders/Dokumente/Good_change_-_7_October_2017_-_word.pdf

¹⁰ <http://themis-sedziowie.eu/materials-in-english/prosecutors-office-under-a-dictatorship-by-ewa-siedlecka-polityka/>

¹¹ http://themis-sedziowie.eu/wp-content/uploads/2021/08/Malicious-prosecution-by-the-Polish-Public-Prosecutor%E2%80%99s-Office_final.pdf

¹² <https://oko.press/to-oni-scigaja-niezaleznych-sedziow-i-prokuratorow-lista-16-ludzi-ziobry-w-prokuraturze-krajowej/>

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 IAD since 2018 and comes from the Voivodship Prosecutor's Office in Łódź;
2. Prosecutor **Marcin Rosiak**, who has been Deputy Head of the IAD 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 IAD 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 IAD, 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 IAD 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 IAD from the Regional Prosecutor's Office in Poznań; he is known to have unjustifiably interrogated 13 Kraków 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 IAD 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 Stanislawczyk** (delegated to the IAD from the Regional Prosecution 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, and he already found himself on a delegation at the highest level of prosecution, in the IAD in 2020, which he represented before the Disciplinary Chamber of the Supreme Court demanding the lifting of Judge Igor Tuleya's immunity (see subsection VI.1);
8. Prosecutor **Dariusz Ziomek** (delegated to the IAD 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 IAD 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. IAD prosecutors exceptionally frequently receive additional financial awards from the Minister of Justice.¹³

¹³ As evidenced in the report prepared by 'Lex Super Omnia' entitled: 'The stick method': https://medelnet.eu/images/2021/THE_STICK_METHOD.pdf

III. No real and compelling reasons for creating the Department

Experience shows that the employees of the new unit can go to some lengths to justify its existence, especially if the employer provides a ‘motivational’ remuneration system. Therefore, there have already been numerous attempts to initiate criminal proceedings against judges, the legitimacy of which is questionable, and more should be expected in the future. The instigation of such proceedings will be all the easier that the so-called official offences of overstepping official rights or the failure to perform official duties (Article 231 PC) is evaluative in nature and exposed to broad interpretation.¹⁴ 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 IAD, 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.¹⁵ Given that Poland has approximately 10,000 active judges and over 6,000 prosecutors, such a number of proceedings should be considered marginal and insignificant, which confirms that 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 1 January 2008 to 31 December 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.¹⁶ 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.

IV. 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 IAD which was slowly taking over from the central disciplinary commissioners is taking priority in the politically motivated,

¹⁴ For more detailed info in this respect see subchapter V.3 of the report ‘Judges under special supervision, namely ...’: http://themis-sedziowie.eu/wp-content/uploads/2019/04/Judges_under_special_supevision_second-publication.pdf

¹⁵ Data from the beginning of August 2018, <https://www.prawo.gazetaprawna.pl%2Fartykuly%2F1206379%2Cpatologie-wsrod-sedziow-i-prokuratorow.html&usg=AOvVaw1gvqMgiquGFrX4y7DDo5Z>

¹⁶ http://themis-sedziowie.eu/wp-content/uploads/2018/02/IMG_2899-e1519303114485.jpg

legal persecution of judges. This is because, since the CJEU applied an interim measure on 8 April 2020¹⁷ 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 State Prosecution Service. 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 IAD motions to lift the immunity of judges was settled by the CJEU's interim measure of 14 July 2021 (C-204/21 R)¹⁸ suspending the activities of that Chamber in ruling on judicial immunity, as well as the judgment of the Grand Chamber of the CJEU of 15 July 2021 (C-791/19),¹⁹ which unequivocally stated that the Disciplinary Chamber does not constitute an independent and impartial court under European law. Despite this, on 23 September 2021, the Disciplinary Chamber of the Supreme Court, acting on the motion of the IAD, lifted the judicial immunity of one of the 'old' judges of the Supreme Court, Marek Pietruszynski, in direct breach of European law (see subsection VI.3).

V. Internal Affairs Department of the State Prosecution Service 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

¹⁷ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62019CO0791\(01\)&from=GA](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62019CO0791(01)&from=GA)

¹⁸ <https://curia.europa.eu/juris/document/document.jsf?jsessionid=F8F2135D07F4CBD58DBD44B971AF8428?text=&docid=244199&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=5163535>

¹⁹ <https://curia.europa.eu/juris/document/document.jsf?text=&docid=244185&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=5163875>

- *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 IAD.

