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Judges under stress

Navigating modern threats to judicial independence – A guide for judges

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March 2025

March of a Thousand Gowns, Warsaw, January 2020. Foreign judges and lawyers taking part in the march alongside Polish legal profession and citizens. *ID 169018857 © GrandWarszawski | Dreamstime.com*

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Foreword by the publisher

Cecilie Østensen Berglund
Chairperson of the Board, Norwegian Courts Administration

An efficient, impartial and independent judiciary is the foundation of a functioning system of democratic checks and balances.

Judges must guarantee that all individuals, irrespective of their backgrounds, are treated equally before the law. When judges are subjected to undue influence or interference, the very foundation of our legal system is compromised, eroding public trust and confidence in the judiciary. The judiciary is therefore an essential component of democratic societies and a key institution that needs to be protected.

In a world where the rule of law and the courts are under pressure in several countries, the question of how to ensure independent and impartial courts and judges is more pertinent than ever.

On the institutional level, the judiciaries and courts in many countries are under pressure. Such pressure can also occur from the perspective of the individual judge, as the independence of judges is in some countries at risk of being unduly influenced in specific cases that they handle.

Such inappropriate pressure was the background for the international conference 'Judges under Stress', organised in Vilnius in April 2024. Judges and experts from academia and other institutions from a number of countries met and discussed the challenges faced by judiciaries as a whole and by individual judges.

This report is a continuation of the conference in Vilnius. We hope it can contribute to fostering judicial resistance among judges against undue pressures and help to identify concrete strategies to strengthen the independence of judiciaries.

A special thanks to the Croatian Ministry of Justice, Public Administration and Digital Transformation, the Bulgarian National Institute of Justice, the Romanian Superior Council of Magistracy and the Lithuanian National Courts Administration for their helpful cooperation with the organisation of the conference. We also want to thank Norway Grants for financing the activities of the 'Judges under Stress' project.

Editor's introduction

Łukasz Bojarski

Who is this guide for and why?

This guide is primarily written for current and future judges, particularly those facing a range of threats, pressures and stresses affecting judicial independence. It is aimed at individual judges as well as judicial associations and institutions that manage the judiciary, such as judicial councils and court administrations.

The guide may also interest anyone concerned with judicial matters, including citizens interested in the courts, journalists, lawyers, politicians, civil society organisations and academics.

The publishers and the author/editor hope this guide will assist judges in challenging situations when their independence is threatened. It is based largely on real-life experiences of judges, serving as a collection of inspiration, advice and good practice. The guide outlines how judges can and should act when their independence is at risk and highlights actions and activities the judicial community should undertake to minimise the risk of attacks on their independence. Additionally, it incorporates selected academic research to present scientific findings in an accessible manner. Finally, the guide reflects the long-standing engagement of the author, who has been involved with justice issues for over three decades.

Step by step

This guide has been developed as a continuation of previous projects. Between 2019 and 2023, Professor Hans Petter Graver and his team conducted a research project at the Faculty of Law at the University of Oslo entitled Judges under Stress (JuS) – the Breaking Point of Judicial Institutions.

The project aimed to address the following questions: How do those in power seek judicial compliance with authoritarian measures? How do judges react to such measures? What are the conditions under which an independent judiciary breaks down?

The project's main focus was on the experiences of Central and Eastern European states under communist rule, but it also extended to current threats to judicial independence and strategies to address them.

Inspired by this project, representatives of the Norwegian Courts Administration proposed to bring these issues closer to judges. An international conference, 'Judges under Stress' co-organised by the Norwegian Courts Administration in Norway and

Lithuania, prepared in cooperation with academics, took place in Vilnius, Lithuania, in April 2024 and brought together judges from several countries.

One of the three thematic strands at the project's closing conference was formulated as 'Judicial Resistance – how judges can resist and postpone the breaking point of the rule of law'. This strand presented empirical research and theoretical reflections on the role of judicial independence, threats to it and how judges can defend it.

The other two threads were 'Institutional path dependence – how legal traditions and culture live on, transform and disappear' and 'Judicial ideology – how judges see themselves and their role in the legal system'. The output of the research project and the proceedings of the final conference are available on the project website and in the publications referenced throughout this guide.

