

Legal harassment of Polish judges - report for the needs of the EU Justice Scoreboard 2020

/updated as of 24 March 2020/

Statistical data regarding the number of judges who are persecuted using hard and soft disciplinary, criminal and administrative measures of repression.

1. Sources of information.

Because this type of persecution is caused by politicized state bodies, such as the Disciplinary Spokesman for Ordinary Courts Judges appointed in 2018, his two deputies, the prosecutor's office subordinated to the Minister of Justice, or the presidents of common courts appointed by the Minister of Justice in 2018, data on this type of persecution comes from independent NGOs and independent media, including, in particular, the Polish Judges' Association "Iustitia", the Association of Judges "Themis", the Association of Prosecutors "Lex Super Omnia" and the "Committee for the Defence of Justice" organisation.

The main source of information on this subject is the report by Polish Judges' Association "Iustitia" published at the beginning of March 2020 entitled "Justice under pressure - repression as a method of struggle to take control over the judiciary and the prosecutor's office in Poland. 2015-2019"¹.

2. Reasons for using reprisals against judges.

The legal persecution of judges in Poland has a political background - it is applied to judges who either issued judgments unfavourable to individual representatives of the executive branch, or who have expressed in judicial decisions or in the media statements showing opposition to the changes in the justice system which violate the constitution and European law.

For example, the following types of judges' activities that have been subject to legal repression are:

- cases in which the judges issued judgments inconvenient for representatives of the executive branch, in cases that directly concern them as parties of the proceedings,

¹ https://www.iustitia.pl/images/pliki/raport2020/Raport_EN.pdf

- cases in which the judges did not grant the prosecution's requests for detention on remand,
- cases in which judges adjudicating directly apply the provisions of the constitution or European law (including in particular cases in which judges submit questions for a preliminary ruling to the CJEU and the Polish Supreme Court),
- judges who protest in the media against violations of the constitution and European law by the executive and legislature, e.g. in such a way that they criticize the newly established disciplinary authorities,
- judges who support other repressed judges,
- judges who participate in legal education activities for young people.

3. Statistical data divided into particular types of repression.

The "Iustitia" report cited above distinguishes two types of repression against judges, which it describes as "hard" and "soft".

3.1. The so-called "hard repression", including disciplinary and explanatory proceedings² against judges in connection with their judicial and non-judicial activities.

At the outset, it should be noted that in 2018 a new, politicized type of disciplinary proceedings against judges was introduced in Poland, which is characterized, among others, by features such as:

- politicizing the procedure for selecting persons who are members of disciplinary bodies (for example, the Minister of Justice appointed the main disciplinary commissioner and his deputies, and all judges of disciplinary courts of the first instance, and the politicized "neo-KRS" [new National Council of the Judiciary] nominated all members of the disciplinary court of the second instance, which is the Disciplinary Chamber of the Supreme Court),
- granting very broad powers under disciplinary proceedings to the Minister of Justice (including the right of binding objection to the decision of the disciplinary commissioner to refuse to initiate proceedings, or the possibility of appointing an *ad hoc* commissioner to specific judges),
- limitation of procedural rights of judges in disciplinary proceedings (including the possibility of conducting proceedings in the absence of the accused and his defence counsel, the admissibility of using in disciplinary proceedings illegally collected evidence, including that obtained from telephone tapping).

All this means that in Poland we are dealing with an inquisitive model of disciplinary proceedings against judges in which their procedural rights were severely restricted³.

² The "explanatory proceedings" stands for the initial phase of disciplinary proceedings, preceding the presentation of disciplinary charges to the judge.