VI. Examples of questionable criminal proceedings conducted by the Internal Affairs Department

1. Judge Igor Tuleya, one of the icons of judicial resistance.

The IAD is accusing Igor Tuleya of abusing his powers. His only ‘fault’ is that he ordered prosecutor’s office to restart an investigation in 2018 into the so-called ‘column chamber voting’ by the parliament. By discontinuing the proceedings, the politicized prosecutor’s office tried to sweep irregularities under the carpet that had taken place during the voting on the 2017 budget. Furthermore, the judge reported about 230 ‘Law and Justice’ deputies to the prosecutor’s office as being suspected of giving false testimony.

The criminal prosecution in this case is in conflict with the law. The IAD accused the judge that 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 IAD, on 18 November 2020, the politicized Disciplinary Chamber lifted Judge Tuleya’s immunity.²⁰

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 IAD 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.

²⁰ https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/igor-tuleya.pdf

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 Kraków. This was a part of the national purge of 159 court presidents. Her name was groundlessly linked to an alleged corruption scandal in the Kraków 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.²¹

The pro-government media made an announcement on 15 September 2020 that an investigation was being conducted by the IAD against Judge Morawiec. On the same day, the IAD 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 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 Kraków Court of Appeal.²²

As Ms Morawiec was not given any official opportunity to comment on the allegations, on 17 September, 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.²³

The subsequent course of the proceedings before the Disciplinary Chamber of the Supreme Court to lift her judicial immunity fully confirms that the charges against Judge Morawiec were groundless. This is evidenced by the fact that, although the Disciplinary Chamber accepted the IAD’s motion on 12 October 2020, lifted the judge’s immunity and suspended her from performing her judicial duties, on 7 June 2021, during the examination of the appeal filed by her defence counsel against this decision, another panel of the Disciplinary Chamber overturned this ruling, concluding that there were no factual grounds making it plausible that Beata Morawiec had committed the offences with which she was charged. However, this does not change the fact that the judge was unjustifiably suspended from her judicial duties for nearly nine months, during which time her salary was reduced by 50%.

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

On 23 September 2021, the illegal Disciplinary Chamber of the Polish Supreme Court, acting in direct breach of the CJEU judgement of 15 July 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

²¹ <https://oko.press/ziobro-przegral-proces-z-sedzia-beata-morawiec-i-ma-ja-przeprosic/>

²² <https://www.polishnews.co.uk/cba-in-the-house-of-judge-beata-morawiec-judge-dariusz-mazur-comments-illegal-actions-of-the-prosecutors-office/>

²³ <http://themis-sedziowie.eu/materials-in-english/public-prosecutor-enters-the-home-of-a-judge-fighting-for-free-courts-in-poland-by-mariusz-jaloszewski/>

Jarosław Duś and Mr Jacek Wygoda. The Disciplinary Chamber was acting on the motion of politicized IAD, 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 IAD 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 23 May 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.²⁴ In June 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.²⁵ Professor Wróbel was also the judge rapporteur who prepared the famous resolution of the joint chambers of the Polish Supreme Court of 23 January 2020, implementing the CJEU judgement of 19 November 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.²⁶ 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.²⁷

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.²⁸

²⁴ <http://themis-sedziowie.eu/materials-in-english/position-of-the-board-of-the-themis-judges-association-of-28-may-2020-regarding-the-appointment-of-the-first-president-of-the-supreme-court/>

²⁵ <http://themis-sedziowie.eu/materials-in-english/the-position-of-prof-wlodzimierz-wrobel-judge-of-the-criminal-chamber-of-the-supreme-court-regarding-the-obstruction-of-the-sc-assembly-on-june-12-2020-by-persons-appointed-with-the-participation/>

²⁶ https://forumfws.eu/bsa-i-4110-1_20_english.pdf

²⁷ http://themis-sedziowie.eu/wp-content/uploads/2020/01/Włodzimierz-Wróbel_Disciplinary-Chamber-as-exceptional-court_def.pdf

²⁸ A number of publications in English describe the legal repression applied against Judge Żurek, including:

The IAD 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 Kraków, 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 of the Penal Code), but the case was then taken over by the IAD and it then became apparent that Judge Żurek had gone from being a victim of an accident at work to a suspect. The IAD started to investigate the case in order to prove that Judge Żurek had given false testimony when reporting the accident at work.²⁹ 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.³⁰

