

IN-DEPTH REPORT:

Challenging the principles of primacy and direct applicability of EU law by the Polish authorities, 9 months after the CJEU's rulings of July 2021

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Table of contents:

1. Foreword	2
2. The CJEU's recent decisions	2
3. Response of the Polish authorities at systemic level – motions to the Constitutional Tribunal	3
4. Reaction of Polish politicians from the ruling camp with regard to the Disciplinary Chamber, the absence of any legislative action	4
5. Reaction of the Public Prosecutor's Office and the Prosecutor General	5
6. Reaction from Małgorzata Manowska, person acting as the First President of the Supreme Court	6
7. The neo-NCJ's response	8
8. Administrative repressions applied by the Minister of Justice and court presidents appointed by him regarding individual judges who implement CJEU rulings	9
9. Disciplinary proceedings against judges implementing CJEU guidelines	11
10. Activity of the Disciplinary Chamber of the Supreme Court	13
11. Chamber of Extraordinary Control and Internal Affairs of the Supreme Court	16
12. Blocking the reinstatement of previously suspended judges	17
13. Repressions against judicial activists demanding the application of EU law	18
14. Start of repression against other legal professionals for questioning the status of neo-judges	18
15. Concluding remarks	18

1. Foreword

The independence of the judiciary in Poland has been systematically dismantled over the last six years, during which previously independent bodies, referred to as safety fuses of democracy, have been brought under political control by the ruling camp (such as the Constitutional Tribunal and the National Council of the Judiciary). At the same time, the ruling camp has set up several central bodies, which specialise in repressing judges, such as the Disciplinary Chamber of the Supreme Court, central disciplinary commissioners, and the Internal Affairs Department of the State Prosecution Service, all of which conduct politically motivated proceedings against judges who try to defend the rule of law.

Many Polish judges have taken up the fight to preserve the independence of the judiciary by criticising the pseudo-reform in the media, submitting requests for preliminary rulings to the CJEU and, more recently, overturning judgments issued with the participation of “neo-judges”. Much of the persecution is directed against those judges who take action to enforce CJEU rulings. The first wave of persecution on this basis followed the CJEU judgment of 19 November 2019 (in *A.K. and Others*, C-585/18, C-624/18 and C-625/18) and affected 21 judges, as discussed in the ‘Themis’ report of 31 December 2021.¹ Such a broad wave of persecution, which took place mainly in 2020, was made possible by the introduction of the so-called Muzzle Act,² which allows judges to be punished for the content of their rulings and for the implementation of CJEU judgments.

Another wave of persecution followed the CJEU rulings of 14 and 15 July 2021, which the Polish authorities have so far failed to implement, and these are the issues addressed in this report. The report also describes various actions of politically subordinated central state bodies, such as the Constitutional Tribunal, the neo-NCJ or the prosecution in the face of CJEU rulings that are inconvenient for the Polish authorities.

2. The CJEU’s recent decisions

- The interim measure of 14 July 2021 (C-204/21 R) suspended the entire Disciplinary Chamber and its previous decisions regarding judges (especially the decisions to suspend Judges Igor Tuleya and Paweł Juszczyszyn), as well as suspended the application of the Muzzle Act and the other rules of national law affecting the independence of judges;
- The judgment of 15 July 2021 (C-791/19) delegatized the entire Disciplinary Chamber of the Supreme Court in the light of EU law;
- The judgment of 6 October 2021 (C-487/19) delegatized the Chamber of Extraordinary Control and Internal Affairs of the Supreme Court in the light of EU law, stated that a decision made with the participation of a neo-judge (appointed with the participation of the neo-NCJ) should be assessed as null and void, and acknowledged that the transfer of a judge between divisions without his consent and without the possibility of appeal could undermine judicial independence;
- It is evident from all these decisions that the neo-NCJ, which was established in a manner contrary to the Polish Constitution, does not guarantee independence from political factors, so that the process of appointment and promotion of judges involving it is defective to such an extent that the cases subsequently handled by them do not guarantee the right of the parties to a fair trial;
- On 16 November 2021, the CJEU (in joined cases C 748/19 to C-754/19) ruled that Poland’s system of secondment of judges to higher instances and their removal from secondment at any time and

¹ http://themis-sedziowie.eu/wp-content/uploads/2021/01/wer_Response-of-Polish-authorities-to-CJEU-judgement_wer11_01_2020_FC_wer-1_RW_201220-2.pdf,

² http://themis-sedziowie.eu/wp-content/uploads/2021/02/Themis_From-bad-to-worse_ang_wer2.pdf,

without justification by the Minister of Justice, who is simultaneously the Prosecutor General, is incompatible with the EU requirement of judicial independence;

- On 27 October the CJEU Vice-President (in case C-204/21 R) imposed a daily fine of €1,000,000 on Poland, as it has breached the interim measure of 14 July regarding the suspension of the Disciplinary Chamber.

3. Response of the Polish authorities at systemic level – motions to the Constitutional Tribunal

- On 14 July 2021 (case P 7/20), at the request of Małgorzata Bednarek, a neo-judge of the Disciplinary Chamber, the Polish Constitutional Tribunal held that Article 4(3) TEU and Article 267 TFEU is in conflict with the Constitution to the extent to which it allows the ECJ to apply interim measures in the area of justice and, in this respect, is not covered by the principles of primacy and direct effect;³
- On 7 October 2021 (case K 3/21), at the request of Prime Minister Mateusz Morawiecki, under the guise of protection of the Constitution, the Polish Constitutional Tribunal ruled that the EU has no right to give Polish courts the power to prioritize EU law over national laws; it was also deemed unconstitutional for the CJEU to empower national courts to review the legality of the appointment of neo-judges; the Constitutional Tribunal also declared it unconstitutional for a national court to declare the process of appointing a judge defective and, as a result, refuse to recognise the person appointed to a judicial office to be a judge;⁴ on the day this judgment was delivered, an official communication appeared on the Constitutional Tribunal's website, in which the phrases 'legal sovereignty of the states' and 'constitutional identity' were repeated several times, ending with the phrase '*if the practice of progressive activism of the CJEU, (...), is not stopped, the Tribunal does not rule out the possibility that it will exercise this competence and will assess the compliance of the CJEU's judgments with the Constitution, including their removal from the Polish legal order*';⁵ the judgment of 7 October 2021 was strongly criticised by 25 retired judges of the Constitutional Tribunal (including 4 former Presidents of the Tribunal) in their position paper of 10 October 2021;⁶
- On 12 November 2021, Prosecutor General Zbigniew Ziobro lodged a motion with the Constitutional Tribunal (case K 8/21)⁷ to review the compliance of Article 279 TFEU and Article 39 of the CJEU's Statute (fines for non-compliance with the CJEU's interim measures) with Polish Constitution; the main objective is to review the compatibility of a fine for failing to comply with an interim measure, as well as the authorisation of a judge of the CJEU to impose interim measures on Poland with regard to the shape and functioning of the constitutional bodies of Poland, with the Polish Constitution in the cases brought before the CJEU; the case is pending before the Constitutional Tribunal; the last time a hearing date has been set in the case for 30 March 2022, at 11 a.m.;⁸
- On 23 December 2021, Prosecutor General Zbigniew Ziobro submitted a request⁹ to the Constitutional Tribunal to declare the European regulation on the mechanism linking access to EU funds to the rule of law incompatible with the Polish Constitution;¹⁰ the case is registered with the Constitutional Tribunal as no. K 1/22; on 16 Feb 2022, the hearing in this case was adjourned without a new date.

³ <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001309/O/D20211309.pdf>,

⁴ <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001852/O/D20211852.pdf>,

⁵ <http://themis-sedziowie.eu/materials-in-english/constitutional-tribunal-the-activities-of-the-eu-authorities-which-extend-beyond-the-limits-of-their-competence-that-has-been-delegated-by-poland-are-in-conflict-with-the-constitution-communique/>,

⁶ <http://themis-sedziowie.eu/materials-in-english/statement-of-retired-judges-of-the-constitutional-tribunal-of-10-october-2021/>,

⁷ Link to the motion of the Prosecutor General: [file:///C:/Users/dariusz.mazur/Downloads/K 8 21 wns 2021 11 10 ADO.pdf](file:///C:/Users/dariusz.mazur/Downloads/K%208%2021%20wns%2021%2011%2010%20ADO.pdf),

⁸ <https://trybunal.gov.pl/postepowanie-i-orzeczenia/wokanda/art/11817-okresowa-kara-finansowa-lub-ryczalt-nakladany-przez-tsue-srodki-tymczasowe-odnoszace-sie-do-ksztaltu-ustroju-i-funkcjonowania-konstytucyjnych-organow-rzeczypospolitej-polskiej>,

⁹ [https://ipo.trybunal.gov.pl/ipo/dok?dok=62a28d4f-892a-4738-b35a-2e497a9e7df9%2FK 1 22 wns 2021 12 23 ADO.pdf](https://ipo.trybunal.gov.pl/ipo/dok?dok=62a28d4f-892a-4738-b35a-2e497a9e7df9%2FK%201%2022%20wns%2021%2012%2023%20ADO.pdf),

¹⁰ <https://trybunal.gov.pl/sprawy-w-trybunale/katalog/k-1-22>,

4. Reaction of Polish politicians from the ruling camp with regard to the Disciplinary Chamber, the absence of any legislative action

