



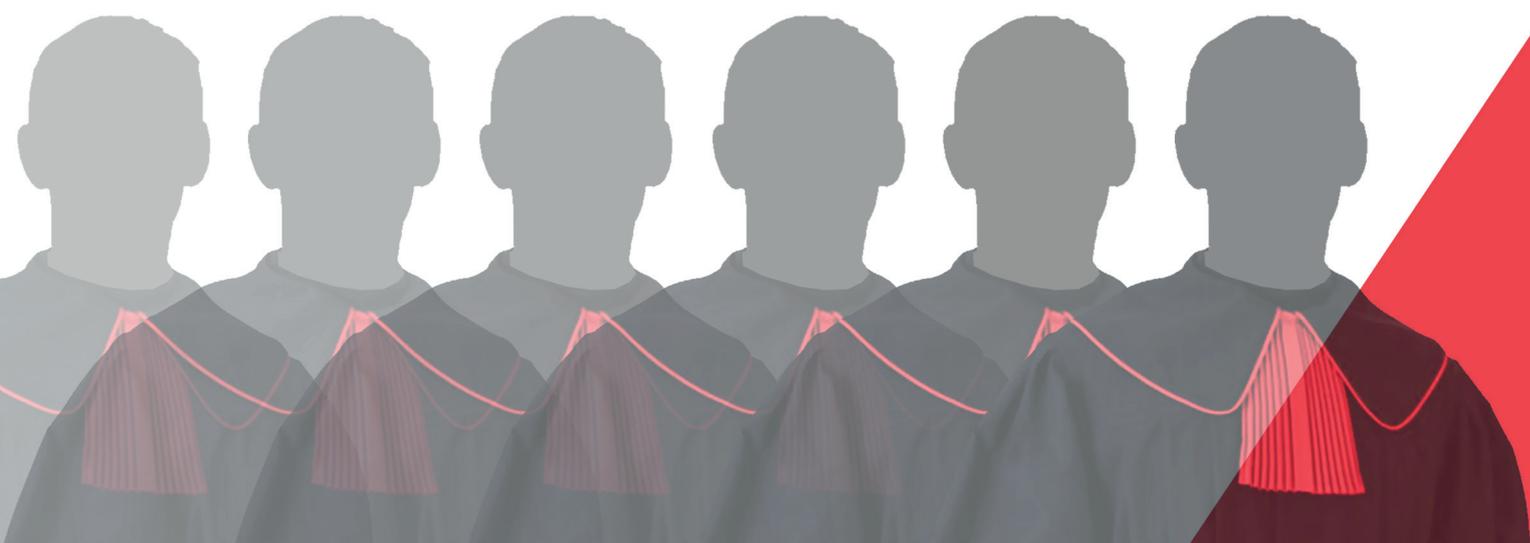
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HEMIS
STOWARZYSZENIE SĘDZIÓW



**Selected cases of malicious prosecution
and dereliction of duties
by the Polish Public Prosecutor's Office
in the years 2015-2021**

August 2021



The **Open Dialogue Foundation** (ODF) was established in Poland in 2009 and is currently headquartered in Brussels, with offices in Warsaw and Kyiv. 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. In 2017 the area of interest of the Foundation was expanded due to the rapidly deteriorating situation in Poland and some other EU Member States affected by illiberal policies implemented by their populist governments.

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The **THEMIS Association of Judges**, founded in 2010, is the second largest judges' association in Poland. Its statutory goals include raising the trust of citizens towards the justice system, the defence of human rights, shaping of social and ethical attitudes among judges, Europeanisation of the Polish justice system and the integration of the judicial community.

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Preface

Since the Law and Justice (PiS)-led United Right coalition (composed of PiS and its two minor partners - Solidarna Polska and Porozumienie) took power in 2015, we have witnessed an unprecedented level of politicization of the public prosecution service that 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 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, amplifying the so-called inequality of arms between the sides of the criminal proceedings and a general repressiveness of the system.

