



Inputs submitted by the Open Dialogue Foundation to the Questionnaire of the Special Rapporteur on the independence of judges and lawyers¹

1. Freedom of expression in Poland is guaranteed by art. 54 sub. 1 of the Polish Constitution, and international agreements to which Poland is signatory, in particular art. 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

However, art. 10 subpar. 2 of the ECHR provides that the exercise of such freedom may be subjected to limits, if these "are prescribed by law and are necessary in a democratic society, in the interests of national security, (...) preventing the disclosure of information received in confidence, or for **maintaining the authority and impartiality of the judiciary**". The Polish Constitution in art. 31 subpar. 3 develops these exceptions further: "Restrictions on the use of constitutional freedoms and rights may be established only in law and only if they are necessary in a democratic state for its security or public order, or for the protection of the environment, health and public morals, or the rights and freedoms of others. **These limitations can not affect the substance of freedoms and rights.**"

Such regulations for judges and prosecutors are set by Constitution of Poland, the Law on Common Courts Organization and the Law on the Prosecutor's Office.

Moldova. As is the case for Poland, in Moldova too, the freedom of expression and the main political and civil rights are guaranteed by international conventions. However, for what concerns these freedoms applied to judges and prosecutors, the Constitution of the Republic of Moldova does not provide for the right of freedom of expression of judges. A number of rights and respective restrictions concerning judges are enshrined in the Law on the Status of Judge².

2. The aforementioned restrictions **aim at avoiding that judges and prosecutors be deprived of their of public rights**. Moreover, the ECtHR in the case of **Baka vs Hungary 20261/12** decided that high position judges are "under an explicit statutory obligation to express an opinion on parliamentary bills that affected the judiciary, after having gathered and summarized the opinions of different courts via the Office of the National Council of Justice"³. It was also confirmed with the ENCJ London Declaration on Judicial Ethics (2010) "It is up to each judge to respect and to work **to maintain the independence of the judiciary, both in its individual aspects and in its institutional aspects**. This independence leads judges to apply the law to the matters which are placed before them in a specific case, without fearing to please or to displease all forms of power, executive, legislative, political, hierarchical, economic, of the media or public opinion. A judge also takes care to remain independent of his colleagues and all pressure groups"⁴.

Based on these restrictions, judges and prosecutors who raised concerns about the direction of changes in law made by government last year were accused of political agitation by government and pro-government

¹ These answers focus on the case of Poland and, partly, on Moldova. The information available has been selected and elaborated by the ODF.

² Law on the Status of Judge; no. 544-XIII; Art 8.

³ <https://www.icj.org/wp-content/uploads/2016/06/Hungary-CASE-OF-BAKA-v.-HUNGARY.pdf>

⁴ <https://www.ency.eu/images/stories/pdf/ethics/judicialethicsdeontologiefinal.pdf>



media. Some of them faced disciplinary proceedings, others were punished in other ways. Below is a non-exhaustive list of judges and prosecutors who were subjected to disciplinary and legal (in some cases even criminal) proceedings:

- Judges **Ewa Maciejewska**⁵ and **Igor Tuleya**⁶ judges who sent pre-judicial queries to CJEU;
- **Krystian Markiewicz, Bartłomiej Przymusiński** - board members of the "Iustitia" polish judge association;
- **Waldemar Żurek**⁷ former spokesperson of the National Council of the Judiciary (KRS);
- **Monika Frąckowiak, Arkadiusz Krupa** who took part in simulation of a court process at educational spin off event during Pol'and'Roll rock festival in Poland;
- **Jerzy Stępień**⁸ former Constitutional Tribunal who took part in rally in support of judicial independence;
- Prosecutors **Krzysztof Parchimowicz, Dariusz Korneluk, Katarzyna Gembalczyk**⁹ - members of the Prof. Hłonda Foundation, who signed a statement expressing concern about disciplinary proceedings against a judge who issued an unfavorable decision for the Minister of justice¹⁰;
- **Wojciech Sadrakula**, who took part in educational classes dedicated to the Constitution¹¹.