- In an interview given to the Polish Press Agency on 7 August 2021, Jarosław Kaczyński, chairman of the Law and Justice (PiS) party, announced that the Supreme Court's Disciplinary Chamber would be abolished in its present form and replaced with another body, stating that this was not due to the CJEU rulings (literally: *'I don't recognise this kind of ruling, because it goes far beyond the treaties and extends the cognition of EU courts'*), but to the fact that the body *'has failed to live up to expectations'*, and announced that government drafts of the new law would appear as early as in September;¹¹ once again, in an interview given to the media on 16 November 2021, Jarosław Kaczyński commented on the liquidation of the Disciplinary Chamber, this time presenting it as a part of the great reform of the judiciary being conducted as part of the 'Polish order', an element of which is also to be the flattening of the structure of the ordinary courts;¹²
- On 19 October 2021, speaking at the European Parliament in Strasbourg during a debate organised after the 7 October 2021 judgment of the Polish Constitutional Tribunal, Polish Prime Minister Mateusz Morawiecki, defending the Tribunal's decision, stated, inter alia, *'The primacy of EU law does not extend to the constitutional system. The Polish constitution is the highest legal act in Poland; it stands above any other principle of law'*.¹³ However, during the same debate, he also declared *'We are going to abolish the Disciplinary Chamber because it does not meet our expectations'*;¹⁴
- At the beginning of November 2021, statements by PiS politicians (including the Deputy Marshal [Speaker] of the Sejm, Ryszard Terlecki) indicated that a bill on the liquidation of the Disciplinary Chamber was to be submitted to the Sejm in mid-November,¹⁵ which, however, did not happen, probably because of the objection to the form of the changes in the law by Minister of Justice Zbigniew Ziobro, who is the leader of the 'Solidary Poland' party, without whose support PiS does not have an absolute majority in the Sejm;¹⁶
- On 18 November 2021, the government's press officer, Piotr Müller, announced that he would present a plan to abolish the Disciplinary Chamber by the end of November;¹⁷
- Asked about the abolition of the Disciplinary Chamber, Justice Minister Zbigniew Ziobro said in a radio interview on 7 December 2021 that *'There is consent for a fundamental reform of the judiciary, including the Supreme Court. On the other hand, there is no agreement to follow the EU dictate. I am against the solutions imposed on Poland by the European Union, which are linked to the restriction of Polish democracy. We cannot allow someone to jump on our heads in a situation where there are no legal grounds for doing so.'*¹⁸ on 10 December, in a statement for a Catholic radio station, Zbigniew Ziobro criticized Małgorzata Manowska's order to partially freeze the activities of the Disciplinary Chamber and added: *'It is actually Berlin that wants to abolish the Disciplinary Chamber. This shows how Poland wants to be treated by the Germans, who have already announced that they want to build a federal state, which means nothing more than that they want Poland to be a <<land>>'*¹⁹;

¹¹ https://www.rmf24.pl/raporty/raport-batalia-o-sady/fakty/news-kaczynski-o-izbie-dyscyplinarnej-sn-zlikwidujemy-ja-i-w-ten-nld,5406354#crp_state=1,

¹² <https://wiadomosci.wp.pl/izba-dyscyplinarna-do-likwidacji-kaczynski-mowi-o-anarchii-w-polskich-sadach-6694377582218048a>,

¹³ <https://emerging-europe.com/news/polands-pm-takes-aim-at-eu-leaders-citing-blackmail-in-strasbourg-address/>,

¹⁴ <https://wiadomosci.onet.pl/kraj/mateusz-morawiecki-zamierzamy-zlikwidowac-izbe-dyscyplinarna-sadu-najwyzszego/glvpx54>,

¹⁵ <https://www.rp.pl/polityka/art19067011-pis-zamknie-izbe-dyscyplinarna-juz-za-tydzien>,

¹⁶ <https://www.newsweek.pl/polska/polityka/likwidacja-izby-dyscyplinarnej-w-obozie-wladzy-awantura-o-najnowszy-projekt/s3q892g>,

¹⁷ <https://www.prawo.pl/prawnicy-sady/likwidacja-izby-dyscyplinarnej-projekt-do-konca-listopada,511817.html>,

¹⁸ <https://www.wprost.pl/polityka/10563928/likwidacja-izby-dyscyplinarnej-sn-ponad-polowa-polakow-za-zbigniew-ziobro-nie-ma-zgody-na-realizowanie-dyktatu-ue.html>,

¹⁹ <https://wydarzenia.interia.pl/news-ograniczenie-dzialalnosci-izby-dyscyplinarnej-ziobro-ciezki-nld,5699198>,

- In turn, on 14 December 2021, Prime Minister Mateusz Morawiecki referred to the plans to abolish the Disciplinary Chamber in a statement to the media, saying that *'When will the final draft see the light of day? We will either be in more or less of a hurry, depending on how we are treated by the European Commission, but we will certainly not be acting at anyone's gunpoint here'*;²⁰
- As a result, despite numerous statements by prominent politicians of the ruling camp about the plans to abolish the Disciplinary Chamber (of which only some have been quoted above), no specific bill in this regard has been submitted to the Sejm,
- It should be emphasised that the Polish Judges' Association 'Iustitia' has prepared a comprehensive bill amending, *inter alia*, the laws on the Supreme Court and on the National Council of the Judiciary, which envisages the liquidation of the Disciplinary Chamber of the Supreme Court and the restoration of the procedure of disciplinary proceedings against judges in accordance with international standards, as well as the restoration of the independence of the National Council of the Judiciary.²¹ If the ruling camp really wanted to implement the guidelines arising from the CJEU rulings, this draft could be a convenient starting point for legislative work.
- However, according to statements made by politicians from the ruling camp, as well as by Małgorzata Manowska,²² who acts as the First President of the Supreme Court, any future changes are more likely to be aimed at a further weakening of the independence of the Polish judiciary. According to these statements, the liquidation of the Disciplinary Chamber would be combined with a further stage of the so-called 'grand reform' of the judiciary, which would involve, on the one hand, the so-called 'flattening' of the ordinary judiciary (by changing the structure from a three-tier to a two-tier system, which is to be a way of verifying rebellious judges) and, on the other, of lowering the status of the Supreme Court by reducing the number of its members from around 100 to around 30,²³ which would prevent it from performing its constitutional function of exercising judicial supervision over the ordinary courts.

5. Reaction of the Public Prosecutor's Office and the Prosecutor General

- In one of his civil cases (case ref. I C 2329/20), on 31 March 2021, the former press officer of the 'old' NCJ, Judge Waldemar Żurek, requested a preliminary ruling from the CJEU on the legal status of ordinary court judges appointed on the motion of the neo-NCJ. Subsequently, the public prosecutor's office joined the case (which happens very rarely in civil cases) and, on 28 September 2021, applied to the court for the removal of Judge Waldemar Żurek, arguing that the submission of the preliminary request by the judge *'undoubtedly constitutes a circumstance of such a kind as to give rise to justified doubts as to the impartiality of the judge in the present case'*.²⁴ The prosecutor referred to the guidelines of Bogdan Świączkowski, Deputy Public Prosecutor General, of 16 December 2019²⁵ as the basis for requesting the removal of the judge;²⁶
- On 11 December 2021, Minister of Justice-Prosecutor General Zbigniew Ziobro held a press conference, at which he referred to the publication in the French newspaper 'Liberation'²⁷ criticising

²⁰ <https://www.pap.pl/aktualnosci/news%2C1027660%2Clikwidacja-izby-dyscyplinarnej-sn-premier-nie-bedziemy-dzialac-pod-niczylim>,

²¹ https://www.iustitia.pl/images/pliki/IUSTITIA_eng.pdf,

²² <https://serwisy.gazetaprawna.pl/orzeczenia/artykuly/8267904,manowska-neosedziowie-wyrok-tk-wywiad.html>,

²³ <https://serwisy.gazetaprawna.pl/orzeczenia/artykuly/8272490,kaczynski-sad-najwyzszy-reforma-sadownictwa-orzecznictwo.html>,

²⁴ <https://krakow.wyborcza.pl/krakow/7,44425,27631261,prokuratura-zada-odsuniecia-sedziego-od-sprawy-cywilnej-bo.html>,

²⁵ See the footnote 39,

²⁶ Although the motion to remove Judge Waldemar Żurek from the examination of the case was not granted, it can hardly be considered a coincidence that the authorities of the Kraków court appointed a judge to examine the case, who is currently seconded to a higher court by the Minister of Justice, which means that he may be arbitrarily removed from this post at any time.

²⁷ https://www.liberation.fr/international/europe/dans-les-hautes-spheres-de-lunion-europeenne-des-commissaires-et-des-juges-a-lethique-en-toc-20211201_63AW5LPZPNE23NNCMADOXNSGEM/,

the CJEU for alleged corruption links (literally: *'the gigantic, biggest scandal of a corrupt nature, undermining the foundations of the functioning of the most important EU institutions'*). Commenting on the CJEU judgments regarding Poland, he stated that *'these judgments could have been dictated by considerations other than the letter of the law and the treaties, which should only be followed by judges who are impartial by nature, hard facts indicate'*. Zbigniew Ziobro also stated that the CJEU is staffed mostly by people connected with the European People's Party, headed by Donald Tusk, and announced that he would write to the president of the European Commission, Ursula von den Leyen, requesting action in regard to the article in 'Liberation';²⁸ as it later transpired, Zbigniew Ziobro's speech was only a prelude to further actions by the prosecution service against the CJEU;

- On 15 December 2021, the Regional Prosecutor's Office in Warsaw registered **pre-trial proceedings for a criminal offence of overstepping the official capacity of CJEU judges** while hearing cases against Poland;²⁹
- On 22 December 2021, the Department of Judicial Proceedings of the National Prosecutor's Office sent guidelines to regional prosecutors reminding them of the obligation arising from Bogdan Świączkowski's letter of 16 December 2019³⁰ to denounce to the disciplinary commissioners those judges who question the status of other judges of ordinary courts or judges of the Supreme Court appointed with the participation of neo-NCJ;
- On 22 December 2021, the Department of Judicial Proceedings of the State Prosecution Service sent guidelines to upper regional prosecutors stating that judgments of the ECtHR and the CJEU regarding the administration of justice are not applicable in Poland and should not be treated as sources of law³¹, as they do not fall within the constitutional list of sources of law³².