Below we list (in reverse chronological order based on the latest developments) several, most notable examples - more can be found at the www.panstwo-pis.pl website run by the "Paragraf-Państwo" association (currently not updated - will restart from September 2021), as well as in statements published by the [Lex Super Omnia](#) independent prosecutors association.

We also list cases not initiated or discontinued by the public prosecution due to their political dimension unfavourable to the ruling camp.

Finally, the report includes a list of the most prominent, systemic issues eroding the prosecution since the United Right took power in 2015, and in annex an analysis of the legal changes that expanded the powers of the Prosecutor-General.

1. Cases of malicious prosecution and abuse of power

Leaders of the Polish Women's Strike

The vague and bogus charges brought in February 2021 against the [leaders of the Polish Women's Strike](#), Marta Lempart, Klementyna Suchanow and Agnieszka Czerederecka, following 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.

The activists are accused (the indictment was presented in July 2021) of causing an epidemiological threat for organising anti-abortion ban protests during the pandemic (Art. 165 par. 1 Criminal Code and Art. 12 par. 1 Criminal Code - the introduction of which was widely regarded as violating the constitutionally-guaranteed freedom of assembly), insulting a police officer (Art. 226 par. 1 Criminal Code) and "praising criminal behaviour" (Art. 255 par. 3 Criminal Code), in the form of destroying the facades of church buildings and "maliciously obstructing the public performance of a religious ceremony" (Art. 255 § 3 of the Criminal Code).

Klementyna Suchanow is additionally charged with three offences: causing domestic disturbance (Art. 193 of the Criminal Code), destruction of or damage to another's property (Art. 288 of the Criminal Code) and infringement of an officer's physical integrity (Art. 222 of the Criminal Code), 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.

Their case is handled by prosecutor Hanna Stachowicz of the Provincial 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 - have no basis in actual events whose extremely distorted versions were presented to justify the investigation.

Bartosz Kramek and the Open Dialogue Foundation

The charges brought against [Bartosz Kramek](#), the Supervisory Board Chair of the Open Dialogue Foundation (ODF), a human rights watchdog known for its harsh criticism of the ruling coalition and international advocacy actions against it. Following a series of failed legal attempts to shut down or silence the foundation, in June 2021 Mr Kramek was detained by officers of the Internal Security Agency (ABW) at the request of the Regional Prosecutor's Office in Lublin. He was charged with dubious allegations of "false declarations" when issuing invoices to his company's clients in 2012-2016 (Art. 271, in relation to Art. 12 and Art. 65 of the Criminal Code), which allegedly were a money laundering scheme designed to finance his NGO (Art. 299, in relation to Art. 12 and Art. 65 of the Criminal Code).

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 was started directly following Mr Kramek publishing an article suggesting civil disobedience actions against the increasingly oppressive government. Also, Mr 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 government started. The investigation was initiated on the basis of seeking an alleged crime of "urging to commit a fiscal offence" (due to Mr Kramek's article on civil disobedience actions) and then widened to cover potential financial irregularities and money laundering by ODF and Mr 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 then-de facto leader Vlad Plahotniuc, whose actions were targeted by ODF's EU advocacy efforts.

The charges also seem to be aimed at inducing a chilling effect on Polish civil society opposing the government's policies.

Furthermore, the same factual basis for the allegations seemed to be used against Mr Kramek's wife, ODF president Lyudmyla Kozlovska in 2018 when an SIS and national entry ban was imposed on her based on an opinion of the ABW declaring her a "threat to state security". The ban was disregarded by 4 other EU states and Switzerland (with Belgium granting her permanent residence, leading to the SIS ban being lifted) and finally dismissed 3 times by the Voivodeship Administrative Court in Warsaw, which called the evidence collected by the ABW against her "insufficient", "very vague", mentioning "irrational conclusions" having been drawn.

Mr Kramek's case is handled by prosecutor Jerzy Ziarkiewicz, a close confidant of Mr Ziobro's known for handling politically sensitive cases, and his aide Marcin Kołodziejczyk (both listed in LSO reports covering dubious prosecutorial promotions and awards in recent years).