The aforementioned list does not contain all cases of pressure. Administrative tools are also used as a form of intimidation judges and prosecutors – such as the threat of possibility of cutting remuneration, of being transferred to another body, department or even another region. According to the report of the Polish judges association "Iustitia" *the condition of the independent judiciary in Poland from judges perspective*¹², above 30% of judges heard about political pressure case, while 15% of judges experienced it on their own.

Moldova.

Moldova has suffered from an evident and broadly criticized politicization of the judiciary. Those judges who have tried to report about the problems of the judicial system have been systematically pressured, threatened or prosecuted. Among individual examples is the case of Mr. Gheorghe Balan, who faced disciplinary actions for “civic activism” and for exercising his freedom of expression by vocally denouncing problems related to the judicial system. Mr. Balan, a judge of the Court of Chişinău, was subjected to different disciplinary sanctions, in return for his criticism. In 2011, he started to speak out about problems such as selective justice, political involvement in the act of justice, questionable evaluation and promotion of judges, of heads of courts and within the professional hierarchy, discretionary disciplinary sanctioning of the disloyal and inconvenient judges to the political regime. When Mr. Balan tried to run for

⁵ <https://www.iustitia.pl/en/2714-polish-disciplinary-prosecutor-michal-lasota-launched-a-case-against-judge-ewa-maciejewska-who-sent-pre-judicial-queries-to-luxembourg>

⁶ <http://themis-sedziowie.eu/materials-in-english/position-of-the-association-of-judges-themis-in-connection-with-the-disciplinary-actions-against-the-authors-of-the-questions-referred-for-preliminary-rulings/>

⁷ <https://www.theguardian.com/world/2018/jun/19/theyre-trying-to-break-me-polish-judges-face-state-led-intimidation>

⁸ <https://archiwumosiatsynskiego.pl/wpis-w-debacie/dyscyplinowanie-sedziego-stepnia/>

⁹ <http://lexso.org.pl/2018/12/21/stanowisko-komitetu-obrony-sprawiedliwosci-kos-wobec-zarzutow-dyscyplinarnych-uchylenia-godnosci-urzedu-prokuratora-przedstawionych-czlonkom-zarzadu-stowarzyszenia/>

¹⁰

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

¹¹ <https://wiadomosci.dziennik.pl/polityka/artykuly/581139,dyscyplinarka-prokurator-wojciech-sadrakula-konstytucja-lekcje-mlodziez.html>

¹² https://www.iustitia.pl/images/pliki/Raport_Iustitia.pdf



the Superior Council of Magistracy, in 2014, he received a warning which prevented him from becoming a member of that judicial body. In June 2015, Mr. Balan submitted a request to the ECtHR. In March 2018, Mr. Balan publicly denounced the irregularities in the parliamentary vote on the law concerning the organization of the judiciary¹³. The case of judge Balan has been followed also by the European Parliament and mentioned in the resolution of 14/11/2018 on the implementation of the Association Agreement between the EU and Moldova, as an example of a breach of fundamental rights¹⁴ in the country.

Another exemplary case is that of Ms. Domnica Manole, judge of the Appellate Chamber of Chişinău, who was unjustly dismissed from her position, for allegedly “issuing an illegal decision”. Judge Manole has often raised several issues regarding the serious signs of the dysfunctionality of the judicial system. The reason for her dismissal are likely a retaliation for her exercise of her right to freedom of expression, other than her duty to denounce the systemic problems of the judicial system for the public interest, combined with the threat she presented to the leadership due to her high authority among judges.

Since May 2016, Ms. Manole is prosecuted for a judgment issued on 14 April 2016, which obliged the Central Electoral Commission to allow a national referendum on introducing direct elections of the President of the country, initiated by an opposition party. Ms. Manole and her defenders, including international observers and Members of the European Parliament¹⁵, have condemned her dismissal as unfair and defined the criminal investigation against her as politically motivated, triggered by the decision taken on 14 April 2016, which was unfavorable to the governing party. The Law on the Status of the Judge states that judges must take decisions in an independent and impartial manner and act without any restrictions, influences, pressures, threats or interference, direct or indirect, by any authority, including the judicial authority. It adds that the hierarchical organisation of the courts may not affect the individual independence of a judge¹⁶.