³ The current model of disciplinary proceedings against judges was described in the "Themis" report:

Figures for "hard" repression:

According to reliable and verifiable sources published so far, the following number of judges can be calculated against whom 'hard' repressive measures have been used:

- the "Iustitia" report mentioned at the beginning of the study lists the names of 34 judges⁴ who are subject to such proceedings,
- according to the report of the "Themis" Association⁵, in the period after the CJEU issued its judgment of 19 November 2019, disciplinary proceedings were initiated against 8 judges who tried to implement the guidelines contained in this judgment. The "Themis" list contains 2 additional names of judges⁶ subject to disciplinary proceedings in connection with their official activities, which are not covered by the above-mentioned "Iustitia" report. Against the same background, the Disciplinary Commissioner for the Ordinary Courts Judges initiated an investigation against another 7 judges⁷ who are not mentioned in the "Iustitia" report,
- Mariusz Jałoszewski's article "Repressions of Ziobro: already 43 judges prosecuted by spokespersons and prosecutors"⁸, originally published on the website Oko.press, lists the names of 6 more judges⁹ subject to explanatory or disciplinary proceedings who are not covered by the "Iustitia" report,

The above show that a total of **49 Polish judges** are currently under politically motivated disciplinary or explanatory proceedings.

3.2. The so-called "soft repression", including repressive actions against judges of a criminal or administrative nature undertaken by the prosecutor's office, executive authorities, the neo National Council of the Judiciary, or presidents of courts nominated by the current Minister of Justice, after premature termination of the term of office of previous presidents.

http://themis-sedziowie.eu/wp-content/uploads/2019/04/Judges_under_special_supervision_second-publication.pdf.

⁴ This applies to the following judges: Olimpia Barańska-Małuszek, Anna Bator-Ciesielska, Włodzimierz Brazewicz, Barbara du Chateau, Monika Ciemięga, Dominik Czeszkiewicz, Alina Czubeniak, Monika Frąckowiak, Piotr Gąciarek, Kamil Jarocki, Sławomir Jęksa, Paweł Juszczyzyn, Katarzyna Kałwak, Arkadiusz Krupa, Magdalena Lewandowska, Dorota Lutostańska, Ewa Maciejewska, Rafał Maciejewski, Krystian Markiewicz, Dariusz Mazur, Ewa Mroczek, Artur Onderek, Bartłomiej Przymusiński, Bartłomiej Starosta, Jerzy Stępień, Igor Tuleya, Piotr Wangler, Dorota Zabłudowska, Waldemar Żurek, Rafał Lisak, Kazimierz Wilczek, Wojciech Maczuga, Aleksandra Janas, Irena Piotrowska.

⁵ <http://themis-sedziowie.eu/materials-in-english/response-of-the-polish-authorities-to-the-cjeu-judgment-of-19-nov-2019-the-report-containing-translations-of-source-documents/>

⁶ It is about judges Ewa Malinowska and Andrzej Żuk.

⁷ It is about 7 judges from the District Court in Olsztyn, unknown by name. The explanatory proceedings were initiated against them in connection with their submission of legal questions to the Supreme Court, in implementation of the judgment of the CJEU of November 19, 2019, <http://themis-sedziowie.eu/materials-in-english/communication-of-the-disciplinary-commissioner-of-the-ordinary-court-judges-case-judges-of-the-regional-court-in-olsztyn/>.

⁸ <https://oko.press/judges-under-fire-43-judges-already-targeted-by-disciplinary-officer-and-prosecutors/>

⁹ It is about judges: Marek Celej, Mariola Głowacka, Małgorzata Kluziak, Marek Nawrocki, Marek Omelan, Andrzej Sterkowicz.

It should be noted that the term "soft repression" is highly arbitrary and the real consequences of such measures, especially if they are applied cumulatively, can be very serious. For example, a judge who has been "transferred as a punishment" from one department to another, deprived of the help of experienced administrative staff and weighted down with a large workload of old cases, can easily commit a judicial error, which may cause him have a "hard" measure of repression in the form of disciplinary proceedings used against him. For example, it can be mentioned that soft repressive measures may take the following form:

- instituting unjustified criminal proceedings against 'inconvenient' judges (a criminal measure applied by the politicized prosecutor's office, including in particular the Department of Internal Affairs of the National Prosecutor's Office, established in 2016, whose exclusive task is to prosecute judges and prosecutors who have committed crimes),
- interventional dismissal of inconvenient judges from delegations to higher courts (administrative measure applied by the Minister of Justice),
- unjustified transfer of judges between departments, where judges cover a new scope of duties and new caseloads (administrative measure used by newly-appointed court presidents),
- deterioration of judges 'working conditions by depriving them of service by experienced judges' assistants and administrative staff (administrative measure used by newly-appointed court presidents and directors),
- unjustified dismissal of judges from their functions (administrative measure used by newly-appointed court presidents),
- liquidation of the court department in order to deprive a judge of his official function (administrative measure used by the Minister of Justice),
- objecting to the taking of additional employment by judges, including when it relates to teaching activities closely related to the exercise of the profession (administrative measure used by newly-appointed court presidents).