Judge Beata Morawiec

The ongoing persecution of the former President of the Regional Court in Cracow, [Judge Beata Morawiec](#), president of the Themis Association of Judges. The internal affairs department of the National Prosecutor's Office (established for the sole purpose of pursuing judges and prosecutors and headed by National Prosecutor Bogdan Świączkowski), represented in this case by prosecutor Michał Walendzik - expeditiously delegated there from the District Prosecutor's Office in Rawa Mazowiecka - has been trying to file charges against the judge ever since she won a

personal rights court case against minister Ziobro. According to the judgement Mr 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.

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), which was first approved by the illegal Disciplinary Chamber of the Supreme Court (in an October 2020 decision of a single judge), but following Judge Morawiec's appeal revoked by a 3-person jury of the Disciplinary Chamber in June 2021. The allegations were highly doubtful, one based on a claim that Judge Morawiec 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), and the other alleging she received a bribe in the form of a mobile phone - a claim not supported by any revealed evidence.

The prosecutor representing the National Prosecutor's Office in these proceedings was Michał Walendziak, formerly of the District Prosecutor's Office in Rawa Mazowiecka - listed by Oko.press and LSO among the top prosecutors whose careers were advanced by Z. Ziobro (by 3 levels within 2 years) and criticised for his abuse of power when issuing an unlawful decision for the Central Anticorruption Bureau (CBA) to search the house of Judge Morawiec in 2020 despite her being protected by immunity.

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 Prime Minister Beata Szydło.

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

Nevertheless, a team of 3 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. Mr Babiński is a university colleague of Zbigniew Ziobro's right hand, National Prosecutor Bogdan Świączkowski. He is included in the Państwo PiS database for expedited promotions and suspicious decisions.

According to press sources Mr 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. 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. 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.

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.

In March 2021 an appeal trial in the case began in the Regional Court of Cracow. Two days before the first proceedings, a judge promoted by Zbigniew Ziobro, Maciej Pragłowski, 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.

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.

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 of the National Prosecutor's Office, delegated there from the Regional Prosecutor's Office in Nowy Sącz, and himself only a prosecutor since 2018. 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 of the Criminal Code).

The alleged breach happened when Judge Tuleya allowed the press to hear the justification of the verdict he gave in court regarding the case on the circumstances under which, on 16 December 2016, the proceedings of the Sejm had been moved from the plenary chamber to the smaller Columned Hall and opposition 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 Law and Justice party in connection with the pushing through of illegal proceedings in the Sejm.

By discontinuing the proceedings, the prosecutor's office tried to sweep under the rug 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.

Mr 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).

The proceedings against Judge Tuleya, just as against Judge Morawiec, are conducted by the newly-created Internal Affairs Department of the National Prosecutor's Office, a specialized prosecutor's unit subordinated directly to the Minister of Justice.

Former PiS politician Przemysław Marchlewicz

The failed investigation into a former, prominent local PiS politician and vice-president of the Lotos oil company, [Przemysław Marchlewicz](#). 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) and in Lublin (in May 2020) on the allegation of fiscal crimes (VAT fraud), with the Appellate Court 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.

Mr 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", which according to him could be used to blackmail them and thus compromise the institution.

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

Leszek Czarnecki and GetBack

The investigation concerning/against billionaire Leszek Czarnecki linked to the “[GetBack affair](#)”, which led to the loss of PLN 2.7 bln by investors who bought fraudulent bonds of the GetBack debt collection company. 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, Mr 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 job for his colleague.

Despite the investigation being handled by a special team of prosecutors, including Przemysław Barański and Marta Choromańska (included in the “Państwo PiS” database for her likely political and unlawful actions), it is Prosecutor-General Ziobro himself who publicly represents the prosecutor’s office in this case, announcing in September 2020 that Czarnecki would be charged with “acting against the interest of the clients of his Idea Bank” (so Art. 286 of the Criminal Code - fraud) when its advisors supported the sale of GetBack bonds, despite no hard evidence of his knowledge of the criminal procedure and the fact that Mr Czarnecki himself had informed the authorities about the potential irregularities.