Mr. Dorin Munteanu, judge at the courts of Chişinău. Judge Munteanu decided on the impossibility of issuing an arrest warrant for a defendant in view of the consideration of her complaint about the illegality of the resumption of the criminal case. On 31 January 2016, General Prosecutor Eduard Kharunzhen brought Judge Dorin Munteanu to criminal liability. The Supreme Council of the Magistracy allowed the prosecutor's office to initiate criminal proceedings. Munteanu was accused of ‘issuing an unlawful decision’, but the charges brought against him are also seen as political and motivated by the nature of the defendant’s case.

¹³ Please see Annex in attachment.

¹⁴ European Parliament resolution of 14 November 2018 on the implementation of the EU Association Agreement with Moldova, par. 26:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2018-0458+0+DOC+XML+V0//EN&language=EN>

¹⁵ The case of Manole was mentioned as well in the above-mentioned resolution

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2018-0458+0+DOC+XML+V0//EN&language=EN>

¹⁶ Article 1, par. 4 of the law on the Statute of Judges.



3. Ethics provisions of judges (Set of Principles of Professional Ethics of Judges and Judicial Assessors¹⁷) and prosecutors (Set of Principles of Professional Ethics of Prosecutors¹⁸) supplement statutory provisions adopted before 2016, following the guidelines of the ENCJ London Declaration on Judicial Ethics (2010) which reads: “Independence, integrity, impartiality, reserve and discretion, diligence, respect and the ability to listen, equality of treatment, competence and transparency are the common values identified [as essential to the judicial role] (Part I). The judge also demonstrates personal qualities of wisdom, loyalty, a sense of humanity, courage, seriousness and prudence, an ability to work and an ability to listen and to communicate effectively.”¹⁹

Some provisions of Set of professional ethic affect freedom of expression:

- maintaining the seriousness of the profession (judges §4, §5, §10, §16, §23; prosecutors §4, §22, §23)
- professional disclosure (judges §13; prosecutors §5, §11, §21, §24)
- disallow participation in prohibited organizations or supporting them (judges §22; prosecutors §17)

There are also some restrictions dedicated to **terms of use of social network** both in Judge and Prosecutor ethics rules. Both professions require reticence when using social networks:

- §23 Set of Principles of Professional Ethics of Judges and Judicial Assessors contains: *“The judge should use social media with restraint.”*

While the Set of Principles of Professional Ethics of Prosecutors (adopted 12/12/2017) is much more restrictive:

- *“§22 1. In public places and during public appearances, the prosecutor should behave in a manner consistent with cultural norms, showing restraint in expressing emotions and not losing control over his own behavior. Taking a polemic with the position of other people, the prosecutor should moderate and avoid wording deprecating those people; however, he/she can not leave statements that are violating applicable law without reaction.*
- *2. The prosecutor, while using social media, should exercise prudence and caution. 3. The principles set out in subparagraph 1 shall also apply to statements in social media, even if they are addressed to a limited group of recipients, as well as in the case of posting and comments without disclosing the actual data of the prosecutor.”*

“§23 The prosecutor, while participating in the public debate on matters not related to the activities of the prosecutor's office, in particular regarding social issues, engaging in polemic with the position of other people, should moderate and avoid wording deprecating these people. However, he can not leave the reactions of other people who violate applicable law.”