5. Judge Andrzej Sterkowicz.

The criminal proceedings that the IAD 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.³¹ 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

- <http://themis-sedziowie.eu/materials-in-english/wholesale-disciplinary-proceedings-for-judge-zurek-two-hearings-in-one-day-by-magdalena-galczyńska-onet-pl/>

- <https://ruleoflaw.pl/the-prosecutor-general-goes-for-judge-zurek-he-is-digging-into-his-private-affairs/>

- <https://www.google.pl/amp/s/amp.theatlantic.com/amp/article/605623/>

- https://www.google.pl/amp/s/www.latimes.com/world-nation/story/2020-02-27/poland-government-judges-nationalism%3f_amp=true

²⁹ <https://oko.press/prokuratura-krajowa-poluje-na-sedziego-zurka/>

³⁰ <https://tvn24.pl/go/programy,7/czarno-na-bialym-odcinki,11367/odcinek-1647,S00E1647,565919>

³¹ <https://oko.press/prokuratura-bada-sedziego-ktory-podpadl-gazecie-polskiej-wydajac-wyroki-niekorzystne-dla-doroty-kani/>

office regarding their family disputes, including for slander and insults. Although, according to the of 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 IAD, 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 Kraków 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 25 June 2019 allowing the criminal case against him to proceed. This case has not yet ended.³²

6. Judge Irena Majcher from the District Court in Opole

Irena Majcher is a judge of the National Court Register in Opole and a member of the Association of Polish Judges 'Iustitia', which is critical of the pseudo-reform of the justice system. In 2009, Judge Irena Majcher decided to ban (remove from the register of associations) the Radical-National Camp (ONR) based in Brzeg. In her justification, the judge stated that this organization 'openly refers to the ideology of the ONR Camp – an extreme right-wing and anti-Semitic organization – founded in 1934'.³³ 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.³⁴

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 IAD. 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 IAD took the view that the judge had committed a clerical offence under Article 231 of the Penal Code 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.³⁵

In the first instance, the motion of the IAD 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 IAD appeals against this decision. The Disciplinary Chamber of the Supreme Court rejected the prosecution's complaint on 21

³² <https://oko.press/prokuratura-ziobry-nie-daruje-prywatnych-spraw-sedziemu-ktory-sadzil-gazete-polska/>

³³ <https://www.gazetaprawna.pl/wiadomosci/artykuly/360417,pierwszy-nielegalny-oboz-narodowo-radykalny.html>

³⁴ <http://themis-sedziowie.eu/materials-in-english/investigations-discontinued-indictments-withdrawn-that-is-how-ziobro-is-helping-hooligans-racists-and-fascists-by-jacek-harlukowicz-gazeta-wyborcza/>

³⁵ <https://oko.press/prokuratura-sciga-sedzie-z-opola/>

October 2020 and upheld the decision of the Disciplinary Court of the Court of Appeal in Wrocław refusing to lift the judge's immunity.³⁶

7. In theory, the prison authorities; in practice, the judges of the Regional Court and the Court of Appeal in Kraków

In practice, the IAD 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 IAD was the questioning of several dozen judges of the Regional Court and the Court of Appeal in Kraków as witnesses in a case regarding the degrading and inhumane treatment of Krzysztof S., the former President of the Court of Appeal in Kraków. 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 Kraków 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',³⁷ and the Assembly of Judges of the Regional Court in Kraków³⁸ and the Assembly of Judges of the Court of Appeal in Kraków in May 2018 passed resolutions condemning the treatment of Krzysztof S. in the prison in Rzeszów, considering it degrading and inhuman, IAD took up an investigation to clarify whether the treatment of the former president of the Court of Appeal in Kraków constituted an abuse of power by prison officials. As it soon transpired, the main subject of the IAD 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 Kraków 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 Kraków, 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

³⁶ <https://oko.press/kompromitacja-prokuratury-ziobry-izba-dyscyplinarna-nie-uchylila-immunitetu-sedzi-majcher-z-opola/>

³⁷ <https://www.polityka.pl/tygodnikpolityka/kraj/1747486,1,ponizanie-sedziego.read>

³⁸ Resolution no. 4 was adopted on 24 May 2018 by the Assembly of Judges of the Regional Court in Kraków in this case: <http://themis-sedziowie.eu/wp-content/uploads/2018/05/Resolutions-of-24-May-2018-ENG..pdf>, followed by resolution no. 1 of the Assembly of the Appeal Court in Kraków of 28 May 2018.