The guide was created based on the author's many years of experience, his cooperation with judges and judges' organisations and work related to the administration of justice for a range of entities, from social organisations, think tanks and academia to international organisations and the Polish national court administration – the Polish National Council of the Judiciary. In part, I use my earlier studies, including fragments of the introduction *(Kappe)* to my doctoral dissertation, *Judicial Resistance against the rule of law backsliding — Judges and citizens — the case of Poland*, University of Oslo, November 2023.

See here for more publications.

What's included?

In Part 1, we revisit the key principles of judicial independence and accountability. Part 2 delves into political attacks on the rule of law and judicial independence, exploring the distinction between legitimate judicial reform and illegitimate political attacks, the characteristics of such attacks and defensive strategies for judges. Part 3 addresses pressures from the media and the public, discussing prevention strategies and effective communication with various audiences. Part 4 focuses on two groups that could support judges subjected to attacks on their independence: the legal complex and civil society organisations. Part 5 examines the pressure on judges from parties to cases and other actors through stress from various forms of corruption.

Summary and recommendations

Part 1: Why judges must be independent and accountable

Judicial independence is fundamental to a democratic society, ensuring that courts function impartially and effectively to guarantee the fair adjudication of cases, but also as a check on the legislative and executive branches. This independence is not absolute and must be balanced with accountability, professional competence and efficiency to maintain public trust. Judicial stress arises from various pressures, including political interference, economic constraints, media scrutiny and the risk of corruption. While independence is necessary, a judiciary also requires mechanisms for accountability to maintain legitimacy.

Recommendations

For judicial governing bodies and councils:

- Develop and enforce a comprehensive framework ensuring judicial independence while maintaining legitimate accountability mechanisms.
- Introduce training programmes focused on balancing independence with accountability, ensuring judges understand ethical responsibilities and how to handle external pressures.

For judicial national and international associations:

- Ensure that judicial associations incorporate both independence and accountability into their overall work, paying due attention also to competence and effectiveness rather than focusing solely on independence.
- Support judges in developing professional skills that improve their decision-making, procedural fairness and public communication, thereby strengthening both judicial effectiveness and public trust in the judiciary.
- Facilitate knowledge-sharing initiatives that focus on best practices in maintaining an independent yet accountable judiciary.

For policymakers, legislators and executive authorities:

- Recognise and respect the judiciary's role within the separation of powers, ensuring that legislative and executive actions do not undermine judicial independence.
- Develop structured methods of interaction between the three branches of government, promoting dialogue, collaboration and strategic planning while preserving the independence of each branch.
- Ensure judicial reforms are developed with direct input from judicial bodies.
- Ensure that legislative initiatives consider and balance judicial independence, accountability, competence and effectiveness in a comprehensive manner.

For civil society organisations (CSOs):
- Educate the public on the role of courts in democratic governance and judicial oversight of government actions.
- Promote civic engagement in judicial accountability processes while preserving independence.

For academics:
- Conduct research exploring the interplay between judicial independence, accountability, competence and effectiveness, identifying best practices for maintaining a well-functioning judiciary.
- Develop educational programmes that equip future judges and lawyers with the necessary skills to balance independence with professional competence, ethical responsibility and accountability.

Part 2: Threats to judicial independence from state institutions

Political attacks on judicial independence often take the form of legislative changes, executive interference and public defamation campaigns. While judicial reform is legitimate in a democratic system, there is a distinction between genuine reform and politically motivated efforts to undermine the judiciary. The concept of judicial resistance has emerged as a response, encompassing legal, professional and moral obligations to uphold judicial independence. Various forms of resistance, including judicial rulings, boycotts and public statements, have been employed to counteract political interference.

Recommendations

For judicial governing bodies and councils:
- Enhance mechanisms to distinguish between lawful judicial oversight and politically driven interference, ensuring that monitoring frameworks identify and address state-led judicial capture.
- Establish an independent mechanism, monitoring body or judicial ombudsman to address concerns related to undue pressures on judges, ensuring that they have secure channels to confidentially report undue influence or threats and seek institutional support without fear of retaliation.
- Develop structured, lawful methods of judicial resistance to counteract unlawful governmental interference, ensuring that judges can respond firmly while adhering to the rule of law and established ethical guidance.

For national and international judicial associations:
- Create solidarity networks for judges under pressure, ensuring mutual support and access to international judicial bodies.
- Establish emergency legal support mechanisms for judges facing politically motivated disciplinary proceedings or dismissals.
- Engage in strategic litigation at the international level (e.g. ECtHR, CJEU) to challenge unlawful pressures on judges.

