

# Poland's Judges Are Being “Harassed into Obedience”

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Judges in Poland have been taking to the streets since last year. They are the latest target in the systematic dismantlement of democratic checks and balances by the Law and Justice party (PiS) government. It has gone further in subjecting the courts to executive control than is the case in any EU member state. It has also conducted online harassment and smear campaigns against judges who voice criticism or refuse to comply. Judges, civil society, and the opposition have taken the lead as the protectors of the rule of law.

The European Union has been slow to respond, and Polish activists say the United States should do more to defend Poland's democracy. The international community needs to increase pressure on the PiS government and help tilt the scale in favor of those advocating for judicial independence, as a check on an anti-democratic ruling party.

Authoritarian means of control are encroaching areas of Poland's once promising democracy. Many independent observers have raised alarm as the government has worked to gain executive control over the entire system of appointment, promotion, and discipline of judges. Minister of Justice and General Prosecutor Zbigniew Ziobro has the power to appoint every person involved with disciplinary investigations against judges. He also has the power to appoint and dismiss any president of ordinary courts. So far, Ziobro has dismissed 1,000 of the country's 6,100 prosecutors. Further, he has replaced the heads of 11 provincial prosecutors' offices, nearly all the heads of regional prosecutors' offices, and 90 percent of the heads of the district prosecutors' offices. In most cases, critical statements about the reforms by prosecutors lead to disciplinary actions.

The government has also managed to gain political control over the National Council of the Judiciary, which is responsible for nominating judges and reviewing ethical complaints against jurists: 23 out of the 25 positions on this body are directly appointed by elected officials. Previously, 15 were elected by judges themselves.

## Efforts to “Muzzle” Polish Judges

The PiS government's efforts to control the judiciary have intensified in the last couple of years. In 2017, it set up a Disciplinary Chamber of the Supreme Court that makes it easier for the government to directly punish judges who voice criticism. Members of the Disciplinary Chamber are selected by the parliament, which raises questions about its autonomy. Last November, the European Court of Justice ruled that this new body

could undermine the independence of the judiciary. Then, it asked the Polish courts to make a final ruling on this matter. In response, Poland's Supreme Court ruled in January that judges appointed to the Disciplinary Chamber by the government are not considered judges under Polish or EU law, effectively ruling against the government. This leaves the EU and the PiS government at a standoff, with the latter continuing with a reform the former said is illegal."

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PiS escalated matters by passing a law that penalizes judges who question the legitimacy of the judicial reforms, essentially disciplining them for speech that the ruling party disagrees with. President Andrzej Duda signed what critics call the "muzzle law" in February, giving politicians the power to fine and fire judges and banning judges from political activity.

PiS has supplemented these official measures with online harassment and smear campaigns against judges. Judge Igor Tuleya, one of the most prominent critics of the judicial reforms, said that he was being "harassed into obedience." In response, he has been threatened with violence and forced to evacuate his office due to fear of anthrax attacks, and is being demonized by right-wing media. Journalists have uncovered a smear campaign against judges that is coordinated by Ministry of Justice officials, involving crude tweets, such as "Fuck off! You are bringing shame on honest judges and dishonor to Poland," vulgar postcards to the Supreme Court's chief justice, and a government-funded campaign to discredit judges on national television.

Thousands of protestors, including judges from 22 European countries, marched on January 11 to express their opposition to the actions of the PiS government. In a climate constructed to intimidate judges and civil society, this was a clear sign that democratic spirit and space to fight back still exist in Poland. However, that space is rapidly closing, given the continued attacks on the opposition by right-wing media.

The EU triggered its Article 7 procedure against Poland in 2017, yet the PiS government's efforts to flout EU values and undermine the independence of the judiciary have only grown stronger. Recently, members of the European Parliament stated that "The failure by the Council [of the EU] to make effective use of Article 7 continues to undermine the integrity of common European values, mutual trust, and the credibility of the European Union as a whole." Additionally, identifying a breach of EU standards by the government under Article 7 is unlikely since this would require unanimous agreement among member states, which is currently not given. Because of the shortcomings of Article 7, members of the European Parliament have stated that an EU permanent mechanism on democracy, rule of law and fundamental rights is needed.

### **A Critical Juncture for Poland's Democracy**

Human rights defenders in Poland are sounding the alarm that the country is at a critical junction. On March 9, the European Court of Justice will hold a hearing on whether interim measures should be issued with respect to the operation of the Disciplinary Chamber of the Supreme Court. In recent conversations with the Office of the Commissioner of Human Rights, officials have said that international pressure is the only way to get the government to listen.

Poland is not immune to international and specifically U.S. pressure. In 2018, the government introduced a law that criminalized speech accusing the Polish nation of complicity in Nazi atrocities, which was to be enforced with jail time. After the United States threatened repercussions, such as a decrease in financing of security and defense initiatives in Poland and the suspension of high-level bilateral contacts, Polish lawmakers removed the criminal provisions before passing the law. Similar pressure now by the international community, and especially by the United States, could help support the drive to protect rule of law in Poland. The presidential election in May provide a window of opportunity when PiS may be more inclined to respond to diplomatic pressure as well as attuned to public opinion.

Action by the international community is vital and urgent. The erosion of the rule of law in Poland poses a threat to the founding principles of the transatlantic alliance. While NATO is a military alliance, it was formed on the basis of shared values: democracy and the rule of law. It will be increasingly difficult for it to effectively counter Russian authoritarianism, when one of its own members employs similarly repressive tactics as that of the Russian regime. To defend Poland's resilience and the democratic values within the transatlantic alliance, the United States should make it clear that democracy is an integral part of bilateral and multilateral relationships.

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