Representatives of Judges of the Court of Appeal in Kraków of 12 October 2018,³⁹ which took the position that: *We assess the questioning of approximately 100 judges of the Court of Appeal and the Regional Court in Kraków by the Internal Affairs Department of the State Prosecution Service to be an unacceptable waste of public funds, as we consider this to be a retaliation for the adoption of resolutions by the judges of these courts in meetings of judges condemning the degrading and inhumane treatment of Judge Krzysztof S. in the prison in Rzeszów. As the actions of the Prosecutor's Office are irrelevant to the resolution of the case, we consider them to be a politically motivated attempt to intimidate the Kraków judiciary.*

8. 13 judges of Kraków courts

Another act of the IAD, 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 2020.⁴⁰ This act involves summoning 13 judges of the district, regional and appellate courts in Kraków, 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 IAD applies to the alleged abuse of powers and the failure of public officials to fulfil their obligations (Article 231 § 1 of the Penal Code), 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 Kraków, 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.⁴¹ The decision to transfer him was taken personally by the Deputy Prosecutor General, Bogdan Świączkowski, and contained no justification. Prosecutor Krasoń challenged this transfer decision in court. As the judges of the Kraków 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.⁴² Judges Marzena Henrych, Sabina Czech-Śmiałkowska, Katarzyna Rozwoda, Paweł Cyran, Aneta Tomasiak and Sławomir Folusz (from the District Court), Jarosław Łukasik, Grażyna Baran, Urszula Pałkowska-Różycka and Dominika Augustyn (from the Regional Court), as well as Agata Pyjas-Luty, Monika Kowalska and Iwona Łuka-Kliszcz (from the Court of Appeal) were questioned in this procedure.

³⁹ <http://themis-sedziowie.eu/materials-in-english/resolutions-of-the-assembly-of-the-representatives-of-the-krakow-appellate-judges-of-12-october-2018/>

⁴⁰ <https://ruleoflaw.pl/the-national-public-prosecutors-office-is-prosecuting-seven-judges-for-taking-decisions-which-favour-an-oppressed-prosecutor/>

⁴¹ <https://ruleoflaw.pl/law-and-justices-concentrated-power-over-polish-prosecutors/>

⁴² <http://themis-sedziowie.eu/materials-in-english/resolution-of-the-board-of-the-themis-judges-association-of-29-december-2020-on-unlawful-pressure-on-krakow-judges-in-connection-with-the-proceedings-in-the-case-of-prosecutor-mariusz-krason/>

This questioning appalled both the Kraków judicial community, which manifested itself in demonstrations in defence of the persecuted judges,⁴³ and encountered a strong negative opinion of the judges' associations, including the 'Themis' Judges Association, whose management board stated in its resolution of 29 December 2020:⁴⁴ *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.⁴⁵

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 IAD 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 IAD 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 8 April 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 directly

⁴³ <https://www.iustitia.pl/en/disciplinary-proceedings/4071-a-short-account-on-protest-prosecutor-krason-s-case-crocow-29-12-2020>

⁴⁴ <http://themis-sedziowie.eu/materials-in-english/resolution-of-the-board-of-the-themis-judges-association-of-29-december-2020-on-unlawful-pressure-on-krakow-judges-in-connection-with-the-proceedings-in-the-case-of-prosecutor-mariusz-krason/>

⁴⁵ <https://monitorkonstytucyjny.eu/archiwa/16811>

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 IAD in order for it to handle criminal proceedings regarding the alleged overstepping of powers (Article 231 of the Penal Code) 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).⁴⁶ According to information published in the ‘Dziennik Gazeta Prawna’ daily newspaper, Deputy Prosecutor General, Bogdan Świączkowski was also supposed to have requested a number of files from the Labour Chamber regarding cases in which ordinary court judges (including Monika Frąckowiak, Krystian Markiewicz, Paweł Juszczyzyn, Bartłomiej Starosta and Waldemar Żurek) challenged the legal status of a number of Supreme Court judges illegally appointed to their positions with the participation of the incorrectly elected, new NCJ.⁴⁷