The investigation is ongoing despite the Regional Court in Warsaw having ruled in April 2021 on the absence of a high likelihood of Mr Czarnecki having committed any crime. 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 Mr 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 poor condition of Idea Bank).

Supreme Audit Office president Marian Banaś

The ongoing battle between the ruling camp and the current president of the Supreme Audit Office (NIK), former PiS finance minister [Marian Banaś](#). Mr Banaś fell out with the government after he was revealed in 2019 to have allegedly conducted fraud activities. Since then Mr Banaś’s institution has issued a series of reports revealing serious irregularities in the government’s actions (following formal audits initiated by the NIK). In response he, officials loyal to him and even his family members were targeted by the National Prosecutor’s Office.

Currently, Mr Banaś faces over a dozen charges, including filing false asset and fiscal declarations (Art. 271 of the Criminal Code - false declaration), while his son and

daughter-in-law face 7 charges each, including using false VAT invoices to extort PLN 120.000 in state funds and PLN 80.000 in VAT tax. The prosecutor's office's actions against Mr Banaś are showcased by state media on a daily basis.

The detention of Mr 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 - as if he was a dangerous criminal - acting on the request of the Provincial Prosecutor's Office in Białystok. 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. The timing of the actions taken by the prosecution and 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 Mr Ziobro as the Minister of Justice which is renowned for supporting his party's goals instead of serving the needs of crime victims.

Former transport minister Sławomir Nowak

The investigation since July 2020 into [former Civic Platform transport minister Sławomir Nowak](#) - suspected of 17 crimes (incl. creating an organised crime group, bribery and money laundering), 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 Mr Nowak was the head of Ukraine's Ukravtodor (Ukraine's State Road Service) as well 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 Mr Nowak, while the prosecutor, Mariusz Dubowski of the Regional Prosecutor's Office in Warsaw, set a bail of PLN 1 mln. Once it was paid for by his daughter, the prosecutor refused to accept the funds - a controversial provision the prosecution only received (with the changes to Art. 266, 281 and 156 of the Code of Criminal Procedure) after the bail was posted. Simultaneously Minister Ziobro threatened he would disclose the evidence - blackmailing the court and providing a one-sided point of view and discredit Mr Nowak before the final sentence, showing the growing disproportion between the prosecution's powers and the rights of the suspect.

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

Opposition attorney Roman Giertych

The investigation into [opposition attorney Roman Giertych](#), ongoing since 2017 - with questionable charges of financial crimes (aiding in two cases of alleged fraud) regarding Polnord - a company represented by Mr Giertych's law firm and previously controlled by Leszek Czarnecki. The case was accompanied by numerous abuses of power by the prosecution (incl. an illegal arrest, unlawful use of the CBA and charging Mr 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 Mr Giertych.

The case is also used to paint a negative picture of the opposition (Mr Giertych is, among others, an attorney to Donald Tusk). Mr Giertych is being directly targeted by the National Prosecutor, Bogdan Świączkowski, who has moved his case between various prosecutor's offices in Warsaw, Wrocław, Poznań and Lublin, 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 Central Anticorruption Bureau was involved to investigate the matter, despite the charges not being part of its responsibilities (no corruption nor state economic interests infringed).

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 Mr Ziobro's loyal henchman Michał Lasota. Another one was initiated in January 2017 by the Regional Prosecutor's Office in Warsaw.

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 auditing his wife when she was dealing with an endangered pregnancy. 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 of an allegedly-due civil law transaction tax (PCC) following the sale of a 37-year-old

tractor by the judge. CBA agents were dispatched by the prosecution to the Bieszczady mountains to interrogate the lumberjack who purchased the tractor, as well as the judge's neighbours nearby. The fiscal authorities audited the lumberjack's accounts. 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 from it. This fact led to commissioner Lasota filing dubious charges of "undermining the dignity of the judge" (Art. 107 para. 1 of the 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.