Different is the case of the Ethics Code of Judges of the Constitutional Tribunal. The code itself was created and adopted on 31th August 2018 - during holiday period, in secret, and it was not (even to this day)

¹⁷ <http://www.krs.pl/pl/dzialalnosc/zbior-zasad-etyki-zawodowej-sedziow/c,18,uchwaly/p,1/4582,uchwala-nr-252017-krajowej-rady-sadownictwa-z-dnia-13-stycznia-2017-r>

¹⁸ <https://pk.gov.pl/wp-content/uploads/2017/12/4622bdb7370556fd43de26f5ef52ee71.pdf>

¹⁹ <https://www.encj.eu/images/stories/pdf/ethics/judiciaethicsdeontologiefinal.pdf>



published on the website of the Constitutional Tribunal, nor were its judges notified of its existence. In the meantime, aforementioned Judge Jerzy Stępień had to face disciplinary proceedings for breaching it, a month before it was introduced²⁰.

4. List of statutory exceptions in freedom of expression is **enumerative** - Judges and prosecutors **cannot be members of parliament** (art. 103 of the Constitution of Poland) **nor political parties nor undertake other political activities** (Judges: art. 178 subpar. 3 of the Constitution; Prosecutors: art. 97 of the Law on the Prosecutor's Office) **and must preserve of the seriousness of the profession in their behavior** (Judges: art. 82 of the Law on Common Courts Organization; Prosecutors: art. 96 of the Law on the Prosecutor's Office), **maintain confidentiality on data they possessed in relation with their duties** (Judges: art. 85 of the Law on Common Courts Organization; Supreme court judges: art. 42 of the Act on the Supreme Court; Prosecutors: art. 102 of the Law on the Prosecutor's Office).

According to the recently adopted (01/2016) Law on the Prosecutor's Office **prosecutors are not allowed to disclose any comments or statements to the media on ongoing investigation or on the functioning of the Prosecutor's Office without authorization of the superiors** (Art. 12 of the Law on the Prosecutor's Office).

The legal situation of the judges of the Constitutional Tribunal is somewhat more complicated. While Art. 195 subpar. 3 of the Constitution of Poland declares: "Judges of the Constitutional Tribunal may not belong to a political party, a trade union or perform public activities incompatible with the principles of independence of courts and independence of judges while in office." due to the fact that since 2015 (PiS coming to power) until the end of 2016, the Acts on the Tribunal was amended, changed and annulled for many times. It is also the longest-controlled institution by the ruling party. So new principles were adopted and expanded to discipline even former judges.

Pursuant to Art. 33. subpar. 1 of the Act of 30 November 2016 on the Status of the Judge of the Constitutional Tribunal: "A retired Judge may not belong to a political party, a trade union or perform public activities incompatible with the principles of judicial independence and independence of judges, but shall retain the right to speak on public matters."

The penalty for non-compliance with this provision of art. 36 of this Act may even be depriving the judge of the Tribunal of a pension.

The adoption of such a law was connected with the fact that the judges of the Tribunal were the first to face the disappearance of the independence of the judiciary. Moreover, these provisions have already been used against the former Judge and president of the Constitutional Tribunal – Prof. Jerzy Stępień.

Moldova. Restrictions are provided under Article 8 of the Law on the Status of Judge, which limits the positions that a judge may hold, allowing only for didactic or scientific activity and specifically forbidding any activity of a political nature. (while not specifically mentioning online activities – the general character of the provision is likely to cover the exercise of similar activities on social platforms and media as well). The same Law also lists the rights to which judges are entitled, including: "a) to enjoy the rights and

²⁰ <https://archiwumosiadynskiego.pl/wpis-w-debacie/dyscyplinowanie-sedziego-stepnia/>



freedoms enshrined in the Constitution and legislation of the Republic of Moldova; d) to establish trade unions and to join trade unions or other national or international organizations to represent their interests, for professional development and protection of their status.

5. Since taking power in autumn 2015 Law and Justice party (PiS) has assumed direct oversight of Prosecutor's Office²¹ (Minister of Justice and General Prosecutor functions have been combined in 01/2016) and the National Council of the Judiciary²² (KRS, all of the judges have been replaced with Parliament nominees 04/2018) - the judicial body which has power to dismiss and appoint court presidents, to appoint, promote or discipline judges. Control over these bodies allows ruling party to punish critics, reward jurists loyal to the ruling party with administrative tools.