6. Reaction from Małgorzata Manowska, person acting as the First President of the Supreme Court

- On 16 July 2021, i.e. on the second day after the judgment of the CJEU declaring the Disciplinary Chamber incompatible with European law, Małgorzata Manowska, a person acting as the First President of the Supreme Court³³, revoked her earlier order suspending the activity of the Disciplinary Chamber in disciplinary matters, thus fully restoring its ability to operate and, at the same time, in an official statement published on the Supreme Court's website, she stated *'I firmly believe that the Disciplinary Chamber of the Supreme Court is fully independent (...) and the judges of this Chamber are fully independent in their adjudication'*;³⁴

²⁸<https://www.pap.pl/aktualnosci/news%2C1025263%2Cziobro-skierowal-list-do-szefowej-ke-mamy-do-czynienia-z-gigantyczna-afera>,

²⁹ <https://notesfrompoland.com/2021/12/17/polish-prosecutors-investigate-whether-eu-judges-exceeded-powers-in-rulings-against-poland/>,

³⁰ A translation of Bogdan Świączkowski's guidelines of 16 December 2019 can be found on page 26 of 'Themis' report: http://themis-sedziowie.eu/wp-content/uploads/2021/01/wer_Response-of-Polish-authorities-to-CJEU-judgement_wer11_01_2020_FC_wer-1_RW_201220-2.pdf,

³¹ <https://wyborcza.pl/7,75398,27941820,prokuratura-krajowa-idzie-na-zderzenie-z-tsue-i-etpcz-uznaja.html>,

³² This statement is in contradiction with Article. 91.1 of the Polish Constitution, contained in the chapter "Sources of law", which states: *'After promulgation thereof in the Journal of Laws of the Republic of Poland (Dziennik Ustaw), a ratified international agreement shall constitute part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a statute'*,

³³ Due to numerous irregularities both in her appointment as a judge of the Supreme Court and in her appointment as First President of that court, Małgorzata Manowska cannot be considered a legitimate president of Poland's most important court, see: <http://themis-sedziowie.eu/materials-in-english/position-of-the-board-of-the-themis-judges-association-of-28-may-2020-regarding-the-appointment-of-the-first-president-of-the-supreme-court/>,

³⁴ <https://www.sn.pl/aktualnosci/SitePages/Wydarzenia.aspx?ItemSID=769-0dc69815-3ade-42fa-bbb8-549c3c6969c5&ListName=Wydarzenia>,

- On the same day, in an interview for the Onet.pl news portal, the author of this report commented on Małgorzata Manowska's decision as a 'legal crime', adding that she should not hold any position of public trust; this led to the opening of disciplinary explanatory proceedings against him;³⁵
- On 5 August 2021, however, in the implementation of the CJEU judgment of 15 July 2021, Małgorzata Manowska issued orders 90/21³⁶ and 91/21³⁷ partially freezing the ability of the Disciplinary Chamber of the Supreme Court to handle disciplinary cases, cases of lifting the immunity of judges and permission for their pre-trial detention, as well as cases regarding labour and social insurance law and the status of retired Supreme Court judges; in accordance with these orders, new cases received by the Supreme Court were to be kept at the office of the First President of the Supreme Court without any further proceedings being assigned to them for the duration of the order (i.e. until 15 November 2021). However, Małgorzata Manowska left the matter of continuing to handle disciplinary cases which had been received by the Supreme Court before the order was issued to the discretion of the President of the Disciplinary Chamber and the judges of that chamber; on 15 November 2021, Małgorzata Manowska issued orders 136/21 and 137/21 extending the validity of the orders of 5 August 2021 to 31 January 2022.³⁸ In practice, the implementation of Małgorzata Manowska's orders is such (according to her next order no. 93/21 of 10 August 2021³⁹) that she forwards the files to the President of the Disciplinary Chamber for registration, with a request to return them to the First President of the Supreme Court, but with the indication that an assessment should be made as to 'whether there is a need for urgent action in the case'.⁴⁰ This form of bogus suspension⁴¹ of the Disciplinary Chamber by Małgorzata Manowska has proved highly ineffective, as the Disciplinary Chamber has indefinitely suspended 4 judges since November 2021, as will be discussed below (see section 10 of the report);
- On 22 October 2021, Małgorzata Manowska published an official position strongly condemning judges who challenge the legal status of judges appointed or promoted with the involvement of the neo-NCJ, describing their actions as 'acts of tyranny';⁴²
- Małgorzata Manowska's negative attitude towards the implementation of CJEU decisions is best demonstrated by the entirety of the actions against the Civil Chamber of the Supreme Court she has taken to prevent the implementation of the CJEU's preliminary ruling of 6 October 2021 (C-487/19) which was raised in Judge Waldemar Żurek's case. Since the implementation of the CJEU's preliminary ruling by the panel of the Supreme Court would most probably undermine the status of all the neo-Judges of the Supreme Court (including Małgorzata Manowska herself), immediately after the return of the file from the CJEU, Małgorzata Manowska retained the file in the Supreme Court's chancellery for a longer time under the pretext of the need to request the disciplinary commissioner to start disciplinary proceedings against one of the neo-judges⁴³ (despite the ability to promptly make a

³⁵ <https://polishnews.co.uk/legal-crime-judge-dariusz-mazur-for-the-first-president-of-the-supreme-court-malgorzata-manowska-and-the-disciplinary-chamber-mazur-is-to-provide-explanations/>,

³⁶ https://www.sn.pl/aktualnosci/SiteAssets/Lists/Wydarzenia/AllItems/Zarz_PP_SN_90_2021.pdf,

³⁷ https://www.sn.pl/aktualnosci/SiteAssets/Lists/Wydarzenia/AllItems/Zarz_PP_SN_91_2021%20tekst_ujednolicony.pdf,

³⁸ <https://serwisy.gazetaprawna.pl/orzeczenia/artykuly/8294634,izba-dyscyplinarna-sad-najwyzszy.html>,

³⁹ http://www.sn.pl/aktualnosci/SiteAssets/Lists/Wydarzenia/AllItems/Zarz_PP_SN_93_2021.pdf,

⁴⁰ <https://wyborcza.pl/7,75398,27820444,izba-dyscyplinarna-zawiesza-w-luce-wystarczylo-kilka-godzin.html>,

⁴¹ In the opinion of many lawyers, the correct implementation of the CJEU's judgments by the First President of the Supreme Court (until the Disciplinary Chamber is liquidated) should involve issuing the same orders as in 2020 issued by the previous, legal president of the Supreme Court, Małgorzata Gersdorf, referring cases from the illegal Disciplinary Chamber of the Supreme Court to the legal chambers, i.e. the Criminal Chamber and the Chamber of Labour and Social Security, thereby completely preventing the Disciplinary Chamber from adjudicating; see: <https://oko.press/dzialania-pozorowane-i-chaos-w-sn-sedziowie-izby-karnej-przejma-czesc-spraw-izby-dyscyplinarnej/>,

⁴² <http://themis-sedziowie.eu/materials-in-english/position-of-the-first-president-of-the-supreme-courtmalgorzata-manowska-phd-in-connection-with-cases-of-judicial-undermining-of-appointments-of-judges/>,

⁴³ This applies to Judge Aleksander Stępkowski, with respect to whom disciplinary proceedings were allegedly initiated because he issued a ruling in the case that was unfavorable to Judge Żurek in circumstances where he did not have the case files. This reason, however, only appears to be a pretext used by Małgorzata Manowska to retain the files, as there is no information to date that she has approached the Disciplinary Commissioner in this matter.

certified copy of the file).⁴⁴ She then started to justify the further retention of the file at the chancellery by the alleged need to prepare a legal opinion on the case by the Supreme Court's Research and Analysis Bureau (even though this constitutes an encroachment into the sphere of jurisprudence of the Supreme Court panel which is presiding over the case of which Małgorzata Manowska is not a member).⁴⁵ Lawyers representing Judge Żurek in the proceedings have notified the European Commission about Małgorzata Manowska's retention of the file;⁴⁶

- Another of Małgorzata Manowska's actions intended to prevent the implementation of the CJEU decision of 6 October 2021 is the reorganization of the Civil Chamber of the Supreme Court as a result of her order coming into effect on 1 January 2022, which involves the liquidation of the existing 5 divisions and the establishment of 3 new ones in their place, accompanied by dismissal of 5 'old' judges from their positions as heads of divisions and the appointment of 3 neo-judges in their place;⁴⁷ it is to be expected that the new presidents will block the implementation of the CJEU ruling by the 'old' judges of the Supreme Court. The chairman of the panel deciding on the case, 'old' Judge Karol Waitz, set a date for the hearing of the case for 31 January 2022, simultaneously asking Małgorzata Manowska to return the file, but encountered her firm refusal. On 5 January 2022, the person acting as the President of the Civil Chamber of the Supreme Court, neo-judge Joanna Misztal-Konecka, requested Judge Karol Waitz to give an explanation within 3 days as to why he had set a hearing date despite not having the case file and she instructed the Secretariat to ascertain whether he had a copy of the file.⁴⁸

7. The neo-NCJ's response

- On 19 November 2021, the neo-NCJ passed a resolution (WP.710.3-6.2021) condemning judges who undermine the legal status of other judges by refusing to adjudicate with them and calling on them to stop such practices or resign from the profession, and authorizing their administrative superiors to remove them from the bench; the resolution is clearly targeted at judges who, while implementing the CJEU rulings, challenge the legal status of neo-judges;⁴⁹
- Despite the unambiguously negative assessment of the independence of the neo-National Council of the Judiciary in a number of rulings by both the CJEU and ECtHR, and the impending expiry of its term in office (it expires in March 2022), the government has not proposed a draft law that would restore the constitutionality of the membership of this body and therefore, the process of nominating candidates for the next term of office of this unconstitutional body ended on 4 January 2022. According to media reports, 14 out of the 15 current judge-members of this body (i.e. all except Jędrzej Kondek), as well as several other people closely related to the Minister of Justice (including two former deputy ministers of justice, i.e. Łukasz Piebiak, known in the media as the informal head of the 'troll farm in the Ministry of Justice',⁵⁰ and Anna Dalkowska) submitted their applications.⁵¹ It is to be expected