Mariusz Krasoń and other Lex Super Omnia prosecutors

The persecution since mid-2019 of [prosecutor Mariusz Krasoń](#) (member of the Lex Super Omnia association, LSO), who initiated the 15 May 2019 resolution of Cracow prosecutors criticising the politicization of the prosecution service, and measures taken against other independent prosecutors from LSO, who faced disciplinary procedures and in January 2021 were suddenly delegated to far away units and departments, having to move up to 411km 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 and board member Jarosław Onyszczyk) already contested them before the Labour Court, with others aiming to do the same.

The Commissioner for Human Rights, 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.

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 6 other prosecutors persecuted in the same way, can claim protection of their labour rights and try to hold the National Prosecutor to account.

Cracow judges who ruled in the Krasoń case

The late-2020 [investigations into 7 judges](#) from Cracow (3 of the Appellate Court and 4 of the Regional Court) who 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 Mr 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.

In January 2021 it was revealed that the National Prosecutor's Office's internal affairs department 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 Appeal Court in Cracow, Judge Jarosław Łukasik, Judge Grażyna Baran, Judge Urszula Pałkowska-Różycka and Judge Dominika Augustyn of the District Court in Cracow, and Judge Aneta Tomasiak-Żukowska of the Cracow-Nowa Huta District Court (delegated to the District Court in Cracow). All of them were summoned for questioning by the prosecution regarding an alleged abuse of power (Art. 231 of the Criminal Code) - a move widely viewed as an attempt by the prosecution to intimidate independent judges, just as it had done 2 years earlier against dozens of Cracow judges who passed a resolution in protest against the degrading and inhuman treatment in prison of a former appeal court president.

General Piotr Pytel

[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 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 Smoleńsk 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.

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 Mr Tusk with dereliction of duty (Art. 231 of the Criminal Code).

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, Mr Misiewicz was awarded a gold medal "for services to the defence" by minister Macierewicz.

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

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.

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 Mr 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.

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 Mr Zarosa for 11 hours following surgery and refused food, drink or even toilet access. After 3 months the Poznań prosecution refused to initiate an investigation.

Jakub Karnowski and PKP Cargo

The ongoing attempts to prosecute 5 management board members and 8 supervisory board members of the [state-owned PKP Cargo railway freight carrier](#), following the company's 2015 purchase of Czech AWT. The company's former president, Jakub

Karnowski, faces charges of mismanagement that led to the supposed loss of up to PLN 250 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.

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 prosecutor Bartosz Wójcik (included in the Państwo PiS database for an expedited promotion and politically-motivated investigations) and overseen by prosecutor Jerzy Ziarkiewicz. Mr Ziarkiewicz, a well-known Ziobro nominate heading the Lublin Prosecutor's Office, is responsible for top political cases, such as of Roman Giertych or Bartosz Kramek, and ones that would otherwise never be treated seriously, like that of a piece of art supposedly "insulting the Polish emblem".

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 Mr Ziobro as a weapon against Mr Morawiecki - his political rival in the ruling United Right camp.

Mr 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.

Niepołomice mayor Roman Ptak

The case of the [Mayor of Niepołomice, Roman Ptak](#) and his deputy Adam Twardowski, where PiS wanted to install a figure linked to the party as the head of the wealthy town, thus administering the considerable amount of EU funds that flows into it every year.

In late 2019 Mr Ptak and Mr Twardowski were detained by the CBA with vague allegations of dereliction of duties (Art. 231 para 2 of the Criminal Code) and making a false statement with regard to the law on public procurement (Art. 233 para 1 & 6 of the Criminal Code) - 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 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".

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. Mr Ptak and Mr Twardowski face up to 10 years of imprisonment.

KNF executives Andrzej Jakubiak and Wojciech Kwaśniak

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.

Prosecutor Adam Gołuch 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 of the Criminal Code), allegedly allowing the loss of PLN 1.5 bln 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.

Activist Andrzej Majdan

The failed attempts of the prosecution to [charge activist Andrzej Majdan with assault](#): in 2017 Mr Majdan, a member of the Committee for the Defence of Democracy (KOD) was accused of having entered into a fight with other people during a pro-democracy rally in Radom. All photo and video evidence showed he was himself severely beaten up by 4 nationalists and could only attempt to mount a self-defence action. 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 Domagała-Szlaga of the District Prosecutor's Office in Radom was in charge of the case.