On an even larger scale, the IAD ‘trawled case files’ of 121 judges of the District Court and the Regional Court in Olsztyn, demanding that the IAD 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,⁴⁸ or his demonstrative tearing up of a draft resolution prepared by the judges during the assembly of the Olsztyn District Court Judges.⁴⁹ However, the conflict escalated to its greatest intensity when, in November 2019, Maciej Nawacki suspended Paweł Juszczyzyn, a judge of the District Court in Olsztyn, from his judicial duties after the judge, in implementing the CJEU’s decision of 19 November 2019 (AK case),⁵⁰ 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 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 14 February 2020 (this happened, probably not by chance, on the day the famous ‘Muzzle Act’ entered into force, which prohibits judges from questioning the

⁴⁶ <http://themis-sedziowie.eu/materials-in-english/prosecutors-office-takes-over-supreme-court-files-the-start-of-an-offensive-against-the-judges-by-lukasz-woznicki-gazeta-wyborcza-20-march-2021/>

⁴⁷ <https://serwisy.gazetaprawna.pl/orzeczenia/artykuly/8126361,prokurator-chce-zajrzec-w-akta-izby-pracy-sn.html>

⁴⁸ <https://oko.press/maciej-nawacki-prezes-sadu-w-olsztynie-z-nominacji-ziobry-naslal-policje-na-swoich-sedziow/>

⁴⁹ <https://oko.press/sedzia-nawacki-publicznie-drac-uchwaly-popelnil-przestepstwo/>

⁵⁰ <https://curia.europa.eu/juris/document/document.jsf?text=&docid=220770&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=5170552>

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 Juszczyzyn 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 Juszczyzyn'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 14 and 15 July 2021, which was subsequently signed by more than 4,200 judges and prosecutors from across Poland.⁵¹ It is significant that, despite the CJEU's interim measure of 14 July 2021 and the final judgment of the Olsztyn Regional Court ordering the reinstatement of Judge Paweł Juszczyzyn, 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 of the Penal Code). 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 IAD. 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 Juszczyzyn.⁵²

10. Judge Jarosław Dudzicz.

Jarosław Dudzicz, is one of the judges who previously did not stand up for anything, but as he fully cooperated with the ruling camp in order to destroy the independence of the Polish judiciary, his career has progressed rapidly in recent years. In the last 3 years, he was promoted from the lowest position in the ordinary judiciary (district court judge) to the position of regional court president 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',⁵³ in 2015, acting under the nickname 'jery 123'. According to Gazeta Wyborcza,⁵⁴ jorry123 also posted other hateful comments. He commented on an article about historian Jan Tomasz Gross, who writes about Polish complicity in the Holocaust, as follows: 'Jewish and German liars against Poland and Poles'. He called the Kielce pogrom 'a communist

⁵¹ <https://oko.press/wielki-historyczny-apel-polskich-sedziow-w-obronie-prawa-ue-ostateczna-lista-4219-nazwisk/>,

⁵² <https://oko.press/prokuratura-krajowa-zada-informacji-o-wszystkich-sedziach-z-olsztyna/>

⁵³ <https://wiadomosci.onet.pl/tylko-w-onecie/antysemitki-wpisy-dudzicza-profesor-safjan-komentuje/1xx83bt>

⁵⁴ <https://wyborcza.pl/7,75398,25182479,jaroslaw-dudzicz-sedzia-dobrej-zmiany-o-zydach-podly-parszywy.html>

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 media⁵⁵ and encountered a strong negative reaction from the Israeli embassy in Poland, as well as the Polish Ombudsman, Adam Bodnar.⁵⁶ Although shortly after these publications, both the neo-NCJ and the Disciplinary Commissioner of the Judges of the Ordinary Courts announced that they would take decisive action against Judge Dudzicz, he has continued to serve as a member of the NCJ and president of the court to this day. According to press reports, after a criminal complaint was filed by an unidentified person in 2015, the police established that the entries had been made from Jarosław Dudzicz’s computer, who subsequently admitted during questioning that he was the author. Although later, the Prosecutor’s Office explained that it was waiting for an expert linguist’s opinion to assess whether the entries had the nature of ‘hate speech’, the fact that the investigation of such a simple matter has lasted more than six years is completely incomprehensible. The investigation into Judge Dudzicz’s anti-Semitic comments is probably the longest-running of the simplest investigations conducted by the Polish prosecution service. Finally, when it was no longer possible to come up with further pretexts to prolong the proceedings, **the case was taken over by the IAD and all talk of it disappeared.**⁵⁷ Independent media revealed in 2019 that Dudzicz was also a member of a group running an online hate speech campaign against independent judges, the so-called ‘Troll Farm at the Ministry of Justice’ since 2018. According to media reports, the group also allegedly included 3 other members of the neo-NCJ, two central disciplinary commissioners for judges, one of the members of the Disciplinary Chamber of the Supreme Court, and the Deputy Minister of Justice, Łukasz Piebiak.⁵⁸ 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 IAD, 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 IAD’s repression of judges who are inconvenient to the authorities, it should be remembered that the IAD was also created to prosecute prosecutors. It is therefore hardly surprising that the IAD, which is politically subservient, is particularly active against prosecutors who are members of the independent ‘Lex