For policymakers, legislators and executive authorities:
- Implement constitutional safeguards preventing executive overreach in judicial matters.
- Differentiate between legitimate judicial reforms and politically motivated actions undermining judicial independence by ensuring that all legal changes are subject to broad consultations with judges and legal experts.
- Respect international commitments on the rule of law and judicial independence, such as those under the Council of Europe (CoE) and the European Union.

For civil society organisations:
- Launch awareness campaigns on the role of independent courts in democracy and counter state-driven disinformation.
- Build coalitions with media organisations to expose and report government-led attacks on the judiciary.
- Support strategic litigation in cases where judicial independence is at risk.

For academics:
- Conduct ongoing empirical research on the application of law in general, including the impact of legislative changes and judicial reforms, with a particular focus on the effects of political interference on judicial independence and public trust, ensuring a continuous assessment of trends and risks.

Part 3: Threats to judicial independence from society and the media

Judges are increasingly subjected to pressures from public opinion, social media and mass media coverage. While transparency and communication with society are necessary, undue media influence or public opinion-driven attacks can compromise judicial independence. Courts need strategies for effective public communication without engaging in partisan political debates. Additionally, judicial harassment through misinformation campaigns has become a tool to delegitimise independent courts.

Recommendations

For judicial governing bodies and councils:
- Ensure that fully professional information services with data on the judiciary, courts and judges are in place.
- Create protocols for handling online threats and media attacks against judges, ensuring swift institutional responses.
- Monitor attempts to intimidate judges via social media campaigns, providing legal protection where necessary.

For courts and judges:
- Establish designated court spokespersons or press officers to handle public communication professionally.
- Implement training programmes for judges on engaging with the media while maintaining judicial neutrality.
- Introduce ethical guidelines on public statements by judges to prevent unnecessary controversies.
- Strengthen internal support mechanisms for judges facing harassment, including psychological and legal assistance.
- Develop media response strategies to address misinformation and ensure accurate representation of judicial decisions.

For judicial national and international associations:
- Advocate for policies that ensure judicial communication strategies enhance transparency while preserving neutrality.
- Support judges in legal disputes against defamatory media campaigns.

For media organisations:
- Establish journalistic standards for reporting on judicial matters, ensuring neutrality and factual accuracy.
- Offer specialised legal journalism training for reporters covering court decisions to improve quality and reduce bias.

- Avoid sensationalist headlines and political framing that may delegitimise the judiciary.
- Encourage fact-checking collaborations between media outlets and legal experts to counter disinformation.

For academics:
- Conduct research on the role of the media in shaping public perceptions of judicial independence.
- Develop training modules for journalists covering judicial affairs.

Part 4: Judges' allies – the role of the legal complex and civil society

The judiciary does not operate in isolation. It is part of a broader legal complex, including lawyers, legal scholars and international institutions, as well as CSOs. These actors play a critical role in defending judicial independence, monitoring judicial attacks, providing legal support, and mobilising public and international advocacy. Collaboration between judges and these allies strengthens the judiciary's ability to resist undue pressure.

Recommendations

For judicial governing bodies and councils:
- Strengthen institutional cooperation with CSOs and legal professional bodies.
- Foster a culture of feedback, encouraging judges to both receive and provide constructive feedback to legal professionals, civil society organisations and the media. This will help replace confrontational discourse with constructive dialogue, strengthening trust in the judiciary.

For courts and judges:
- Establish open channels of communication with legal professions and CSOs to enhance mutual understanding and cooperation in upholding the rule of law.
- Promote judicial openness by facilitating access to court information, engaging in public outreach and supporting initiatives that improve public trust in the judiciary.

For judicial national and international associations:
- Strengthen international cooperation by judicial associations to coordinate efforts to defend judicial independence and uphold legal standards.
- Promote professional training programmes focusing on judicial ethics, rule-of-law advocacy and best practices for protecting an independent judiciary.

For bar associations and legal professionals:
- Promote cross-border legal collaboration between bar associations to strengthen advocacy efforts for judicial independence.
- Provide legal and institutional support to judges facing political pressure, including emergency legal assistance and advocacy at national and international levels.
- Issue statements and take legal actions to defend the rule of law and judicial integrity in response to governmental or legislative threats.

For international legal bodies and human rights organisations:
- Provide technical assistance and international legal expertise to support national judiciaries under threat.
- Establish monitoring mechanisms to track rule-of-law violations and publish periodic reports on judicial independence.