⁴⁴ <http://themis-sedziowie.eu/materials-in-english/judge-zureks-case-is-stuck-in-the-secretariat-this-is-how-the-first-president-of-the-supreme-court-is-blocking-the-cjeu-ruling-by-ewa-ivanova-gazeta-wyborcza/>,

⁴⁵ <https://ruleoflaw.pl/malgorzata-manowska-blocks-the-implementation-of-an-important-cjeu-judgment/>,

⁴⁶ <https://wolnesady.org/files/2021.12.30-Oswiadczenie-pelnomocnikow.pdf>,

⁴⁷ <https://www.sn.pl/aktualnosci/SitePages/Wydarzenia.aspx?ItemSID=801-0dc69815-3ade-42fa-bbb8-549c3c6969c5&ListName=Wydarzenia>,

⁴⁸ https://www.sn.pl/aktualnosci/SiteAssets/Lists/Komunikaty_o_sprawach/AllItems/Zarz%C4%85dzenie%20Prezesa%20Kieruj%C4%85cego%20Prac%C4%85%20IC%20z%20dnia%205%20stycznia%202022%20r.pdf,

⁴⁹ Link to the original publication in Polish: <https://krs.pl/pl/dzialalnosc/opinie-stanowiska-uchwaly/1229-stanowisko-krajowej-rady-sadownictwa-z-dnia-19-listopada-2021-r-wp-710-3-6-2021.html>; link to the English translation: <http://themis-sedziowie.eu/materials-in-english/position-of-the-neo-national-council-of-the-judiciary-of-19-november-2021/>,

⁵⁰ <http://themis-sedziowie.eu/materials-in-english/onet-investigation-troll-farm-at-the-ministry-of-justice-or-we-do-not-put-in-jail-for-doing-good/>,

⁵¹ <https://oko.press/sami-swoi-ida-do-nowej-krs-bis-piebiak-zastepczyini-i-kolezanka-ziobry-oraz-jego-nominaci/>,

that, should a neo-NCJ be appointed for a new term of office with such a ‘strengthened’ membership, it will be even more at the disposal of the ruling camp;

- On 18 January 2022, as many as 50 former members of the NCJ who had served on that body in previous terms (and thus had all been elected by other judges in a manner that is consistent with the Polish Constitution and international law) signed an open letter in which they requested the legislative and executive authorities to restore the compatibility of the selection procedure of the NCJ judges with the Polish Constitution and international law; the former members of the NCJ also appealed to all Polish judges to refrain from participating in the defective NCJ election procedure until the relevant statutory changes are made.⁵²
- On 21 January 2022, the neo-NCJ decided to conduct a lustration exercise at the Supreme Court, which is to include cases from the Disciplinary Chamber regarding the suspension of judges, and is to focus on the efficiency of the proceedings in these cases. It appears that the objective of the lustration is to put pressure on the Disciplinary Chamber to examine suspension cases of judges more quickly, an action which is clearly in breach of the CJEU rulings.⁵³

8. Administrative repressions applied by the Minister of Justice and court presidents appointed by him regarding individual judges who implement CJEU rulings

- Since September 2021, as many as 10 judges of Polish ordinary courts have been temporarily suspended for 30 days, formally on the basis of the ‘old’ Article 130 of the Act on the Structure of Ordinary Courts,⁵⁴ but in practice, on the basis of the amendment to this Act introduced by the Muzzle Act.⁵⁵ Four of them were suspended by the Minister of Justice, six by politically loyal court presidents for issuing judicial decisions implementing the CJEU guidelines, by questioning the legal status of neo-judges or the legal status of the Disciplinary Chamber, namely:
 - Judge **Adam Synakiewicz** of the Regional Court in Częstochowa – was suspended by a decision of Minister of Justice Zbigniew Ziobro of 8 September 2021 for having overturned a judgment of a court of the first instance containing a neo-judge, citing the case law of the CJEU and ECtHR;⁵⁶ after 30 days of suspension, the judge returned to his post and issued several more rulings questioning the legal status of neo-judges;
 - Judge **Piotr Gąciarek** of the Regional Court in Warsaw – was suspended by a decision of the President of the Regional Court in Warsaw, Piotr Schab (also acting as the central disciplinary commissioner for judges), of 13 September 2021 for a declaration made a few days earlier, in which the Judge refused to adjudicate in a bench with a judge promoted by the neo-NCJ;⁵⁷

⁵² <http://themis-sedziowie.eu/materials-in-english/open-letter-of-judges-members-of-the-national-council-of-the-judiciary-of-all-terms-of-office-from-1990-to-2018/>,

⁵³ <https://oko.press/rzad-zwodzi-ue-izba-dyscyplinarna-dziala-ale-ma-miec-nowego-prezesa-i-chce-zawiesic-3-nowych-sedziow/>,

⁵⁴ Article 130, para. 1 literally states ‘If a judge is arrested because he was caught in the act of committing an intentional crime or if, in view of the nature of the act committed by the judge, the dignity of the court or the important interests of the service require his immediate removal from the performance of his duties, the court president or the minister of justice may order the immediate interruption of the judge’s official duties until a disciplinary court issues a resolution of a disciplinary court, for no longer than one month’. In practice, this provision has so far only been applied in situations where judges have been caught red-handed while committing an offence. Its application to judges who are implementing CJEU judgments is a very serious abuse.

⁵⁵This applies to Article 107 § 1, item 3 of the Act on the Structure of Ordinary Courts as amended by the Muzzle Act, according to which: ‘A judge is liable on disciplinary charges for (disciplinary) offenses in conducting his office, including: (...) actions questioning the existence of an official relationship a judge, the effectiveness of the appointment of a judge, or the power of a constitutional body of the Republic of Poland’;

⁵⁶ <http://themis-sedziowie.eu/aktualnosci/judge-piotr-gaciarrek-was-suspended-by-ziobros-nominee-for-implementing-eu-law-by-m-jaloszewski-oko-press/>,

⁵⁷ <https://ruleoflaw.pl/judge-piotr-gaciarrek-was-suspended-by-ziobros-nominee-for-implementing-eu-law/>,

- Judge **Marta Piłśnik** of the District Court in Warsaw – was suspended by a decision of Minister of Justice Zbigniew Ziobro of 15 September 2021 because the judge released an accused prosecutor from custody because she applied July’s CJEU rulings which challenged the legality of the Disciplinary Chamber of the Supreme Court, which had decided to lift the prosecutor’s immunity;⁵⁸ after 30 days of suspension, the judge returned to her post;
- Judge **Maciej Ferek** of the Regional Court in Kraków – was suspended by a decision of the President of the Regional Court in Kraków, Dagmara Pawełczyk-Woicka, of 22 October 2021 for not recognizing three rulings of neo-judges, citing the case law of the CJEU and ECtHR;⁵⁹
- Judge **Agnieszka Niklas-Bibik** of the Regional Court in Słupsk – after having overturned two rulings of the court of the first instance with a neo-judge in the bench (citing CJEU and ECtHR case law) on 4 October 2021, was transferred from the Appeals Division to the First Instance Division on 18 October 2021 as a punishment. Subsequently, after she submitted two requests for preliminary rulings to the CJEU in the same cases on 20 October 2021, she was suspended from her duties for 30 days on the basis of a decision of the President of the Regional Court in Słupsk, Andrzej Michałowicz, (husband of Joanna Kołodziej-Michałowicz, a prominent member of the neo-NCJ) dated 29 October 2021.⁶⁰ The judge returned to her position after the 30-day suspension;⁶¹
- Judge **Maciej Rutkiewicz** of the District Court in Elbląg – was suspended by a decision of the President of the District Court in Elbląg, Agnieszka Walkowiak,⁶² of 9 November 2021 for discontinuing proceedings against a prosecutor accused in criminal proceedings on the basis of the judgment of the CJEU which challenged the legality of the Disciplinary Chamber of the Supreme Court, which had decided to lift the prosecutor’s immunity;⁶³
- Judge **Krzysztof Chmielewski** of the Regional Court in Warsaw – was suspended by a decision of the Vice-President of the Regional Court in Warsaw, Przemysław Radzik (also being the deputy central disciplinary commissioner for judges) of 15 December 2021 for questioning the legal status of the neo-judge, Agnieszka Stachniak-Rogalska, who had been promoted to the position of judge of the regional court with the participation of the neo-NCJ and appointed President of the District Court by the current Minister of Justice (Judge Chmielewski, at the request of a party, excluded her from the bench, considering that there were doubts about her independence);⁶⁴
- Judge **Marzanna Piekarska-Drażek** of the Court of Appeal in Warsaw – was suspended by a decision of Minister of Justice Zbigniew Ziobro of 24 January 2022 for having overturned a judgment of a court of the first instance containing a neo-judge, citing the case law of the CJEU and ECtHR.⁶⁵ The judge returned to her position after the 30-day suspension;
- Judge **Joanna Hetnarowicz-Sikora** of the District Court in Słupsk, board member of the ‘Iustitia’ judges’ association - was suspended by a decision of Minister of Justice Zbigniew Ziobro of 8 February 2022 for excluding on 29 November 2021 a neo-judge from the bench. In an unprecedented and humiliating situation, she received the decision on her immediate suspension during a day of court sessions, just minutes before her last case of the day, forcing her to explain her inability to conduct the court session which she was to preside over to the

⁵⁸ <https://www.rp.pl/sady-i-trybunaly/art18924421-sedzia-odsunieta-od-orzekania-podwazyła-decyzje-izby-dyscyplinarnej> ,

⁵⁹ <https://www.prawo.pl/prawnicy-sady/protest-sedziow-w-obronie-macieja-ferka.511391.html>,

⁶⁰ <https://ruleoflaw.pl/judge-niklas-bibik-suspended-for-applying-eu-law-and-for-asking-preliminary-questions-to-the-cjeu/>,

⁶¹ <https://ruleoflaw.pl/judge-niklas-bibik-suspended-for-applying-eu-law-and-for-asking-preliminary-questions-to-the-cjeu/>,

⁶² She was previously known for confiscating judges’ robes to prevent them from taking them to the March of a Thousand Robes in Jan 2020.