⁵⁵ <https://www.timesofisrael.com/polish-judge-called-jews-a-despicable-filthy-nation-in-online-forum/>

⁵⁶ <https://wyborcza.pl/7,75398,25182479,jaroslaw-dudzicz-sedzia-dobrej-zmiany-o-zydach-podly-parszywy.html>

⁵⁷ <https://wroclaw.wyborcza.pl/wroclaw/7,35771,27885206,kasta-stoi-w-miejscu-dziwne-sledztwo-w-sprawie-afery-hejterskiej.html>

⁵⁸ <http://themis-sedziowie.eu/materials-in-english/onet-investigation-troll-farm-at-the-ministry-of-justice-or-we-do-not-put-in-jail-for-doing-good/>

- <http://themis-sedziowie.eu/materials-in-english/troll-farm-at-the-ministry-of-justice-part-3-judges-organize-smear-campaign-against-the-president-of-the-supreme-court/>

[https://view.officeapps.live.com/op/view.aspx?src=http%3A%2F%2Fthemis-sedziowie.eu%2Fwp-content%2Fuploads%2F2019%2F10%2FHow-a-member-of-the-NCJ-Puchalski-helped-](https://view.officeapps.live.com/op/view.aspx?src=http%3A%2F%2Fthemis-sedziowie.eu%2Fwp-content%2Fuploads%2F2019%2F10%2FHow-a-member-of-the-NCJ-Puchalski-helped-EMI_wer.docx&wdOrigin=BROWSELINK)

[EMI_wer.docx&wdOrigin=BROWSELINK](https://view.officeapps.live.com/op/view.aspx?src=http%3A%2F%2Fthemis-sedziowie.eu%2Fwp-content%2Fuploads%2F2019%2F10%2FHow-a-member-of-the-NCJ-Puchalski-helped-EMI_wer.docx&wdOrigin=BROWSELINK)

<http://themis-sedziowie.eu/materials-in-english/appeal-of-the-themis-association-of-judgesof-26-august-2019-regarding-the-so-called-piebiak-scandal/>

Super Omnia' Association of Prosecutors,⁵⁹ which is highly critical of the pseudo-reforms in the judiciary and prosecution system. The IAD 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 of the Penal Code).

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 3 December 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 so-called 'Smolensk disaster', in which, among other things, the former President of Poland, Lech Kaczyński, died in an aeroplane crash.

The official reason why the IAD initiated the investigation against Prosecutor Brzozowska was the fact that she refused to initiate the investigation into the so-called 'reprivatisation scandal' regarding a number of tenement houses in Warsaw because of the failure of the Central Anticorruption Bureau to provide her with appropriate evidence. The fact that the accusation against Prosecutor Brzozowska is dubious and may be politically motivated is evidenced by the fact that, when the IAD 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.⁶⁰

12. Public Prosecutor Józef Gacek.

Another of the prosecutors, members of Lex Super Omnia, being investigated by the IAD, 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

⁵⁹ 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

⁶⁰ <https://archiwumosiatynskiego.pl/wpis-w-debacie/prokuratura-ziobry-oskarza-niezalezna-prokuratorke-to-precedens-ktory-ma-zastraszyc-sledczych/>

'old' Constitutional Court (of 9 March 2016).⁶¹ However, the reason why the IAD accused Prosecutor Gacek of allegedly failing to perform his official duties (Article 231 para. 1 of the Penal Code) 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 22 July 2020 as a result of the decision of the illegal Disciplinary Chamber of the Supreme Court.⁶²