For academics:
- Conduct interdisciplinary research on judicial alliances with civil society and the legal profession and their impact on the rule of law.
- Develop legal education programmes promoting cooperation between the judiciary and legal professionals.

Part 5: Threats to judicial independence from corruption

Corruption within the judiciary can take many forms, including political influence, financial misconduct, nepotism and case manipulation. While systemic corruption exists in some legal systems, even minor instances can severely undermine public trust. Countering judicial corruption requires a combination of systemic measures, such as transparency in judicial appointments, and individual ethics enforcement, such as disciplinary proceedings against compromised judges.

Recommendations

For judicial governing bodies and councils:
- Implement merit-based selection and promotion procedures to prevent political or financial influence in judicial appointments.
- Establish independent disciplinary bodies with transparent procedures to investigate corruption allegations against judges.

For courts and judges:
- Adopt a zero-tolerance policy on bribery and undue influence, with strict enforcement mechanisms.
- Encourage peer accountability among judges through professional integrity committees within the judiciary.

For policymakers, legislators and executive authorities:
- Strengthen legislation criminalising judicial corruption, including stricter penalties for bribery and undue influence.

For academics:
- Conduct studies on the effectiveness of judicial anti-corruption mechanisms.

'The rule of law never dies by itself. The facilitators of this death are always lawyers. Every populist and authoritarian regime has needed and needs them. Someone has to pretend to be a judge and professor, someone has to write the laws for the authorities, and someone has to announce the decisions of the authorities to the people.

Silent lawyers. Out of resentment, fear, profit, laziness, naivety and sometimes ignorance. The rule of law only dies with their help.'

Włodzimierz Wróbel

Professor Włodzimierz Wróbel is a judge of the Penal Chamber of the Polish Supreme Court and one of the symbolic figures of the judicial resistance in Poland (translated by ŁB).

Part 1. Why judges must be independent and accountable

The role of judges in a society

In many societies over the centuries, and especially since World War II, humankind has made great efforts to build a modern democratic world based on the rule of law and the protection of fundamental rights. Among the guarantors of the preservation of these values are independent courts which, under a system of checks and balances, restrain the legally questionable inclinations of the legislative and executive branches and protect the fundamental rights of every citizen. Without the right to an independent court, the protection of all other rights and freedoms can become illusory.

QUESTION
What role do courts and judges play in a society? Is it limited to adjudicating in ordinary, typical cases of citizens?

In simple terms, courts play a twofold role. **First, they adjudicate** the numerous, life-altering affairs of citizens. **Second**, the courts, being a branch of power themselves, **control and limit** the actions of other authorities. From the human rights perspective, this second role – controller of other branches of the government – is crucial. However, although this is obvious to many, it is not obvious to everybody.

The practical solutions vary. In many countries the constitutional courts control the legislature and the administrative judiciary controls the executive. The ordinary courts exercise control wherever the other party to the dispute, besides the natural or legal person, is an organ of the state. This applies whether it is, for instance, a criminal case in which the state is prosecutor or a compensation case in which a citizen sues the state. In some countries, such as Norway, Denmark and Iceland, there are no separate constitutional or administrative courts. All cases, including constitutional review cases and administrative cases, begin in the first instance courts.

To fairly fulfil their social role, judges need the attribute of independence. This can be understood in three ways: a **systemic independence** of the judiciary as a whole, an **individual independence** of specific judges performing their profession, and the judge's **impartiality in a specific case**. These different facets of independence are intertwined and contemporary culture has developed many mechanisms and guarantees to defend it.

Resources
Many treaties and documents highlight the importance of judicial independence. One of these documents is a manual of over 600 pages, produced by judges under the auspices of the CEELI Institute (https://ceeliinstitute.org). The manual is divided into thematic sections and is based on close to 200 hundred different international treaties and documents.

Manual on independence, impartiality and integrity of justice. A thematic compilation of international standards, policies and best practices (August 2022).

Another recent document is the ELI-Mount Scopus European Standards of Judicial Independence, developed by the European Law Institute (December 2024).

QUESTION
Is it possible for courts to function and for judges to adjudicate if they are not independent and impartial?

If the courts are not independent, if they are corrupt in any way (politically, economically or otherwise), their social role remains a façade. Of course, we are all well aware that there are countries with a systemic lack of independence of the courts and judges and full or partial subordination to politicians, other authorities or influences such as economic corruption.