At the beginning of 2016 special law enforcement cell was established at the national prosecutor's office to prosecute offenses of judges and prosecutors. Three proceedings against judges and three against prosecutors were conducted for 3 years of operation through this body.

Recently assigned court and prosecutor offices presidents have the necessary administrative tools to *de facto* influence judges and prosecutors. Such powers are put into effect against independent judges and prosecutors who risk disciplinary proceeding or/and to be moved to another department or office in another city, declassified (eg. after 10 yr. experience in criminal law department, a "disobedient" judge could be moved to a civic one²³).

Formally, ethics principles still seem to meet standards of a democratic state of law. However, in practice as well as in the interpretation of ethics principles confirm existing of unwritten but most important rule for judges and prosecutors: they are not allowed to express their concerns about judicial independence, as well as in the sphere of adjudicating (judges) and conducting investigation (prosecutors) not to be exposed to people who will decide about their professional future.

As a result, although 90% of judges (according to the Iustitia report mentioned above) believe that the independence of the judiciary is at stake, the vast majority of them are simply afraid to express their concerns in any form. Similarly for prosecutors, expressing their concerns is even more risky²⁴.

In addition, on December 12, 2018 renewed **KRS adopted a resolution regarding the interpretation of § 10** of the Set of professional ethics rules of judges and court assessors: "(...) behavior that can undermine trust in the independence and impartiality of the judge is the public use by the judge of infographics, symbols that are unequivocally or can be identified with political parties, trade unions, as well as with social movements created by trade unions, political parties or other organizations conducting political activity."²⁵

²¹ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)028-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)028-e)

²² <https://www.foreignaffairs.com/articles/poland/2017-07-26/assault-polands-judiciary>

²³ Judge Wojciech Łączewski who who issued an unfavorable judgment in the case to Mariusz Kaminiski - close Zbiegniew Ziobro associate <http://wyborcza.pl/1,75398,20050680,sedzia-laczewski-nie-bedzie-sadzil-spraw-karnych.html> and Monika Smaga-Leśniewska <https://www.tvn24.pl/wiadomosci-z-kraju,3/sedzia-ktora-odmowila-aresztu-dla-piniora-ma-byc-przeniesiona,740498.html>

²⁴ <https://www.polityka.pl/tygodnikpolityka/spoleczenstwo/1697396,1,prokuratorzy-pod-rzadami-pis-zastraszeni-i-przekupywani.read>

²⁵ <http://krs.pl/pl/aktualnosci/d,2018,12/5630,uchwala-krajowej-rady-sadownictwa-z-12-grudnia-2018-r-dotyczaca-wykladni-10-zbioru-zasad-etyki-zawodowej-sedziow-i-asesorow-sadowych>



Asked by the Polish Press Agency (PAP) journalist president of the KRS Leszek Mazur - if the content of the resolution should be applied to eg. judges who publicly wear T-shirts with the word "constitution" inscribed in the characteristic logotype - KRS chairman replied: "Of course, this has been associated with these behaviors, because in recent times some judges have used from this graphic in different situations."²⁶

Moreover there is an unofficial **black list of inconvenient judges** who are not allowed to be promoted, examined by Krystyna Pawłowicz (PiS MP and member of renewed KRS) at least during the examination of the judge's candidacies to new functions. During the speech on the candidacy of Marta Kozuchowska-Warywoda (member of the Iustitia Association), Pawłowicz stated that: "The point is that Mrs. Marta Kozuchowska-Warywoda is on the list of people who went to Brussels to smear Poland. It is obvious she is strongly politically involved. In the pictures she stands with a candle near the judge Mr. Żurek and calls with him there ... they stand together, with candles, and in front of the court and in front of the Sejm. And she pretty obviously conducts political activities."²⁷