13. Public Prosecutor Waldemar Pionka.

Another of the criminal proceedings conducted by the IAD 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 fulfil his duties when filing the asset declaration (Article 231 of the Penal Code), which was subsequently taken over by the IAD. However, the Prosecutor's Disciplinary Court of the first instance set aside the IAD's request to waive Prosecutor Pionka's immunity in May 2019 stating that the error in his asset declaration was not culpable. The IAD appealed against this decision to the Disciplinary Chamber of the Supreme Court, which reversed the first instance decision on 19 December 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 15 July 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.⁶³

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

⁶¹ https://wiadomosci.onet.pl/kraj/prokurator-wyrzucony-z-wydzialu-za-wszczecie-postepowania-ws-wyroku-trybunalu/ehqlf9?utm_source=wiadomosci.onet.pl_viasg_wiadomosci&utm_medium=referral&utm_campaign=leo_automatic&srcc=ucs&utm_v=2

⁶² <https://wiadomosci.onet.pl/tylko-w-onecie/prokurator-gacek-utracic-immunitet-teraz-komentuje-sprawe-to-dla-mnie-kuriozum/cc0xg0r>

⁶³ <https://drive.google.com/file/d/1Hm8UksjQx5HY1TXMT9WsP5lh6XjyX1p/view?pli=1>

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,⁶⁴ 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),
- 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 Kraków, which was clearly perceived as an attempt to intimidate the judges hearing the case in the court of appeal,⁶⁵
- 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 Kraków

⁶⁴ <https://tvn24.pl/polska/proces-ws-smierci-ojca-ziobry-jak-zmienialo-sie-prawo-ra717991-2489978>

⁶⁵ <https://www.polityka.pl/tygodnikpolityka/kraj/1729584,1,zwrot-w-procesie-ws-smierci-ojca-ziobry-krakowski-sad-nie-chce-sie-zajmowac-ta-sprawa.read>

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 documentation⁶⁶ (however, no such evidence was found),

- in December 2016, the medical surgery of Dr Dariusz Dudek's wife, who is unrelated to the case, was also searched, in an unsuccessful attempt to initiate criminal proceedings against her as well, on charges of her allegedly embezzling funds for prescriptions for reimbursed medicines.⁶⁷

Despite all the actions described above, the case before the court of the first instance ended with the acquittal of all the accused doctors.⁶⁸ 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.

VII. Summary.

As can be seen from the above, the systemic position of the Internal Affairs Department of the National Prosecutor's Office not only satisfies the criteria of its inconsistency with European Union law in the light of the ruling of the CJEU of 18 May 2021 (see chapter V), but also the manner in which this unit operates unambiguously confirms this contradiction. The Department has the exclusive right to prosecute judges and prosecutors when they commit intentional crimes. Its establishment was not justified by a real need, and the extent of its subordination to an active politician of the ruling camp – Minister of Justice/Prosecutor General Zbigniew Ziobro – is indisputable (he appoints prosecutors who are members of the Department at any time, as well as being able to dismiss them, and being able to give them direct instructions on individual procedural actions).

The practice of the department over several years clearly shows that it is used to unjustifiably prosecute independent judges and prosecutors, and can therefore be used to exert political pressure on them and even – in cooperation with the politicized Disciplinary Chamber of the Supreme Court – to remove them from practicing their profession (through the IAD's submission of motions to the Disciplinary Chamber to lift their immunity and suspend them from their duties). It is impossible to consider that all the proceedings described in chapter VI conducted by the IAD, which are directed against judges and prosecutors who are inconvenient

⁶⁶ <https://wiadomosci.onet.pl/tylko-w-onecie/skazany-na-wyrok-jak-polskie-panstwo-osacza-lekarza-ktory-leczyl-ojca-zbigniewa/wjg4yg3> ,

⁶⁷ <https://lekarzki.blog.polityka.pl/2016/01/11/dobierzemy-sie-do-twojej-rodziny-wracaja-brunatno-czerwone-demony/>

⁶⁸ <https://www.polityka.pl/tygodnikpolityka/kraj/1693856,1,sprawa-smierci-ojca-ministra-sprawiedliwosci-zbigniewa-ziobry-sad-uniewinnil-lekarzy.read>

for the ruling camp, are coincidental, but they are simultaneously highly questionable from a legal point of view.

In the light of the above arguments, the author of this report is of the opinion that the European Commission has all the grounds for initiating infringement proceedings against the Internal Affairs Department of the State Prosecution Service before the CJEU (see chapter V).