⁶³ <https://ruleoflaw.pl/judge-rutkiewicz-of-elblag-suspended-for-applying-eu-law-against-the-cjeu-order/>,

⁶⁴ <https://oko.press/izba-dyscyplinarna-chce-zawiesic-sedziego-chmielewskiego-z-warszawy/>,

⁶⁵ <https://oko.press/ziobro-zlamal-zabezpieczenie-tsue-i-zawiesil-sedzie-piekarska-drazek/>,

sides of the proceedings. She was formally suspended on the basis of Article 130 of the Act on the Structure of Ordinary Courts, being suspected of a disciplinary offence under Article 107 of the Act on the Structure of Ordinary Courts (*disciplinary responsibility of a judge*) and Article 231 of the Criminal Code (*abuse of power*). In the decision, the minister, having been notified of the ‘offence’ by the Deputy Disciplinary Commissioner of the Judges of the Ordinary Courts, claimed the judge had “*acted against the public interest in the form of the proper functioning of the justice system, thus undermining the dignity of the District Court in Słupsk, harmed crucial interests of the service and undermined the public trust towards the justice system*”.⁶⁶ The judge returned to her position after the 30-day suspension;

- o Judge **Anna Głowacka** of the Regional Court in Kraków – was suspended by a decision of the President of the Regional Court in Kraków, Dagmara Pawełczyk-Woicka, of 25 February 2022 for not recognizing ruling of neo-judge, citing the case law of the CJEU and ECtHR⁶⁷;
- In September and October 2021, the President of the Regional Court in Kraków, Dagmara Pawełczyk-Woicka, transferred 4 judges (**Maciej Czajka, Beata Morawiec, Katarzyna Wierzbicka** and **Wojciech Maczuga**) to other divisions, punishing them for having submitted a written statement to her in which they announced that if they are required to consider cases with neo-judges, they intended to question their legal status.
- In turn, in January 2022, Dagmara Pawełczyk-Woicka decided that Judge **Grzegorz Buła**, who submitted dissenting opinions to judgments in two cases, in which he questioned the legal status of the neo-judges adjudicating with him (one of whom was Dagmara Pawełczyk-Woicka herself), is to be transferred from the appellate division to the first-instance division as punishment; on the other hand, with respect to Judge **Edyta Barańska**, who overturned a ruling involving a neo-judge on 4 January 2022, Dagmara Pawełczyk-Woicka ordered a lustration exercise involving a review of her case files to look for possible misconduct, which could provide grounds for the initiation of disciplinary proceedings (both of these people are judges of the Regional Court in Kraków).⁶⁸
- Dagmara Pawełczyk-Woicka’s latest ‘brilliant’ idea to prevent ‘old’ judges from challenging the legal status of neo-judges is to create a special section within the first Civil Division of the Regional Court in Kraków in which only neo-judges, as well as judges seconded there by the Minister of Justice (whose legal status was challenged under European law by the CJEU judgment of 16 November 2022 in joined Cases C-748/19 to C-754/19), will adjudicate as the appellate instance; the judges of the Kraków court rightly claim that the creation of such a special unit consisting of subservient judges will blatantly undermine the right of citizens to a fair trial before an independent and impartial court.

9. Disciplinary proceedings against judges implementing CJEU guidelines

- Notwithstanding the fact that Judges Adam Synakiewicz, Piotr Gąciarek, Marta Pilśnik, Maciej Ferek, Agnieszka Niklas-Bibik, Maciej Rutkiewicz, Krzysztof Chmielewski and Marzanna Piekarska-Drażek were subjected to the administrative repression described above (30-day suspension from their duties), and four of them were subsequently suspended indefinitely by the Disciplinary Chamber of the Supreme Court (see below, section 10 of the report), disciplinary proceedings were applied against all of them by the central Disciplinary Commissioners. In these proceedings, each of these judges was charged with having ‘*offended the dignity of his (her) office in that, while exceeding his (her) authority, he (she) granted himself (herself) the competence to examine the legality of the appointment of another*

⁶⁶ <https://tvn24.pl/polska/sedzia-joanna-hetnarowicz-sikora-odsunieta-od-orzekania-w-trybie-natychmiastowym-przez-ministra-sprawiedliwosci-zbigniewa-ziobre-5592257>

⁶⁷ <https://oko.press/w-cieniu-wojny-ludzie-ziobry-rozkrecaja-represje-sedziow/>,

⁶⁸ <https://oko.press/prezeska-od-ziobry-reorganizuje-krakowskich-sedziow-etpcz-i-tsue/>,

judge, by which he (she) took unlawful actions questioning the effectiveness of the appointment and the existence of the official relationship of the other judge, and questioning the legitimacy of the constitutional bodies of the Republic of Poland – the Constitutional Tribunal and the National Council of the Judiciary’, which was qualified as a disciplinary offence under Article 107 § 1, items 3 and 5⁶⁹ of the Law on the Structure of Ordinary Courts of 27 July 2001;

- The disciplinary charges presented to the individual judges listed above have been individualized, depending on the facts. For example, three separate disciplinary charges were presented on 4 November 2021 to Judge Maciej Ferek, who issued three rulings challenging the status of neo-judges;⁷⁰
- It should be emphasized that, in the case of **Judge Agnieszka Niklas-Bibik, the direct basis for the pressing two of the four disciplinary charges on 29 November 2021 was the fact that she had applied to the CJEU for preliminary rulings in two cases;**⁷¹ Agnieszka Niklas-Bibik therefore became the second Polish judge to face disciplinary charges for referring to the CJEU for a preliminary ruling; previously, in December 2019, such a charge was brought against Judge Anna Bator-Ciesielska of the Regional Court in Warsaw;⁷²
- Another judge against whom disciplinary proceedings have been raised is **Marzanna Piekarska-Drażek**, Judge of the Court of Appeal in Warsaw, who was charged on 12 January 2022 by the Deputy Disciplinary Commissioner of the Judges of the Ordinary Courts, Michał Lasota, with a disciplinary charge on the grounds that, on 9 December 2021 she overturned a ruling of neo-Judge Beata Adamczyk-Łabuda of the Regional Court in Warsaw (who was promoted to office of regional court judge by the neo-NCJ and is currently employed in the office of the central disciplinary commissioners for judges, Piotr Schab, Przemysław Radzik and Michał Lasota) at the beginning of December 2021, citing the rulings of the CJEU, ECHR and the Polish Supreme Court. For this reason, Judge Piekarska-Drażek was charged with the disciplinary offence of breaching the Muzzle Act. According to the commissioner’s assessment, the judge also committed the offence of overstepping her powers under Article 231 of the Penal Code;⁷³
- Additionally, on 22 October 2021 the central disciplinary commissioner initiated disciplinary explanatory proceedings against 14 judges of the Regional Court in Kraków (**Maciej Czajka, Waldemar Żurek, Grzegorz Dyrka, Maciej Ferek, Jarosław Gaberle, Janusz Kawalek, Edyta Barańska, Joanna Makarska, Dariusz Mazur, Beata Morawiec, Ewa Szymańska, Katarzyna Wierzbicka, Wojciech Maczuga and Anna Głowacka**)⁷⁴ because of their written statement to the President of the Kraków Regional Court, Dagmara Pawełczyk-Woicka, in which they announced that if they are to examine cases with neo-judges, they intended to question their legal status.⁷⁵

⁶⁹ The current wording of the provision was introduced by the so-called ‘Muzzle Act’.

⁷⁰ The official statement of the Disciplinary Commissioner of the Ordinary Court Judges: <http://rzecznik.gov.pl/wp-content/uploads/2021/11/KomunikatSOKrakow.pdf>,

⁷¹ Two identical disciplinary charges have been raised against Judge Agnieszka Niklas-Bibik in connection with the submission of preliminary questions to the CJEU as follows: ‘on 20 October 2021 in Słupsk, in her capacity as a public official, the judge, overstepping her authority in a manifest and flagrant manner, breached the provisions of the law under Article 47 a § 1 and Article 47 b § 1 and § 5 of the Act on the Structure of Ordinary Courts of 27 July 2001, while simultaneously breaching the dignity of her office, by taking judicial actions resulting in the issuance of a decision in the case of case ref. VI Ka 55/21 of the Słupsk Regional Court, under the obligation to examine the case, which she was discharged from examining by the resolution of the Court Board of the Słupsk Regional Court of 11 October 2021, also satisfying the requirements of an intentional crime prosecuted by public indictment under Article 231 § of the Penal Code, i.e. a disciplinary offence under Article 107 § 1, items 1 and 5 of the Law on the Structure of the Ordinary Courts of 27 July 2001;

⁷² See the report ‘Response of the Polish authorities to the CJEU judgment of 19 Nov 2019’, 3rd publication, pages 6, 22–23, http://themis-sedziowie.eu/wp-content/uploads/2021/01/wer_Response-of-Polish-authorities-to-CJEU-judgement_wer11_01_2020_FC_wer-1_RW_201220-2.pdf,

⁷³ <https://oko.press/sedziowie-nie-boja-sie-represji-ludzi-ziobry/>,

⁷⁴ Official announcement of the opening of an explanatory proceedings: <http://rzecznik.gov.pl/wp-content/uploads/2021/10/KomunikatKrakow.pdf>,

⁷⁵ <http://themis-sedziowie.eu/materials-in-english/krakow-judges-do-not-want-to-adjudicate-with-neo-judges-they-immediately-encountered-reprisals-by-m-jaloszewski-oko-press/>,