The current political context in Poland is a relevant influencing factor of restriction of judges' rights and freedoms. Their freedom of expression online – through posts on social platforms like Twitter and Facebook – or on mass media, when critical to the reforms of the PiS government, exposes them to the risk of being accused of political involvement by pro-government media²⁸, other than being targeted by right-wing trolls and hate speech. Even Jarosław Kaczyński - founder, MP and the head of Law and Justice party said: "hatred for one's own country is one of the diseases that affected some of the judges and which leads to disasters."²⁹

Furthermore, we have noticed that a sort of censorship is being applied by pro-government media. Judges who pledge loyalty to the PiS-ruled government, enjoy greater coverage³⁰ without any negative consequences while undertaking exactly the same activities that opposing judges who were punished for political engagement.

Most often politically motivated disciplinary (or substitutive administrative or even criminal) proceedings against opposing judges are usually undertaken against senior judges³¹, judges who issued unfavorable judgments in politically important proceedings³² or were recognized by the media during attendance in demonstrations in defense of the independence of the judiciary³³.

²⁶ <https://prawo.gazetaprawna.pl/artykuly/1387603,granice-aktywnosci-publicznej-sedziego-krs-uchwala.html>

²⁷ https://www.rmfm24.pl/tylko-w-rmf24/tomasz_skory/blogi/news-krajowa-rada-weryfikacyjna.nId.2605310

²⁸ <https://niezalezna.pl/103211-sedziowie-jada-juz-po-bandzie-mowia-ze-sa-apolityczni-ale-na-wiecz-polityczny-sla-zaproszenie>

²⁹ <https://www.rp.pl/Sedziowie-i-sady/309259926-Ojkofobia-Politycy-coraz-czesciej-obrazaja-sedziow.html>

³⁰ There are few samples of pro-PiS Judges interviews: <https://wpolityce.pl/polityka/413132-tomczynski-nie-chce-znowu-wstydzic-sie-za-sedziow>, <https://prawo.gazetaprawna.pl/artykuly/1338967,jan-majchrowski-odbudowa-autorytetu-sadownictwa.html>, <https://wpolityce.pl/polityka/414089-nasz-wywiad-jak-walczyz-z-upolitycznieniem-kasty>

³¹ Judges of the Supreme Court who send pre judiciary questions to CJUE - Jerzy Kuzniar, Jolanta Franczak, Halina Kirylo, Maciej Pacuda, Krzysztof Raczka, Jolanta Strusinska-Zukowska, Malgorzata Wrebiakowska-Marzec <https://oko.press/prokurator-generalny-grozi-sedziom-sn-to-przestepstwo-z-art-244-kk/>

³² Mentioned before Igor Tuleya who was also judging "Doctor G" case <https://www.gazetaprawna.pl/artykuly/672362.burza-po-wyroku-ws-miroslaw-a-g-sedzia-igor-tuleya-odpowie-dyscyplinarnie.html>, Agnieszka Poświata who refused to grant arrest to former PO senator Józef Pinior

³³ Sample articles: <https://www.tvp.info/33352858/sedziowie-na-wieczach-opozycji> <https://niezalezna.pl/103211-sedziowie-jada-juz-po-bandzie-mowia-ze-sa-apolityczni-ale-na-wiecz-polityczny-sla-zaproszenie>



The main reason for this is the goal that the Minister of Justice desires to achieve - a **chilling effect on the rest of jurists**. To reach that goal, the government initiated proceedings more frequently against superior judges. In the long run, superior judges and prosecutors disobedient to the government will have to face the transfer³⁴ if they were not yet replaced.

In the judges' environment there is also fear of a large reform³⁵, which would consist in merging regional and district courts. If that happened all the judges from these courts (that is about 80% over all 10000 judges in Poland) could be transferred and moved to any possible position, so no one could be sure of their future assignment.

As it was mentioned in recently published Ewa Siedlecka book “Judges Says. PiS attempt on the judicial system”³⁶ noticed: “PiS uses the stick and carrot method. Stick is repression and pressure. Carrots are office posts in the courts, in the National Council of the Judiciary, in the Ministry of Justice, and even the Ministry of Foreign Affairs, where the judges in the department dealing with international tribunals and judging committees, such as the UN Human Rights Committee, were created. These carrots are not only power and extra money, but also a reduced number of cases to be tried.”