Whether it is worth maintaining such an artificial structure that lacks the basic attribute of independence can theoretically be answered in various ways, but I find it surprising how seldom these questions are asked. Nevertheless, in current practice around the world, courts (like 'democratic' elections) are an inherent element of statehood regardless of whether or not they are impartial and fair.

It is perhaps remarkable that reflection and normative efforts have so far not looked at developing a concept of protection for judicial independence under threat, in the form of judicial resistance. This is despite the fact that the topic of the independence of courts and judges, and the guarantee of this independence, has been explored for years and much effort has been devoted to it.

On the one hand, we can consider the shocking example of the Weimar Republic and its independent judges who, with very few exceptions, failed to rise to the occasion in the early 1930s before it was too late. Then on the other hand, we have the recent example of Polish judges who showed that the development of authoritarianism can be delayed and perhaps even stopped.

Balancing independence with accountability and other values

While judicial independence is a prerequisite for the protection of citizens' rights, a fair trial and the rule of law in general, independence alone is not sufficient. Among various definitions that have been proposed of the basic characteristics of a court, an interesting and convincing concept of **judicial capacity** was formulated during the accession process of the 10 EU candidate countries from Central and Eastern Europe (CEE) (Bulgaria, Czechia, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia). According to this concept, a well-functioning judiciary should balance **independence**, **competence**, **accountability** and **efficiency**.

Resources
Open Society Institute, Monitoring the EU accession process: Judicial capacity (full report) (2002).

In the case of the new democracies in the CEE region, for historical reasons (political dependency) most or all the emphasis was placed on *judicial independence*. After the right of access to a court was fully implemented, case numbers rose significantly and so *efficiency* also became very important, due to the excessive length of proceedings. However, what was somehow neglected was a focus on *competence* and *accountability*.

Professional *competence* was developed based on traditional, narrow legal methodology without any systemic and critical interpretation of the law and soft legal skills. *Accountability* (including *transparency*, which is sometimes listed separately) of the judiciary as a whole, as well as specific courts and judges, was not a priority. In fact, there was barely any awareness of the concept and it was often mistaken for and limited to professional/disciplinary responsibility. For example, in both Norwegian and Polish the word 'accountability' has no direct equivalent. In Polish the word 'odpowiedzialność' (responsibility) was used. An alternative term for accountability – rozliczalność – has since been proposed, but has not been widely adopted.

Meanwhile, a well-functioning judiciary should balance all four of these features, as they are interdependent. Just as independence without competence and accountability is not enough for the exercise of sound justice, competence alone is insufficient if there is no independence or efficiency.

Academic sources
Michal Bobek, 'The fortress of judicial independence and the mental transitions of the Central European judiciaries', 14.1 Eur. Pub. L. 1, 99–123 (2007).

James E. Moliterno, Lucia Berdisová, Peter Čuroš & Ján Mazúr, 'Independence without accountability: The harmful consequences of EU policy toward Central and Eastern European entrants', 42 Fordham Int'l L.J. 481 (2018).

QUESTION
Are we 'doomed' to independent courts or is a paradigm shift possible?

Of course, the role of independent courts described above is crucial in a liberal democracy. But as we know, this is not the only option. Long-time Hungarian Prime Minister Viktor Orban, for example, promotes 'illiberal democracy'. Other leaders, such as Polish politicians Jarosław Kaczyński (leader of the Law and Justice party) or Mateusz Morawiecki (Prime Minister for six years), openly refer to the will/interests of the people as standing above the law.

At time of writing, early 2025 marks another chapter in this saga. Pledges by the new US President Donald Trump concerning the judiciary and liberalism suggest that we will witness tensions and another clash between political authority and the courts. Professor Maya Sen argues, for instance, that 'federal courts are unlikely to protect democracy from threats posed by Trump and Musk, as the judiciary's power to check executive overreach is limited and increasingly challenged' ('Why federal courts are unlikely to save democracy from Trump's and Musk's attacks').

All this brings to mind, including in academic discussions, the figure of Carl Schmitt (1888-1985), a conservative German legal and political theorist, theoretician of the authoritarian state, supporter of decisionism, co-founder of so-called political theology and a prominent member of the Nazi party. He was one of the critics of liberalism and parliamentary democracy. According to Schmitt, there can be no functioning legal order without a sovereign authority and since democracy is self-rule by the people, any attempts to get rid of the people's sovereignty cannot be successful.

