



OPEN DIALOGUE

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**ATTACKS ON JUDGES AND INDEPENDENT PROSECUTORS IN POLAND.
AN ODF EVENT AT THE OSCE FORUM**

Due to the intensification of attacks on judges and prosecutors belonging to the Association of Polish Independent Prosecutors, Lex Super Omnia, we held a discussion on their current situation on 26 September 2019.

The event¹ was part of the international OSCE conference – the Human Dimension Implementation Meeting (HDIM). The conference is held every year by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw. Within its framework, the Open Dialogue Foundation organises events devoted to the protection of human rights and the rule of law in post-Soviet countries, and – since 2017 – also in Poland.

The discussion was attended by judges Waldemar Żurek and Dariusz Mazur, and prosecutor Krzysztof Parchimowicz, president of Lex Super Omnia.

Our panellists related the story of the politicisation of law enforcement agencies and attacks on the justice system that took place after PiS came to power in Poland.

In addition to the unconstitutional and questionable legislative changes that increase the control that legislative and executive power has over the prosecutor's office and the judiciary, numerous attacks and acts of harassments that disobedient judges and prosecutors have been subjected to were cited.

However, in the autumn of 2017, a billboard campaign was launched to show judges as a kind of “extraordinary caste” of corrupt, conceited, lazy people. It aimed to reduce public confidence in the entire professional group.

Judges and prosecutors who criticise unconstitutional changes in courts have to face not only disciplinary proceedings conducted by disciplinary courts controlled by nominees of the Minister of Justice, but also personal attacks on the Internet and public television (the latter now openly pro-government) organised by the management of the ministry.

Our guests talked about their experiences with the institutionalised hate machine, and its specific features.

Their speeches were a serious surprise for the foreign participants in the HDIM meeting.

Institutional hate campaign

Waldemar Żurek began his presentation with the following words: “I never thought I would have to talk at such a conference about how judges are being persecuted in Poland today. What are they being persecuted for? For talking about the constitution, for meetings with citizens, for giving interviews in the press in which they question the legitimacy of reforms.” At this moment, there are six disciplinary

¹ <https://en.odfoundation.eu/a/9508,hate-speech-as-a-political-weapon-directed-against-independent-judges-and-prosecutors-in-poland-side-event-at-osce-hdim-2019-in-warsaw>

proceedings underway against judge Żurek.

Judges encounter hate speech not only on the Internet, but also on the streets and in the workplace. “At first, it is supported by the actions of government institutions, which, in my opinion, have been given a specific task,” said Waldemar Żurek. “I am interested in the judiciary and justice in the world and so far I have not come across a situation in which a government – for public money – created an official hate campaign, very often showing false examples of judges, in order to slander us in the eyes of public opinion and to provoke a huge drop in public confidence in judges,” he said, referring to the activities of the Polish National Foundation, which attacked Polish judges in a state-funded billboard campaign.

Judge Mazur added, “And this campaign was, in theory, designed to promote the great reform of the justice system. In fact, it was a black PR operation run by Law and Justice, which showed the judiciary in a distorting mirror and described disciplinary proceedings and real or alleged court mistakes. Some of the situations described during the campaign were real, some were manipulated and some were completely falsified. The billboard said, “There is a judge who stole trousers from a shop.” However, the campaign didn't mention that when this situation happened, the judge had been retired for many years and, moreover, was mentally deranged.

In terms of tone, the campaign was black-and-white, and the judges were placed on the black side and depicted as examples of incompetence, corruption and indolence. One Cracow court judge very accurately commented on this billboard campaign. He said, “The situation in which a branch of state authority pays to organise a negative campaign against another branch of state authority of the same country is so peculiar that not even George Orwell or Monty Python could have come up with it.”

Judge Żurek says of himself, “I am probably the most hated person in this affair, which was most likely organised by the deputy minister in the Ministry of Justice.” Hundreds of messages have been sent to this judge's phone number and he has even received death threats. For Waldemar Żurek, however, the most disturbing was an e-mail that read, “You'll get two shots as you're walking through the shopping centre.” “Underneath it was written that I would get two hits in the face [in Polish, hits = shots in this context – translator], but when I read the first sentence, I already imagined someone shooting me.”

Attacks by PiS leadership and members of the government

In his presentation, Judge Mazur used specific examples to point out the involvement of the highest-ranking members of the PiS government in these activities, such as:

- **Prime Minister Mateusz Morawiecki** comparing Polish judges and Polish courts with the Vichy courts collaborating with the Nazis in France, or saying that judges are a corrupt part of the “post-communist system”;
- **Minister of Justice and Prosecutor General Zbigniew Ziobro**, “who said in a public statement that judges who directly apply the constitution or international treaties may face disciplinary proceedings”;
- **President of PiS Jarosław Kaczyński speaking about “oikophobia”** (hatred for the homeland) among judges as one of the reasons for the reform of the judiciary;
- **Łukasz Piebiak**, former Deputy Minister of Justice who oversaw the hate scandal on the Internet and who said that “judges who are not standing on the side of the state in the proceedings are black sheep which should be removed from the judicial profession”.