This leads to demolishing balance of power by establishing meritocracy in courts and prosecutors offices. The judges' environment resists, eg. boycotting recruitment for unlawfully released positions in Supreme Court³⁷, but can not stop these bad changes in long term without strong support of the international community.

The use of administrative actions as a tool of interference in the independence of prosecutors, has been even more widely used for longer period. The “Panstwo-PiS” report³⁸ on “State of the Prosecutor Office” and Lex Super Omnia report³⁹ titled “‘Good Change’ in Prosecutor's` Office” indicate cases of abuse of power and beneficiaries of collaboration with the government.

As concerns prosecutors, on the basis of Art. 12 of the new Law on the Prosecutor's Office of 01/2016, only the Attorney General, National Attorney and prosecutors authorized by them may express their opinions on the prosecution's activities. In fact, it prevents prosecutors from participating in the public debate regarding the functioning of the prosecutor's office. However, there was only one case when this article was used for proceeding against a prosecutor.

According to the opinion of the Lex Super Omnia, a Polish prosecutors association, the Draft of Set of Principles of Professional Ethics of Prosecutors “clearly shows a departure from respect for constitutional rights and freedoms, apolitical and proper relations in the prosecutor's office. There are no records that emphasize the importance of impartiality, objectivity, responsibility, care for the development of own competences or ordinary honesty. On the one hand, the dominant solutions are those that require an even more servile attitude towards the authorities and their representatives and, on the other hand, give up the

³⁴ <https://freedomhouse.org/report/special-reports/hostile-takeover-how-law-and-justice-captured-poland-s-courts>

³⁵ <https://www.rp.pl/Sedziowie-i-sady/301229945-Zbigniew-Ziobro-sady-czeka-reforma.html>

³⁶ “Judges Says. PiS attempt on the judicial system” book (2018, Czerwone i czarne Sp.k.), page 190 and 191

³⁷ https://www.washingtonpost.com/world/europe/polands-judges-boycott-supreme-court-posts-accusing-the-government-of-a-takeover-bid/2018/08/17/8a9a5590-943a-11e8-818b-e9b7348cd87d_story.html?noredirect=on&utm_term=.7fba1d4fee8a

³⁸ http://www.panstwo-pis.pl/index.php/Raport:Prokuratura_pod_specjalnym_nadzorem

³⁹ <http://lexso.org.pl/2018/06/07/dobra-zmiana-w-prokuraturze-raport-stowarzyszenia-prokuratorow-lex-super-omnia/>



obligation to ensure the maintenance of civil rights and freedoms. The proposed regulations are part of the doctrine characteristic of authoritarian regimes⁴⁰. This draft was adopted on 12th December 2017⁴¹.

6. The Constitutional Tribunal, Poland's constitutional court, which had the power to invalidate the above mentioned controversial acts, was paralyzed by the Beata Szydło-led government since he raise to power (end of 2015) until the majority of judges was replaced. Nowadays the body ceased to perform its functions independently⁴². According to the aforementioned "Iustitia" report (10/10/2018) over 80% of judges in Poland believe that currently, the Constitutional Tribunal does not meet democratic standards.

Moldova. One of the most significant cases is *Guja v. Moldova* within the ECtHR. The Court ruled in favour of the defendant, a civil servant dismissed from his position at the General Prosecutor's Office for having disclosed information of public interest concerning the attempt by some political figures to influence the judiciary⁴³.

7. Controversial draft acts and draft amendments on judicial system reform (the Law of Prosecutors' Office, Acts on the Constitution Tribunal, Acts on the National Council of the Judiciary, Acts on the Supreme Court) or generally performed by PiS have been widely criticised by judges^{44,45}, prosecutors⁴⁶, attorneys associations, bars and NGOs^{47,48} including the Open Dialogue Foundation⁴⁹. It was also subject to numerous appeals and resolutions for international legal associations and bodies (eg. Venice Commission⁵⁰, UNHCHR⁵¹).