There are several to dozens of other cases of activists being criminally charged in connection with their participation in peaceful anti-government protests throughout the country. A report on the topic, commissioned by the European Parliament, will be published by ODF in September.

Doctors caring for Prosecutor-General Zbigniew Ziobro's father

The case of the 2006 [death of Z. Ziobro's father](#) Jerzy Ziobro, where the prosecution seemingly abused power under pressure from Mr 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 Mr 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 Mr 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 Mr 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".

In 2017 Mr Ziobro's family appealed the 2017 court verdict - this time with Mr 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 Mr Ziobro's (both attended school together), expressly promoted despite negative assessments of her work and known to directly follow his orders. The request was denied by the - then still independent - Supreme Court.

At various stages of the case Mr 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 of the Criminal Code). In December 2015, with an order of the Appellate Prosecutor's Office in Katowice, the Central Anticorruption Bureau 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 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.

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, to their opinion regarding the alleged fault of the doctors. In all 19 cases they did not find any.

Former CBA head Paweł Wojtunik

[Paweł Wojtunik](#) was the head of the Central Anticorruption Bureau from 2009 until 2015. In 2013, the CBA conducted arrests as part of the so-called infoaffair, where a group of officials from various institutions was suspected of fraud, fixing tenders for IT services with businesses during the 2011 Polish EU Council presidency. Mr 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 Mr Wojtunik and Mr Sikorski among others - in early 2017 the Regional Prosecutor's Office in Gliwice discontinued the investigation, finding no reasonable suspicion of Mr 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 Mr Wojtunik.

A separate investigation has been conducted into Mr Wojtunik, among others, 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). Mr 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 Mr 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.

Mr 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 didn't 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.

After a nearly 6-year legal battle, in March 2021 the Supreme Administrative Court ruled that the 2016 accusations and actions against Mr Wojtunik by the secret services and then-Prime Minister Beata Szydło, who revoked his security certificates after him leaving his office, were groundless.

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

The PLN 70 mln squandered [by Deputy Prime Minister Jacek Sasin](#) and [other abuses by the government](#) during the attempted 2020 mail-in presidential election - investigations 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 (one of the founders of the LSO association), initiated in April 2020 towards Art. 165 of the Criminal Code (introduction of a public hazard), was quashed 3 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 Świączkowski 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 of the Criminal Code). It serves as 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).

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.

In May 2021 the Supreme Audit Office (NIK) filed a notification with the prosecution against the Prime Minister and 3 ministers, citing serious violations of the law during the preparation of the 2020 election, claiming from PLN 70 mln up to PLN 133 mln of state budget funds could have been spent unlawfully.

Failed purchases during COVID-19 pandemic

The Health Ministry's, headed by minister Łukasz Szumowski, 2020 [failed, possibly corrupt purchases](#) of ventilators (PLN 250 mln contract, bought from an arms dealer and vast majority never delivered) and masks (PLN 5 mln contract, bought from a skiing instructor and friend of the minister, turned out to be faulty) during the COVID-19 pandemic.

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 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.

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 democratic opposition MEPs who voted in favour of the European Parliament resolution on the rule of law in Poland.

The Regional Prosecutor's Office in Katowice initiated an investigation based on a notification by the six MEPs. The investigation lasted 3 years, despite a video recording from the event and all witnesses having been long questioned. In January 2019 the unexplained delay in the case was formally criticised by Ombudsman Adam Bodnar, together with 29 other investigations of hate crime discontinued, not initiated or delayed by the public prosecution. The investigation was discontinued twice, last time in November 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".

Following an appeal by the victims, the Provincial Prosecutor's Office in Katowice upheld the decision to discontinue the investigation on the same grounds.

The victims filed a private subsidiary indictment in April 2021, which was transferred by the PiS-controlled Supreme Court 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 Appellate Court in Katowice, hence the SC wanted to defend his right to an independent trial. Previously, following his work in the Gliwice court, Jakub K. was delegated to the Justice Ministry under Zbigniew Ziobro.