It is, of course, possible to change the paradigm of courts that are independent of other authorities, but with the law as it currently exists, this usually means amending national constitutions (because otherwise it would be in violation of them) and denouncing the ratification of international documents and membership of international organisations like the European Union or the Council of Europe.

Understanding of the rule of law in a liberal democracy is therefore subject to change, but for as long as it is established and binding, care should be taken to make it a real, tangible phenomenon.

Academic sources

Maya Sen, 'Why federal courts are unlikely to save democracy from Trump's and Musk's attacks', Harvard Kennedy School (12 February 2025). See here for more of Professor Sen's publications.

The model of 'judicial supremacy' is not the only one but it is the one that was (at least partly) implemented in the CEE countries after 1989. For a critical discussion, see for example:

Cristina E. Parau, Transnational networking and elite self-empowerment. The making of the judiciary in contemporary Europe and beyond (Oxford University Press 2018)

Current pressures – sources of judicial stress

As highlighted above, courts have a very serious social role to play: the impartial resolution of conflicts between legal entities and control of the legality of the actions of other authorities. At the same time, the courts themselves are subject to legislation and the law, implementing state policy in individual areas (e.g. criminal policy or family policy).

In the check and balance system of liberal democracy courts can also be influenced in other ways, for example by changing the structure of the courts, the status of judges, or decisions regarding the level of financing of the judiciary. The actual position of courts and judges depends on many factors that make up the political and legal culture of a particular society. However, historical experience shows that, as the third power, judges can be vulnerable and subject to various types of stress.

In this Guide, we deal with the vulnerability of judges as the third power and some of the problems that courts and judges are currently struggling with in Europe. We identify those threats and pressures and propose how to tackle them, how to repel illegal attacks, how to minimise losses and with whom and how to cooperate in this regard.

What stresses are we talking about? They include political pressures resulting from the expectations of politicians and representatives of other authorities, both executive and legislative. These expectations may also escalate to include unceremonious attacks on judges who seek to maintain their independence. This is an issue faced in many countries. The stresses may also include economic threats (risk of job losses or salary cuts), psychological torment and distress.

Among other threats, the Guide also covers corruption, not only political, but also economic, and how judges might tackle and try to minimise the risk of corruption.

Other stresses might come from the public and from media/social media pressures on the judiciary.

There are also stresses within the judiciary itself, connected to relations between judges and management staff, such as court presidents, or between judges from different court levels.

To summarise, the stresses addressed in this Guide are not related to workload or the psychological burden of work, but specifically to threats against judicial independence.

'The (judicial) reform is ready, but it will be announced only after solving the problem with the Constitutional Tribunal.'

Zbigniew Ziobro
Polish Minister of Justice, 2016.

Part 2. Threats, stresses and pressures affecting judges' independence from other state institutions

In modern history, we can find many disputes, tensions and clashes in relations between the judiciary and the legislature and the executive. If we refer to the popular theory of the tripartition of powers and the concept of checks and balances, we must recognise that these tensions and clashes are natural processes. Since individual powers should balance and control each other, such tensions are inevitable. Relations between the authorities, their competencies in relation to each other, should, like all other elements of public life, be a topic of debate and subject to change if needed.

However, a normal public debate during which changes to the law or changes to the court system are considered is one thing, but unlawful political pressure exerted on judges, with attacks aimed at subordinating the judiciary to the vision of the political powers and limiting the independence of the courts and their supervisory role, are quite another.

Some legal changes may place certain pressures on judges performing their roles, but without endangering their independence. This is not the subject of this Guide. We focus here on the unfortunate situations that put judges in a very difficult position, when political authorities try to put pressure on judges by limiting their independence and powers of judicial review or by expecting specific rulings in certain types of cases or even in specific individual cases.

In Part 2 we will address the following issues:

- Can we distinguish proper judicial reform and regular legislative changes from the improper influence of authorities on judicial independence and how can we do this?
- What are the methods used by authorities in attacks on judicial independence?
- We provide a handful of examples from different countries of what may be described as rule of law backsliding.
- Next, we address how judges may resist and respond to the improper influences of other powers. We present several possibilities but focus on 'judicial resistance' as a

normative concept for defending judicial independence.
- Based on the experience of judges in a number of countries (especially Poland) we present a list of types and examples of resistance methods.
- We place special emphasis on the role of jurisprudence from international courts and the CJEU and ECHR as bodies setting standards for all their member states.