10. Activity of the Disciplinary Chamber of the Supreme Court

On 22 July 2021, referring to the CJEU rulings of 14 and 15 July, Tomasz Przesławski, acting as President of the Disciplinary Chamber of the Supreme Court, published his position on the official website of the Supreme Court, from which it follows, among other things, that the Disciplinary Chamber is not an addressee of the CJEU rulings, as *‘they are not addressed to the bodies responsible for applying the law, but for enacting it’*.⁷⁶ Despite the fact that the CJEU stated in its judgment of 15 July 2021 that the Disciplinary Chamber of the Supreme Court does not constitute a court in the meaning of European law, this body has by no means ceased its activities, as evidenced by the following facts:

- on 23 September 2021, the Disciplinary Chamber lifted the immunity of an ‘old’ judge of the Supreme Court, **Marek Pietruszyński**, because of a very dubious charge brought by the politicized Internal Affairs Department of the State Prosecution Service, of allegedly failing to fulfil his judicial duties; two very similar cases of lifting immunity are pending before the Disciplinary Chamber of the Supreme Court⁷⁷ against Judges Andrzej Stępka and Włodzimierz Wróbel;⁷⁸
- on 16 November 2021, the Disciplinary Chamber of the Supreme Court indefinitely prolonged Judge **Maciej Ferek**’s suspension (which was applied by the President of the Regional Court in Kraków) and cut his salary by 50% under the Muzzle Act.⁷⁹ Not only was Judge Ferek not notified of the date of the hearing in the Disciplinary Chamber (the same happened to the other judges below), but the official announcement that a hearing had been held in his case appeared on the Supreme Court’s website after the decision to lift his immunity had been announced, so that the judge learned of his suspension from the pro-government press;
- on 17 November 2021, the Disciplinary Chamber sentenced retired prosecutor **Wojciech Sadrakuła** to a disciplinary penalty of a reprimand for having criticized a bill intended to politically subordinate the Constitutional Tribunal at a meeting of the Parliamentary Committee in 2016;
- on 24 November 2021, the Disciplinary Chamber of the Supreme Court indefinitely prolonged Judge **Piotr Gąciarek**’s suspension (applied by the President of the Regional Court in Warsaw) and cut his salary by 40%, under the Muzzle Act;
- on 15 December 2021, the Disciplinary Chamber of the Supreme Court indefinitely prolonged Judge **Maciej Rutkiewicz**’s suspension (applied by the President of the Regional Court in Elbląg) and cut his salary by 40%, under the Muzzle Act;
- on 5 January 2022, the Disciplinary Chamber of the Supreme Court indefinitely prolonged Judge **Krzysztof Chmielewski**’s suspension (applied by the President of the Regional Court in Warsaw) and cut his salary by 25%, under Muzzle Act;⁸⁰
- to date, the only judge to avoid suspension after her file was transferred to the Disciplinary Chamber is **Agnieszka Niklas-Bibik** of the Regional Court in Słupsk.⁸¹ Although the Disciplinary Chamber set a date of 29 November 2021 for a hearing on the judge’s suspension, on the same day in the morning, Judge Niklas-Bibik sent a request to Małgorzata Manowska to withdraw her file from the Disciplinary

⁷⁶ <http://www.sn.pl/aktualnosci/SitePages/Wydarzenia.aspx?ItemSID=771-0dc69815-3ade-42fa-bbb8-549c3c6969c5&ListName=Wydarzenia>,

⁷⁷ <https://ruleoflaw.pl/the-public-prosecutors-office-is-taking-on-the-supreme-court-it-wants-the-immunity-of-three-judges-to-be-lifted/>,

⁷⁸ Although at a hearing on 31 May 2021 the Disciplinary Chamber, sitting as a court of first instance, refused to waive the immunity of Judge Włodzimierz Wróbel (see: <https://polishnews.co.uk/the-case-of-the-immunity-of-the-supreme-court-judge-wlodzimierz-wrobel-the-decision-was-made-by-the-disciplinary-chamber-not-recognized-by-the-supreme-court/>), this decision was appealed by the Internal Affairs Department of the State Prosecution Service, and the date for hearing this appeal was set by the Disciplinary Chamber for 9 February 2022,

⁷⁹ <http://themis-sedziowie.eu/materials-in-english/the-illegal-disciplinary-chamber-is-working-again-and-has-suspended-judge-ferek-for-applying-eu-law-by-m-jaloszewski-oko-press/>,

⁸⁰ <https://polishnews.co.uk/the-disciplinary-chamber-suspended-judge-krzysztof-chmielewski/>,

⁸¹ <https://polishnews.co.uk/the-unrecognized-disciplinary-chamber-did-not-settle-the-case-of-judge-agnieszka-niklas-bibik-from-slupsk-the-files-were-taken-over-by-the-first-president-of-the-supreme-court-malgorzata-manowska/>,

Chamber and transfer it to the Criminal Chamber of the Supreme Court. In justifying her request, the judge cited the fact that the Disciplinary Chamber is illegal under both the Polish Constitution and the case law of the CJEU and ECtHR.⁸² One hour before the scheduled date of the hearing, the files were handed over to Małgorzata Manowska, thus avoiding the judge's indefinite suspension.⁸³

Few of the people working in the Disciplinary Chamber of the Supreme Court have decided to refrain from passing judgments in the wake of the CJEU rulings. This applies in particular to former prosecutors Adam Roch (who, not wishing to breach the Constitution and international law, did not appear at the hearing on lifting of Supreme Court Judge Adam Stępka's immunity on 6 September 2021, as a result of which the hearing was adjourned⁸⁴), and Paweł Zubert (who refused to rule in a disciplinary hearing against an ordinary court judge on 14 September 2021 for the same reasons⁸⁵). However, the vast majority of people appointed to the Disciplinary Chamber do not hesitate to break European law by issuing rulings despite the CJEU's finding in its judgments of 14 and 15 July 2021 that the Disciplinary Chamber does not constitute a court in the meaning of European law. In particular, this applies to the persons appointed to the Disciplinary Chamber, such as: Ryszard Witkowski (who was a part of the panel which suspended Judge Ferek and, before that, Judge Juszczyzyn), Jacek Wygoda (ruled in cases against Judges Pietruszyński, Ferek and Gąciarek), Małgorzata Bednarek (ruled in cases against Judges Pietruszyński and Rutkiewicz), Jarosław Duś (ruled against Judges Pietruszyński, Chmielewski and Rutkiewicz), Konrad Wytrykowski (ruled against Prosecutor Sadrakuła, and against Judges Gąciarek and previously Juszczyzyn and Tuleya), Sławomir Niedzielak (ruled against Judges Chmielewski and previously Juszczyzyn and Tuleya), and Adam Tomczyński (previously suspended Judge Tuleya).

It should be noted that the actions of the Disciplinary Chamber of the Supreme Court in breach of European law following the CJEU rulings of 14 and 15 July 2021 were by no means limited to ruling on the politically motivated cases mentioned above, i.e., cases against judges who applied European law, against Judge Pietruszyński, and against retired Prosecutor Sadrakuła. In fact, during this period, a number of hearings in other disciplinary cases, cases of lifting immunity, suspension from duties, cassation and resumption of disciplinary decisions, decisions on arresting regarding judges and other legal professionals were held before the Disciplinary Chamber, also in conflict with the CJEU rulings mentioned above. In particular, hearings before the Disciplinary Chamber were held in:⁸⁶

- July 2021, in particular on 19,⁸⁷ 20⁸⁸ and 22;⁸⁹
- August 2021, in particular on 2,⁹⁰ 3 (2 cases),⁹¹ 12 (4 cases),⁹² 26⁹³ and 31 (2 cases);⁹⁴

⁸² <https://oko.press/sedzia-niklas-bibik-zablokowala-swoje-zawieszenie-izba-dyscyplinarna-na-razie-skapitulowala/>,

⁸³ In the opinion of the author of this report, in the light of Małgorzata Manowska's other actions described above, it is difficult to assume that her action was motivated by the intention to comply with European law; it seems rather that it was intended to avoid future disciplinary and possibly criminal liability, which would be inevitable if she had not acted after having been notified personally of the intention to unlawfully suspend the judge; in such a situation her complicity in the illegal action would be more than obvious.

⁸⁴ <https://oko.press/wolta-w-izbie-dyscyplinarnej-adam-roch-nie-chcial-lamac-orzeczen-tsue/>,

⁸⁵ <https://www.rp.pl/sady-i-trybunaly/art18919401-izba-dyscyplinarna-sn-znow-na-wstecznym>, Paweł Zubert's attitude is not entirely consistent, however, as he participated in the aforementioned decision by which retired prosecutor Wojciech Sadrakuła was punished.

⁸⁶ The following list is based on the electronic lists of cases available on the official website of the Supreme Court and does not include hearings that have been cancelled or those that do not directly involve issues of disciplinary liability, lifting immunity, suspension or arrest (for example, hearings for the reimbursement of attendance expenses are not included); if more than one case was heard on a given day, the number of cases dealt with is given in brackets,

⁸⁷ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MPOI-C47EVK.pdf,

⁸⁸ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_KMAA-C3LEW6.pdf,

⁸⁹ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_RSZT-C3VA4Z.pdf,

⁹⁰ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_%C5%81KAK-C5HFDU.pdf,

⁹¹ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_RSZT-C4WGMC.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MPOI-C55GCT.pdf,

⁹² http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_%C5%81KAK-C4ND8Q.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_%C5%81KAK-C4UE2U.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_RSZT-C53E3E.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MPOI-C54H8P.pdf,