Jarosław Kaczyński's "two towers"

The case of the failed attempt by the Srebrna company, linked to and de-facto controlled by PiS Chairman Jarosław Kaczyński, 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.

Mr Birgfellner, represented by attorney Roman Giertych, accused the PiS chairman of a failure to pay for an order submitted to the Austrian businessman, related to preparations for the construction. Mr Birgfellner was questioned by the Warsaw prosecution at least 6 times, in one instance having to reply to some 100 questions, many of which were repetitions. After nearly a year, in October 2019 the Regional Prosecutor's Office in Warsaw refused to initiate an investigation. Mr Birgfellner's attorneys filed a complaint with the Provincial Prosecutor's office regarding the regional prosecution's tardiness, quoting the Code of Criminal Procedure, which gives the prosecution 6 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 11 October, 2 days before the planned elections, thus ensuring that the news was not revealed until after the elections.

Orlen president Daniel Obajtek

The numerous abuses by [Orlen president Daniel Obajtek](#), a favourite of Jarosław Kaczyński - investigation discontinued by the National Prosecutor's Office.

A criminal case - concerning fraud, corruption and false testimony while Mr Obajtek served as Mayor of Pczim - was handled by the Regional Prosecutor's Office in Ostrów Wielkopolski, then transferred to its counterpart in Piotrków Trybunalski. In 2016 the parliamentary majority changed the law allowing the prosecution to exclude Mr 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 Mr Obajtek and three other defendants, all of whom testifying against Mr Obajtek.

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 Mr Obajtek was initiated by the District Prosecutor's Office in Cracow-Śródmieście West in February 2013 upon a notification of the CBA, based on its year-long investigation, which found, among others, that Obajtek provided false statements in 4 tax declarations, concealing a total of close to PLN 1 mln in assets. The prosecution discontinued the case finding Mr Obajtek's errors "unintentional", merely the results of his "carelessness and negligence". The conclusions were based on the testimony of Mr Obajtek himself and the other suspects.

A series of press publications in 2021 revealed the sizable fortune belonging to Mr Obajtek and his family, with transactions of a potentially corrupt nature, including PLN 800.000 of state aid received for the renovation of his mansion or a PLN 800.000 purchase of stock by Mr Obajtek's mother, who worked as a tailor, with her latest salary being in the PLN 1200-1500/month range. The public prosecution has not initiated any investigation into these matters.

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 - investigations usually not initiated by the prosecution service. A [mini-report on 19 selected, recent cases](#) attached to a joint appeal by 7 NGOs was published by the Open Dialogue Foundation on 13 July 2021.

"Hate affair" in the Justice Ministry

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 Mr Piebiak was from - headed by Ziobro-loyal prosecutor Jerzy Ziarkiewicz.

The investigation kept being extended every 6 months and conducted in rem, not against any of the known culprits, with its object being the exceeding of powers by public officials through "unlawful processing of personal data which constituted an

action prejudicial to public and private interests” (Art. 231 of the Criminal Code 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 Mr 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 Dworzak, 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.

PiS MEP Ryszard Czarnecki

The [misappropriation of EU funding for alleged travel expenses and other fabricated costs](#), including fictitious hires of assistants, by PiS MEP Ryszard Czarnecki, who was ordered by the European Parliament to return the sum. The investigation into an adverse disposition of the EP’s property (Art. 286 of the Criminal Code) 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 Mr Czarnecki.

Solidarna Polska party congress

The [misappropriation of EU funding by ruling United Right member, Zbigniew Ziobro’s Solidarna Polska](#) party, which organized a party congress in 2013 claiming it was a meeting on climate change in order to obtain EU funds. The investigation was discontinued by the Regional Prosecutor’s Office in Warsaw.

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 prominent political office. 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 Mr Ziobro has no influence.

Similarly, the first time PiS was in government (2006-2007), the public prosecution (also headed by Zbigniew Ziobro) became known for political investigations used as a propaganda tool. These include, most famously, the cases of [dr Mirosław Garlicki](#), former minister [Barbara Blida](#), cases of [allegedly corrupt judges and doctors](#) (all ended with no wins for the prosecution and often tragic consequences for the accused), with some judges even winning [large damages](#) for breach of personal rights by the prosecution service.