Judges and prosecutor associations adopted many resolutions dedicated to group or individual proceedings against judges in individual cases in relation with freedom of expression⁵². However, there were quite few

⁴⁰ <http://lexso.org.pl/2017/12/05/opinia-stowarzyszenia-prokuratorow-lex-super-omnia-odnosnie-projektu-zbioru-zasad-etyki-zawodowej-prokuratorow-z-dnia-7-listopada-2017-roku/>

⁴¹ <https://pk.gov.pl/wp-content/uploads/2017/12/3683b5a1df98dbf3b28ca533f5da7a3d.pdf>

⁴² <https://freedomhouse.org/report/special-reports/hostile-takeover-how-law-and-justice-captured-poland-s-courts>

⁴³ <https://globalfreedomofexpression.columbia.edu/cases/guja-v-moldova/>

⁴⁴ <https://www.iustitia.pl/79-informacje/2182-the-response-of-the-polish-judges-association-iustitia-to-the-white-paper-on-the-reform-of-the-polish-judiciary-presented-to-the-european-commission-by-the-government-of-the-republic-of-poland>

⁴⁵ EAJ resolution: <https://www.iustitia.pl/en/activity/informations/2639-resolution-of-the-european-association-of-judges-concerning-poland>

⁴⁶ <http://www.inpris.pl/en/whats-going-on-at-inpris/article/t/lex-super-omnia-resolution-of-27-may-2017/>

⁴⁷ <https://www.reuters.com/article/us-poland-judiciary-civic-groups/rights-groups-urge-end-to-polands-overhaul-of-judiciary-idUSKBN1DM0SH>

⁴⁸ Iustitia and other associations open letter to the president of Poland: <https://www.iustitia.pl/79-informacje/1875-list-organizacji-spoecznych-i-prawniczych-do-prezydenta-rp> Batory Foundation report:

http://www.batory.org.pl/upload/files/Programy%20operacyjne/Forum%20Idei/ESI-ideaForum_Batory%20-%20Poland%20and%20the%20end%20of%20the%20Rule%20of%20Law.pdf

⁴⁹ <https://en.odfoundation.eu/a/8715,odf-at-the-coe-concerned-with-dismantling-of-independence-of-judiciary-in-poland-and-mass-detentions-in-kazakhstan>

⁵⁰ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)031-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)031-e)

⁵¹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22313&LangID=E>

⁵² Themis judge association resolution on Waldemar Żurek case: <http://themis-sedziowie.eu/materials-in-english/position-of-the-association-of-judges-themis-of-03092018-on-the-transfer-of-regional-court-judge-waldemar-zurek-2/> and others <http://themis-sedziowie.eu/materials-in-english/position-of-the-association-of-judges-themis-in-connection-with-the-disciplinary-actions-against-the-authors-of-the-questions-referred-for-preliminary-rulings/>



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cases of disciplinary proceedings for jurists based only on their online activity in Poland. A particularly vulnerable group is that of judges and prosecutors who have been appointed as spokespersons of the bodies or legal associations to which they belong. Since their function requires the use of social networks to express not only their own opinions, but also the associations' statements, they are often subject to attacks of online trolls and they become easily targeted by disciplinary proceedings.

Those spokespersons who were subjected to disciplinary proceedings for their online activity are: Bartłomiej Przymusiński, Cezary Skwara, Waldemar Żurek and Krzysztof Parchimowicz⁵³.

No resolutions have yet been adopted concerning judges' and prosecutors' freedom of expression online but it is clear that this subject should be taken into consideration at least in the case of jurists-spokespersons.

⁵³ <https://www.rpo.gov.pl/pl/content/rpo-przed-komisj%C4%85-libe-parlamentu-europejskiego-w-sprawie-publicznego-wys%C5%82uchania-polski>