Judge Piotr Gąciarek referred to the attitude and comments of PiS politicians regarding judges, saying that “one cannot spread rumours when one is a high official.” And, as demonstrated by judge Mazur, the fact is that despite the claims by PiS that Polish judges are currently corrupt, only one in ten

thousand judges has been accused of accepting financial gain, which was confirmed by a GRECO report.

Hate campaign

Judge Dariusz Mazur described the attacks on judges being conducted since 2016 using the Justice Watch (@KastaWatch) account on Twitter. He revealed the *modus operandi* of a kind of “troll farm” operating at the Ministry of Justice to harass and insult specific judges who express negative opinions of the judicial reform. This was done in cooperation with pro-government media. Twelve judges loyal to the government (promoted on the basis of the unconstitutional reforms) were directly involved in this procedure. They were headed by Deputy Minister Łukasz Piebiak in a KASTA group conversation on the WhatsApp messaging application. Several of them have been delegated to work in the Ministry of Justice.

Six of the above-mentioned persons were members of an official task group of Minister Piebiak appointed to advise the Minister of Justice on the judges against whom disciplinary proceedings should be instituted. The KASTA group discussed the next steps in attacks on judges, publications on the Internet and the involvement and actions of the wife of one of the judges – Emilia Szmydt – who, at the beginning of 2019, after getting into conflict with the members of the KASTA group, revealed details of the group’s activities, which in August 2019 were reported in the media. Her leak contained secret and confidential information, which was illegally provided to the group by representatives of the Ministry.

“The activity of Emilia and all the people who accompanied her in this process, as well as the activity of @KastaWatch, has the attributes of many crimes as specified in the Polish penal code, but the law enforcement authorities did not take any real actions in this respect, only sham actions that do not lead to anything,” said Judge Piotr Gąciarek at the end of his presentation.

“We have to come to terms with the fact that some persons unknown are attacking the judges using anonymous accounts. What is new, however, is that it was an action organised from the very top by officials of the Ministry of Justice,” said judge Piotr Gąciarek. “Polish public television, which is tax-funded and for which I also pay a monthly subscription, prepared deceitful and defamatory material involving a story from my private life where I was the victim of crime and fraud and someone else was the perpetrator. Violation of privacy is one aspect of the case, but I was very sorry to see that the material contained a clear suggestion that I used some kind of influence in my private case, leading to someone's conviction, and that my colleagues (due to our connections) convicted someone who had deceived me,” continued Judge Gąciarek. “Today, after the revealing of this scandal, I know that the television material was not accidental. Someone pulled out a case in which I was the victim and handed it over to a lady professionally involved in hate in the media.”

In connection with his work in the Supreme Court, prosecutor Parchimowicz was portrayed as “a friend of the tax mafia”. “The head of the prosecutor's office is depriving me of my professional achievements in the media. His statements echo around a right-wing portal. Then they reach Twitter in the form of hate.” he said during his presentation.

Inaction and lack of fairness of the justice system

There were also many examples of judicial lack of fairness in proceedings, which the judges reported indicating that the law no longer protects judges as citizens.

“At the first hearing, when I brought a picture of what was left of my car tire, the prosecutor, who was investigating and was there to supposedly protect me, did not even collect the evidence from me. By seizing my phone records, the prosecutor's office identified the person who sends me several dozen text messages a day with various content, but the proceedings were ultimately discontinued. My family

home, where my elderly parents live, is being pelted with eggs. The prosecutor's office, a year after they received information from me, is questioning my parents," said Waldemar Żurek.

Judge Mazur added: "A politically dependent prosecutor's office and the institution of the new mode of disciplinary proceedings don't give judges any support regarding the black PR campaign. Piebiak's special force, as a centre of coordination for politically-motivated persecution of defiant judges was a completely Putinesque project characteristic of an authoritarian state, not a state based on the rule of law – a democratic state."

Harassment by law

"The Central Anti-Corruption Bureau begins a months-long audit of my property declarations. The reasons for this audit are unknown, because the Bureau is issuing conflicting messages," said judge Żurek. "I have been interrogated several times during this inspection, which has been in progress for 16 months."

The notification of the commencement of the inspection, which has already lasted for several months, was brought to the judge by agents of the Bureau. They entered a closed zone in the premises of the National Council of the Judiciary, informing the staff that if they were not informed of the whereabouts of Judge Żurek, they would check every room. The judge mentioned that the notice, the receipt of which he did not even have to confirm, could have been sent by post. "Such a show of strength is presented in these proceedings on a daily basis." "The Central Anti-Corruption Bureau agents entered the house of a person who purchased a motor vehicle from me many years ago (a 1977 model) to check if this transaction actually took place. The Bureau sends out information to check my tax records, yet it does not send requests directly to the tax office, but rather sends them through the public prosecutor's office to inform the media that the prosecutor's office is still doing something about my case." Then he said: "In the spring of this year, I applied to the prosecutor's office for the names [of Internet accounts] of the most aggressive haters. To date, the prosecutor's office has not determined the IP addresses of these computers, but on the basis of an anonymous notification, an inspection of cases in which I adjudicated was carried out – to verify whether I am conducting protracted proceedings or whether there are complaints against me. The higher court inspector said that everything was in perfect order. Two months later, he was no longer an inspector."