⁹³ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MPOI-C54EFL.pdf,

⁹⁴ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MBRA-C4R9W2.pdf,

- September 2021, in particular on 2,⁹⁵ 6,⁹⁶ 8,⁹⁷ 9,⁹⁸ 13 (2 cases),⁹⁹ 14 (5 cases),¹⁰⁰ 15 (3 cases),¹⁰¹ 16 (4 cases),¹⁰² 20,¹⁰³ 21,¹⁰⁴ 22 (4 cases),¹⁰⁵ 23 (2cases),¹⁰⁶ 27 (5 cases),¹⁰⁷ 29 (5 cases)¹⁰⁸ and 30;¹⁰⁹
- October 2021, in particular on 7 (2 cases),¹¹⁰ 12 (4 cases),¹¹¹ 13 (4 cases),¹¹² 14 (5 cases),¹¹³ 15 (2 cases),¹¹⁴ 19,¹¹⁵ 21,¹¹⁶ 25 (2 cases),¹¹⁷ 26 (5 cases),¹¹⁸ 27 (5 cases)¹¹⁹ and 28 (2 cases),¹²⁰
- November 2021, in particular on 8 (3 cases),¹²¹ 10,¹²² 15,¹²³ 16 (8 cases),¹²⁴ 17 (3 cases),¹²⁵ 18 (6 cases),¹²⁶ 23,¹²⁷ 24 (3 cases),¹²⁸ 25 (3 cases),¹²⁹ 29¹³⁰ and 30;¹³¹

- ⁹⁵ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_KWOA-C5ABD4.pdf,
⁹⁶ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MPOI-C53GTX.pdf,
⁹⁷ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ARUK-C6FGMK.pdf,
⁹⁸ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ATAK-C4MEWK.pdf,
⁹⁹ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MBRA-C4U9MM.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MPOI-C6TAUY.pdf,
¹⁰⁰ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_KWOA-C3LGB3.pdf,
¹⁰¹ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_KWOA-C3LGE7.pdf,
¹⁰² http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ARUK-C3LGB5.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ARUK-C3YAB5.pdf,
¹⁰³ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_RSZT-C5DET5.pdf,
¹⁰⁴ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MPOI-C49EQA.pdf,
¹⁰⁵ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ARUK-C5JAW9.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_%C5%81KAK-C4WFF6.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MPOI-C72C3Q.pdf,
¹⁰⁶ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_RSZT-C568L7.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MPOI-C758ZM.pdf,
¹⁰⁷ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MBRA-C4PB8F.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_%C5%81KAK-C68A4N.pdf,
¹⁰⁸ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_JJAA-C44A9N.pdf,
¹⁰⁹ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MBRA-C3YABQ.pdf,
¹¹⁰ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MPOI-C67GHB.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ARUK-C7KDFG.pdf,
¹¹¹ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_KMAA-C4BD7D.pdf,
¹¹² http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ARUK-C44BGQ.pdf,
¹¹³ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MBRA-C3YB88.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MBRA-C4PCKY.pdf,
¹¹⁴ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MPOI-C7BENS.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_RSZT-C7PFBA.pdf,
¹¹⁵ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ATAK-C7699G.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ATAK-C7TE6Y.pdf,
¹¹⁶ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ATAK-C79H9G.pdf,
¹¹⁷ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_KMAA-C76CMV.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_KMAA-C7QESQ.pdf,
¹¹⁸ http://www.sn.pl/spraw_y/SesjaPdfLib/wokanda_KWOA-C44BWP.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_%C5%81KAK-C7PDA6.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ARUK-C7RHKJ.pdf,
¹¹⁹ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MBRA-C44BZD.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ARUK-C88B2H.pdf,
¹²⁰ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_KMAA-C68DSU.pdf,
¹²¹ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ARUK-C6HAD4.pdf,
¹²² http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_KMAA-C6W9V9.pdf,
¹²³ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_%C5%81KAK-C7WA9V.pdf,
¹²⁴ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_RSZT-C6PEMK.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_KWOA-C6QAJC.pdf,
¹²⁵ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MBRA-C8LGV6.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_KMAA-C8MCFG.pdf,
¹²⁶ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ATAK-C8TE85.pdf,
¹²⁷ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MPOI-C6PHKK.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ARUK-C85G5Q.pdf,
¹²⁸ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MBRA-C889QJ.pdf,
¹²⁹ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ARUK-C7QE4C.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ARUK-C7ZBAW.pdf,
¹³⁰ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ARUK-C7ZCKR.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ARUK-C86H5Y.pdf,
¹³¹ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_RSZT-C89CG3.pdf,
¹²⁷ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MBRA-C7BFU6.pdf,
¹²⁸ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_KWOA-C85DV7.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MBRA-C88FZD.pdf,
¹²⁹ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_RSZT-C92K84.pdf,
¹²⁹ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ARUK-C6VB59.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_KWOA-C95ASL.pdf,
¹³⁰ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ATAK-C95E55.pdf,
¹³¹ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_RSZT-C99DTS.pdf,

- December 2021, in particular on 7,¹³² 8 (5 cases),¹³³ 9 (4 cases),¹³⁴ 14 (4 cases),¹³⁵ 15,¹³⁶ 20¹³⁷ and 21 (2 cases)¹³⁸;
- January 2022, in particular on 5,¹³⁹ 11 (10 cases),¹⁴⁰ 12 (6 cases),¹⁴¹ 13 (2 cases)¹⁴² and 14¹⁴³.

Therefore, during the six months that have passed since the CJEU rulings, after which the Disciplinary Chamber of the Supreme Court should have stopped operating, **it has held court sessions on 57 working days, during which 152 hearings were held to resolve issues related to disciplinary liability, cases of lifting immunity, suspension from duties, cassation and resumption of disciplinary decisions, decisions on bringing in by force or arresting judges and other legal professionals.**

- Furthermore, the term of office of the person acting as President of the Chamber, Tomasz Przesławski, will come to an end on 25 February 2022. Therefore, an Assembly of the Chamber was held on 10 and 17 January 2022, during which three candidates were selected for the office of its future president (Małgorzata Bednarek, Adam Roch and Ryszard Witkowski), who will be presented to the President of Poland, Andrzej Duda, who will appoint the president of the Chamber from among them.¹⁴⁴

11. Chamber of Extraordinary Control and Internal Affairs of the Supreme Court

- As demonstrated in section 2 of this report, the CJEU ruling of 6 October 2021 (C-487/19) de facto outlawed the Supreme Court's Chamber of Control and Public Affairs under European law (as a body, like the Disciplinary Chamber, entirely selected by the neo-NCJ, which lacks the value of independence). Despite this, not only has no legislative initiative been taken to bring this body into conformity with European law, but even – unlike the Disciplinary Chamber – no politician from the ruling camp has spoken publicly about plans for any legal changes in this regard.
- Moreover, the term of office of the person acting as President of the Chamber, Joanna Lemańska, will come to an on 25 February 2022. Therefore, an Assembly of the Chamber was held on 19 January 2022, which selected three candidates for the office of its future president (Marek Dobrowolski, Joanna

¹³²http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MPOI-C9GFA8.pdf,

¹³³ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_KMAA-C8KD8J.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_KMAA-C8KDTL.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_KMAA-C93EKQ.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MBRA-C94D6K.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_RSZT-C9HFU6.pdf,

¹³⁴ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_%C5%81KAK-C7RBJW.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ARUK-C8DSDJ.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ATAK-C9JAJZ.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ARUK-C9JAXT.pdf,

¹³⁵ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MPOI-C9JFP6.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MBRA-C9KBDN.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_RSZT-C9PKUA.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MPOI-C9QJCL.pdf,

¹³⁶ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_RSZT-C9PLAB.pdf,

¹³⁷ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ATAK-C98CNH.pdf,

¹³⁸ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MPOI-C8TH4Q.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_RSZT-C9AE9Y.pdf,

¹³⁹ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_RSZT-CABB5Y.pdf,

¹⁴⁰ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ARUK-C88A3L.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ARUK-C8TBX9.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ARUK-C8TCWT.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_KMAA-C99GEG.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_KMAA-CA6GQQ.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_KMAA-CA6GUB.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ARUK-CACBPJ.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_RSZT-CACHFL.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_JJAA-CAKES7.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_RSZT-CAKFV9.pdf,

¹⁴¹ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ARUK-C8UFYB.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_ARUK-C8UGPA.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_KMAA-C93EYQ.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_KMAA-CACDIX.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_RSZT-CAKHYK.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_KWOA-CALEPS.pdf,

¹⁴² http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_MPOI-C9VGT8.pdf, http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_RSZT-CAMB2M.pdf,

¹⁴³ http://www.sn.pl/sprawy/SesjaPdfLib/wokanda_RSZT-CANHV3.pdf,

¹⁴⁴ Link to official communication on the Supreme Court website: <https://www.sn.pl/aktualnosci/SitePages/Wydarzenia.aspx?ItemSID=805-0dc69815-3ade-42fa-bbb8-549c3c6969c5&ListName=Wydarzenia>,

Lemańska and Oktawian Nawrot), who will be presented to the President of Poland, Andrzej Duda, who will appoint the president of the Chamber from among them.¹⁴⁵

12. Blocking the reinstatement of previously suspended judges

The interim relief ordered by the CJEU on 14 July 2021 (C-204/21 R) implies an obligation to reinstate previously suspended Judges Paweł Juszczyszyn and Igor Tuleya. Despite the ruling of the CJEU, both the person acting as the President of the Regional Court in Warsaw, Piotr Schab (at the same time the Disciplinary Commissioner of the Judges of the Ordinary Courts) in relation to Igor Tuleya, and the person acting as the President of the District Court in Olsztyn, Maciej Nawacki (simultaneously a member of the neo-NCJ) refused to reinstate them, which, however, has not resulted in any negative reaction from the Minister of Justice (who has the right to dismiss a court president from his post if he improperly performs his duties). Therefore, the two judges suspended by the Disciplinary Chamber of the Supreme Court applied to the ordinary courts for their reinstatement.