Figures for “soft” repression:

Reliable sources mention the following soft repression measures:

- the “Iustitia” report entitled “Justice under pressure ...” lists the names of the 25 judges¹⁰ concerned by this type of proceedings,

¹⁰ It is about judges: Łukasz Biliński, Monika Frąckowiak, Alicja Fronczyk, Justyna Koska-Janusz, Marta Kożuchowska-Warywoda, Wojciech Marczewski, Irena Majcher, Tomasz Marczyński, Aleksandra Marek-Ossowska, Krystian Markiewicz, Andrzej Olszewski, Agnieszka Pilarczyk, Bartłomiej Przymusiński, Adam Skowron, Igor Tuleya, Monika Zielińska, Agnieszka Poświata, Michał Karczewski, Kinga Misiukiewicz, Monika Orzeczowska, Wojciech Merta, Alina Bojara, Mariusz Broda, Maria Leszczyńska, Wojciech Borodziuk.

- the report "Country that punishes..."¹¹ prepared in 2019 by the Committee for the Defence of Justice lists the names of another judge¹² who was subject to a soft measure of repression,
- another judge¹³ was mentioned in the article of independent journalist Mariusz Jałoszewski. She was subject to a soft repressive measure consisting in dismissing her from a delegation to a higher court,
- a similar situation regarding another judge, not described in the "Iustitia" report, was mentioned in an article by Wojciech Tumidalski¹⁴,
- the report of the Association of Judges "Themis" entitled "Judges under special supervision ..." lists the names of additional five judges who were dismissed from official functions as part of their repression¹⁵.

Therefore, soft repression was used against a total of at least **33 judges**.

4. Summary.

Considering that in the "Iustitia" report names of 4 judges are repeated in the part concerning soft and hard repression, since both types of means were used against them¹⁶, we obtain a total figure of **78 judges** who are in one way or another repressed because of their legal - both judicial, as well as non-judicial - activities. It should be emphasized that there is likely also a considerable number of persecuted judges, especially treated with "soft" means of repression, who did not disclose the issues they faced publicly, often out of fear of further persecution. There is probably a "dark number" of persecution that cannot be estimated at this time. Given that these persecutions concern either judges who publicly criticize the judicial pseudo-reform, or those whose judicial or administrative activity was inconvenient for the ruling camp, it should be recognized that these persecutions have political overtones and tend to limit the independence of the judiciary by provoking a "chilling effect" among the judges in order to subordinate them to executive power. This effect is constantly reinforced in a systemic way in public media, the Internet, and (in 2017) in the form of so called "billboard campaign" - a black PR campaign against judges, inspired and supported by the executive.

¹¹ http://komitetobronysprawiedliwosci.pl/app/uploads/2019/02/Raport-KOS_eng.pdf,

¹² It is about judge Monika Smaga-Leśniewska.

¹³ It is about judge Katarzyna Kruk, <https://oko.press/kolejna-sedzia-cofnieta-przez-resort-ziobry-sadu-nizszej-instancji-11-procesow-zacznie-sie-nowa>,

¹⁴ It is about judge Krzysztof Ptasiewicz, <https://www.rp.pl/Prawnicy/312179936-Sedzia-uchylil-areszty---zostal-odwolany-z-delegacji-w-niecala-godzine.html>,

¹⁵ It is about judges Agnieszka Włodyga, Janusz Kawałek, Joanna Melnyczuk, Ewa Ługowska, Paweł Rygiel, http://themis-sedziowie.eu/wp-content/uploads/2019/04/Judges_under_special_supevision_second-publication.pdf, see page 55, subsection VI.6.

¹⁶ It is about judges: : Monika Frąckowiak, Krystian Markiewicz, Bartłomiej Przymusiński, Igor Tuleya.