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 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; **a typical practice are propaganda attacks on persons** regarding and 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); 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);

- **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;
- **The misuse of special services**, 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, 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 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;

- **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 Judiciary Council (neo-KRS).

Annex: Changes in the legal framework expanding the powers of the Prosecutor-General

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)."

Below is a list of changes to Polish law which increased the control of the Prosecutor-General over the course of preparatory and judicial proceedings, including the possibility of influencing the use of pre-trial detention by courts.

- 1) Under the Law on the Public Prosecutor's Office of 28 January 2016 (which entered into force on 4 March 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. It should be added that the Act on the Public Prosecutor's Office does not provide for any admissibility requirements, and therefore 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 § 2 and § 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 § 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 § 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 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 appellate 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, an Internal Affairs Division 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 of Internal Affairs 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 Internal Affairs 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 required 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 12 August 2017) introduced new rules for the appointment of presidents of all levels of common courts, strengthening the position of the Minister of Justice - Prosecutor-General in this regard. Until now, it was the Minister of Justice who was responsible for appointing presidents of district courts and courts of appeal, but in the case of a negative opinion of the general assembly, the Minister of Justice was not able to push through a candidate without a positive opinion of the National Judicial Council. In contrast, presidents of district courts (the lowest level of Polish courts) were appointed by presidents of courts of appeal after obtaining the opinion of both the general assembly of judges of the relevant district court and the president of the superior regional court. Under the current Act, the Minister of Justice is responsible for appointing presidents of all levels of common courts and does not need to seek the opinion of either the General Assembly of Judges or the National Judicial Council. This eliminates any form of influence of the judicial self-government bodies on the process of appointing presidents of common courts. In addition, the draft Act extended the grounds for dismissal of presidents of courts by the Minister of Justice by adding a vague and undefined premise of 'persistent failure to fulfil professional tasks and responsibilities'. Finally, an interim provision in the Act empowered the Minister of Justice to dismiss presidents of common courts at all levels appointed under the previous legislation, within six months of the entry into force of the new Ordinance, solely on the basis of his discretionary powers (the Minister need not 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

par. 4 of the Code of Criminal Procedure, (amendment entered into force on 15 April 2016)

Article 55 § 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 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 § 3 - also of that victim.

- 5) The possibility was introduced to withdraw to the prosecutor's office a case transferred to the court with the indictment under the famous Article 5 of the Act of 10.06.2016 (Dz.U.2016 pos. 1017) probably this provision was 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 par. 2 of the Code of Criminal Procedure (the amendment entered into force on 5 August 2016)

Article 360 § 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 Code of Criminal Procedure, which entered into force on 15 April 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 § 1 of the Penal Code, 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 Code of Criminal Procedure (amendment entered into force on 15 April 2016)

168 b.

If, as a result of an inspection ordered at the request of an authorised body under specific provisions, evidence has been obtained of the commission of an offence prosecuted ex officio or a fiscal offence by a person with regard to whom the inspection was applied other than the offence covered by the inspection order or of an offence prosecuted ex officio or a fiscal offence committed by a person other than the person covered by the inspection order, the public prosecutor shall decide on the use of such evidence in criminal proceedings.

- 10) The possibility of the prosecutor's objection to the court's decision on changing the temporary arrest to a bail was introduced, which blocks the immediate release of the defendant from custody - Article 257 par. 3 of the Code of Criminal Procedure (the amendment entered into force on 5 October 2019). This amendment raises doubts as to its compliance with Article 5 of the ECHR, from which it follows that only an independent and autonomous court has the power to decide on the deprivation of liberty

Article 257 § 3

If the public prosecutor declares, at the latest at the meeting after the announcement of the order issued under § 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 Code of Criminal Procedure (the amendment entered into force on 22 June 2021)

Article 266 § 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 Code of Criminal Procedure (amendment entered into force on 22 June 2021)

Article 281 § 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
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