- The District Court in Bydgoszcz delivered a judgment at the request of Judge Paweł Juszczyszyn ordering his reinstatement as a judge, disregarding the ruling of the Disciplinary Chamber of the Supreme Court, which is illegal under European law and which suspended him on 4 February 2020.¹⁴⁶ Reinstatement proceedings are also pending before the ordinary courts with respect to Judge Igor Tuleya.¹⁴⁷ During the proceedings on the reinstatement of Judges Tuleya and Juszczyszyn, the disciplinary commissioners attempted to put pressure on the judges hearing the cases, among other things, by groundlessly requesting access to the case files.¹⁴⁸
- Maciej Nawacki's term of office as President of the Olsztyn District Court came to an end on 18 December 2021, as a result of which the management of the court was assumed by Vice President Paweł Krygielski. On 20 December 2021, Paweł Krygielski, enforcing the judgment of the District Court in Bydgoszcz of 17 December and simultaneously the CJEU's interim measure of 14 July, reinstated Judge Paweł Juszczyszyn to his post and ordered the return of the whole of his salary to him, which had been reduced during the period of his suspension. However, the reinstatement lasted just four hours, after which the Olsztyn District Court received a message from the Ministry of Justice by fax appointing Maciej Nawacki President of the Olsztyn District Court for the next term. On the same day, Maciej Nawacki interrupted his leave of absence on which he had been, returned to the court, overruled Paweł Krygielski's decision and again removed Judge Juszczyszyn from his duties;¹⁴⁹
- Next, comprehensive repressive measures were applied to Judge Paweł Krygielski, in the sense that, as early as on 20 December, he was dismissed from his post of deputy president of the court by the Minister of Justice, and by Maciej Nawacki from the position of president of the division.¹⁵⁰ On 28

¹⁴⁵ Link to official communication on the Supreme Court website: <https://www.sn.pl/aktualnosci/SitePages/Wydarzenia.aspx?ItemSID=806-0dc69815-3ade-42fa-bbb8-549c3c6969c5&ListName=Wydarzenia>,

¹⁴⁶ This was ruled by the District Court in Bydgoszcz, Labour and Social Insurance Division, in a judgment of 17 December 2021 ordering the judge to be immediately reinstated in his position. It should be noted that previously, on 16 April 2021, the same court had already issued a provisional ruling (which was immediately enforceable) ordering Judge Paweł Juszczyszyn's immediate reinstatement. Subsequently, the Regional Court in Olsztyn made a decision to reinstate Judge Juszczyszyn as an interim measure on 10 May 2021. The Olsztyn Regional Court also ordered the person acting as the First President of the Supreme Court, Małgorzata Manowska, to remove the decision to suspend Judge Juszczyszyn from the Supreme Court's website, but Małgorzata Manowska did not comply with this ruling. However, the president of the Olsztyn District Court, and simultaneously a member of the neo-NCJ, Maciej Nawacki, refused to enforce all those rulings. See: <https://polishnews.co.uk/pawel-juszczyszyn-the-court-ordered-the-reinstatement-of-the-judge-from-olsztyn/>, <https://oko.press/pilne-sad-w-olsztynie-zawiesil-decyzje-izby-dyscyplinarnej/>,

¹⁴⁷ <https://wiadomosci.wp.pl/pelnomocnik-tulei-wnioskuje-o-przywrocenie-go-do-pracy-to-bezprawne-uniemozliwienie-wykonania-zawodu-6615901021272608a>,

¹⁴⁸ <https://wyborcza.pl/7,173236,27082093,courts-siding-with-judges-harassed-by-the-ruling-camp-face-mounting.html>,

¹⁴⁹ <https://tvn24.pl/tvn24-news-in-english/polish-judge-returns-to-work-after-suspension-and-is-banned-again-shortly-after-5534245>,

¹⁵⁰ <https://oko.press/represje-wobec-sedziego-krygielskiego-za-przywrocenie-juszczyszyna-do-pracy/>,

December 2021, the Deputy Disciplinary Commissioner of the Judges of the Ordinary Courts, Przemysław Radzik initiated disciplinary explanatory proceedings against Judge Paweł Krygielski, acknowledging that, by reinstating Paweł Juszczyszyn and therefore failing to recognize the decision of the Disciplinary Chamber to suspend him, Judge Krygielski may have committed the disciplinary offence of undermining the dignity of the office.¹⁵¹

13. Repressions against judicial activists demanding the application of EU law

- On 15 July 2021, the President of the largest association of Polish judges ‘Iustitia’, Krystian Markiewicz, and the press officer of the association of judges ‘Themis’, Maciej Czajka, gave an interview to the independent OKO.press news portal, in which, while commenting on the CJEU judgment of the same day, they stated that ECtHR and CJEU judgments regarding the Polish judiciary should be enforced in Poland, and that anyone who fails to enforce them becomes exposed to criminal and disciplinary liability. For this reason, the Internal Affairs Department of the State Prosecution Service (which is known for its previous repressive actions against defiant judges and prosecutors¹⁵²) undertook an investigation against them, within which it requested information about the circumstances of the interview from OKO.press. The portal’s editorial team adamantly refused to provide any information to the prosecution service, referring to journalistic secrecy.¹⁵³

14. Start of repression against other legal professionals for questioning the status of neo-judges

- Until now, various kinds of reprisals for questioning the status of neo-judges have fallen on judges. However, on 28 October 2021, the Deputy Disciplinary Commissioner of the Judges of the Ordinary Courts, Przemysław Radzik submitted a letter to the Disciplinary Commissioner of the Regional Chamber of Legal Advisers in Katowice requesting disciplinary proceedings to be initiated with respect to Legal Counsel Rafał Josse for challenging the status of neo-judges of the Supreme Court by appealing to the Supreme Court against a judgment that was unfavorable to his client; according to Przemysław Radzik, such conduct by the legal counsel could constitute ‘*conduct which is in conflict with the law, principles of ethics or the dignity of the profession, or a breach of his professional duties*’ (disciplinary offence under Article 64 of the Act on Legal Counsels); Przemysław Radzik’s notice led to the initiation of disciplinary explanatory proceedings against Rafał Josse, who was summoned by the local disciplinary commissioner to submit written explanations.¹⁵⁴

15. Concluding remarks

In light of the circumstances described above, it should be unequivocally stated that the CJEU rulings of 14 and 15 July 2021 have not been implemented by the Polish authorities. This is evidenced by the fact that the Disciplinary Chamber is still operating (over the last 6 months, more than 150 hearings were held in it on 57 working days).

During the six months that have passed since the CJEU judgments, the government coalition has not presented any draft laws that would implement the CJEU judgments, and when three drafts finally appeared (the President's, the Law and Justice party's and Zbigniew Ziobro's Solidarna Polska's), none of

¹⁵¹ <http://rzecznik.gov.pl/wp-content/uploads/2021/12/komunikat-Olsztyn.pdf>,

¹⁵² http://themis-sedziowie.eu/wp-content/uploads/2021/12/Internal-Affairs-Department_as-oppression-tool_wer.pdf,

¹⁵³ <https://oko.press/prosecutors-office-strikes-at-iustitias-president-markiewicz/>,

¹⁵⁴ <https://oko.press/za-stosowanie-prawa-eu-czlowiek-ziobry-bierze-sie-za-radcow-prawnych-a-poszlo-o-sprawe-przedsiębiorcy/>,

them met the requirements arising from the CJEU judgments or the European Commission's recommendations.

In addition to these reprehensible omissions, the Polish authorities have taken a number of active steps to undermine the enforceability of the July 2021 CJEU rulings, both systemically and as individual repressions against judges seeking to enforce the CJEU rulings, with the provisions laid down by the so-called 'Muzzle Act' constituting the actual grounds for this.

The fact that both Chambers of the Polish Supreme Court, whose legality under European law was questioned by the CJEU (i.e. the Disciplinary Chamber and the Chamber of Extraordinary Control and Public Affairs), held elections in January 2022 for candidates for the next term of office of their presidents confirms that these bodies intend to continue their activities uninterruptedly.

Individual repressive actions include the temporary suspension of judges either personally by the Minister of Justice or by court presidents appointed by him (a total of 10 judges were affected), the indefinite suspension of judges by the Disciplinary Chamber (4 judges), the repressive transfer of judges between divisions (4 judges from Kraków), the initiation of disciplinary proceedings against them (against all suspended judges) and the initiation of explanatory proceedings (14 judges from Kraków). It should be pointed out that, following the rulings of the CJEU of July 2021, the unjustified removal of Polish judges from court has become even easier than before, as it takes place on the basis of an administrative decision of an active politician from the ruling camp – the Minister of Justice or the court president appointed by him, which is much quicker than through disciplinary proceedings. It is also significant that the basis of the disciplinary charges against Judge Agnieszka Niklas-Bibik was the request she submitted to the CJEU for a preliminary ruling.

The actions of the person acting as the First President of the Supreme Court, Małgorzata Manowska, who only ostensibly suspended the operation of the Disciplinary Chamber of the Supreme Court and prevented the implementation of the CJEU judgment of 6 October 2021 (C-487/19) by groundlessly retaining the case files in her secretarial office, cannot be regarded as the implementation of European law either.

Furthermore, contrary to the 14 July 2021 ruling of the CJEU, neither of the judges suspended before that ruling (Igor Tuleya and Paweł Juszczyszyn) were reinstated in their positions, and when the deputy president of the District Court in Olsztyn issued a decision reinstating Judge Juszczyszyn, the actions of the Ministry of Justice resulted in the decision being immediately overturned, while the person making that decision was immediately subjected to a wave of administrative and disciplinary reprisals.

The systemic actions undermining the enforceability of CJEU judgments in Poland include judgments of the Constitutional Tribunal (issued at the request of the Prime Minister and the Minister of Justice) undermining the principle of primacy and direct application of EU law with respect to interim measures and CJEU judgments regarding the judiciary, and in the future probably also with respect to fines, as well as the mechanism of conditionality (pending cases).

The fact that the Polish government does not intend to proceed to fix the Polish judiciary in the spirit of the implementation of CJEU rulings is also evidenced by the fact that – despite the unambiguous and consistent position of the CJEU regarding the lack of independence of the neo-NCJ – not only has no legislative action been taken to restore the compliance of the election of the judges from this body with the Polish Constitution, but the recruitment of candidates for the next term is being conducted on the same unconstitutional basis.

It is clear from the above that not only have the Polish authorities failed to take any specific action to enforce the CJEU judgments, but quite the contrary, they are blatantly and ostentatiously preventing their implementation, both at the systemic level and at the level of individual repression against judges who try to enforce them. In fact, it is difficult to imagine what more the Polish authorities could do to prevent the application of European law in the field of justice in Poland.