In his case, Judge Mazur pointed to harassment by law, consisting in his dismissal from the position of coordinator for international cooperation and human rights of the court in Cracow. He also indicated the scale of proceedings against judges and prosecutors that resulted from the activities of the Department of Internal Affairs of the National Prosecutor's Office established in 2016: "During the two years of activity of this body, they examined more than one thousand cases and this huge activity enabled them to start seven proceedings against persons – five of them against prosecutors and two of them against judges. Taking into account that we have more than ten thousand judges and more than six thousand prosecutors, this number is clearly insignificant and it shows that this union was created not because of the fact that the judiciary and public prosecutor's offices are corrupt, but just with the aim of persecuting people who remain independent of the executive."

Prosecutor Parchimowicz said that his story is one of "institutional hatred and the deep reticence of the heads of the prosecutor's office towards independent prosecutors, to freedom of speech, and to freedom of association. The first act took place in spring of 2016. At that time, more than 100 prosecutors were demoted. I was demoted from the General Prosecutor's Office by three levels – down to the District Prosecutor's Office." He talked about the difficulties he faced when establishing the Lex Super Omnia association – under the control of the prosecutor's office: the lists of founding members were copied, and prosecutors were asked to notify their superiors in writing of their intention to join the

LSO. “I am probably the most persecuted lawyer in Poland,” he added. Since March 2016, he has already been transferred four times between the branches of the prosecutor's office in Warsaw, and his duties have been changed six times.

All participants in the event spoke about ongoing disciplinary proceedings against them. “In thirteen cases against me, the disciplinary spokesman implemented explanatory proceedings, which were the first stage of disciplinary action. The vast majority of proceedings concern criticism of the actions of the current prosecutor's office, but the essence of these proceedings lies in the fact that disciplinary spokesmen are trying to censor and supervise the activities of the LSO association,” said prosecutor Parchimowicz. “Due to the lack of effects of disciplinary proceedings, my supervisor referred me to medical examinations that were to prove that I was permanently unable to work in the prosecutor's office. The atmosphere of harassment at work makes me – an experienced prosecutor with a thick skin – sometimes feel nauseous in the morning before leaving for work.”

Impact on private life

The actions of the state apparatus against judges and prosecutors guarding the constitution also affect their private lives. “This is extremely troublesome. I have so many proceedings that currently thirteen attorneys are supporting me in this fight,” said Waldemar Żurek. When the proceedings show nothing, the control extends to his wife, who is heavily pregnant. The law firm refuses to represent the judge in the workplace harassment case because of fear of state attacks. Prosecutor Parchimowicz said that his colleagues would like to be more active in resisting the demolition of a law-abiding prosecutor's office, but their wives are afraid for their families. “I have filed a lawsuit against the television station, but being a judge and going to court is very difficult because for the judge it is worse and longer. It is more difficult for a judge to seek justice in a court than for an ordinary citizen,” said Judge Gąciarek.

He also spoke about the reasons why he began to openly criticise the reform of the judiciary in public space. “We, the judges, were raised with the view that a judge is silent and does not speak in the media,” he said. “However, the breakthrough – what shocked me and made me become unconditionally involved – was the moment I realised that within the space of ten days, one can implement a previously unknown act that can destroy the Supreme Court in Poland. When I first spoke publicly during a citizens' demonstration in front of the Supreme Court and in its defence, I said that, until recently, I would rather believe that I would fly into space than that, as a judge, I would speak at a street demonstration.”

Conclusions

As Judge Waldemar Żurek said at the end of his speech, judges take an oath before the President of the Republic of Poland. They swear to “uphold the law, and for us, the highest law is the Constitution of Poland. And I will keep this oath, regardless of the persecution.”

In concluding his presentation Krzysztof Parchimowicz said, “We have a common goal – citizens are fighting for and demanding a fair trial before an independent court. We – lawyers – fight for our professional dignity. Thirty years ago, we rejected a system in which the only non-partisan participant in a criminal trial was the defendant. The current dispute between legal circles and those in power does not concern legal complexities at all. The point is that the rulers want to create the conditions to be able to enslave free people again with the hands of lawyers. We do not want to agree to that. We want to keep our hands clean.”

Piotr Gąciarek, meanwhile, concluded his statement saying, “If those who stood behind this slander and materials against me thought that they would shut me up or frighten me, then what happened only strengthened me – it spurred me to be even more active and strengthened me in thinking that in view

of what was happening, that is, the violation of the rule of law in our country, today a judge – just like an independent prosecutor – cannot remain silent. And so I think that it is better to fight among decent and courageous people for important matters until the very end, even if there is no certainty of victory, than to win dubious money or privileges with careerists.”

A full recording of the event can be viewed in two versions:

- in English²
- in Polish and English (with Polish subtitles)³

For more information, please contact:

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² <https://www.youtube.com/watch?v=9sq6mGKe-0A>

³ <https://www.youtube.com/watch?v=fA26pFN0Fok>