Judicial reform v. illegal political attacks

Obviously, the state, the democratic government, has the right to change substantive and procedural law and the court system. This results from the essence of democracy. Just as the currently applicable solutions, both at the national and international level, were once developed and adopted, so future changes are possible and natural. Therefore, a clear distinction must be drawn between justified changes to the judiciary, resulting from a democratic mandate, and abuses.

However judges, as a relatively conservative social group, can sometimes be overly sensitive (as a result of past experiences) and often view proposed changes suspiciously, seeing them as an attack on their independence.

If changes in the law or reforms to the courts or the status of judges result from a democratic mandate, judges, like everyone else, are obliged to accept new realities. However, if changes in the law or other actions of the authorities are contrary to accepted standards and aim to limit their independence and subordinate the courts, exerting pressure on them, judges should react.

Academic sources
Professor Matthew Tokson, for instance, warns from the American perspective against the controversial, conservative approach of judges to legal change, involving new doctrines for the higher courts and new legislation.

Matthew Tokson, 'Judicial resistance and legal change', University of Chicago Law Review, Vol. 82 (Iss. 2, Article 5) (2015).

QUESTION
What is rule of law backsliding?

In contrast to legitimate judicial reform, academics describe what they call 'rule of law backsliding', based on events that took place in Hungary and Poland. Professors Laurent Pech and Kim Lane Scheppele 'propose to define rule of law backsliding as the process through which elected public authorities deliberately implement governmental blueprints which aim to systematically weaken, annihilate or capture internal checks on power with the view of dismantling the liberal democratic state and entrenching the long-term rule of the dominant party.'

Laurent Pech & Kim Lane Scheppele, 'Illiberalism within: Rule of law backsliding in the European Union', 19 Cambridge Y.B. Eur. L. (2017).

Overview

Autocratic techniques[1]

- Isolating the courts by establishing power centres out of judicial reach
  - The 'dual state'
- Targeting constitutional courts
  - Court packing and dismissal of judges
  - Changes in appointment procedures
- Legislation to limit and direct the courts
  - Most judges follow a positivist apporach to legal authority
  - Potential conflict between legislation and the values underlying the rule of law
- Control over appointment processes
  - Loyal people to serve on National Councils of the Judiciary
- Use of the media
  - Questioning the integrity of the judiciary in general
  - Persecution of individual judges
- Disciplinary proceedings
  - Chilling effect of general investigations
  - Targeting specific action and rulings

Resources

Decline of democracy?

Reality check – democracy is on the decline and the judiciary is the main target. V-dem Democracy Report 2023: Defiance in the face of autocratisation. Democracy is down to 1989 levels (Hungary, Poland, Romania, Turkey and Israel). See here.

QUESTION

What methods are used to attack the rule of law and judges?

In Poland the attack on the rule of law manifested itself in various ways. The key ones were:

Legislative changes

Changes included limiting the role of the National Council for the Judiciary (NCJ), limiting the independence of courts and judges, limiting judicial review and limiting the right of judges to apply European law.

Administrative decisions by the executive

Decisions made by the executive powers, including all decisions regarding the appointment and dismissal of court presidents being made by the Minister of Justice.

Actions undermining the authority of courts and judges

Smear campaigns, hate campaigns and personal attacks against judges. For instance, the defamatory 'Just Courts' campaign by the Polish National Foundation (PFN) (established by public entities) which, despite spending several million PLN, was later unavailable on the PFN website www.pfn.org.pl.

1 Based on the presentation given by Professor Hans Petter Graver during the JuS seminar in Vilnius, April 2024.

Punishments and chilling effect

Other activities punishing judges who resisted and designed to have a chilling effect (harassment, repression and disciplinary proceedings, see resources below).

Resources

Poland

Written by judges and prosecutors, the final report documenting repressions against them was published in 2024, entitled 'Justice under pressure…' (the report is in Polish but an English version is expected as well). The authors present 'a report compiling the most egregious cases of repression against Polish judges and prosecutors in the years 2015–2023. It summarises the period in which the political authorities attacked judicial independence'.

Jakub Kościerzyński (ed.) and others, Justice under pressure. Repression as a means of attempting to take control over the judiciary and prosecutor's office in Poland 2015-2023 (original title: Represje jako metoda walki o przejęcie kontroli nad władzą sądowniczą i prokuraturą w Polsce w latach 2015-2023) (2024).

A previous report, covering a shorter period, was published in English as well as Polish: Jakub Kościerzyński (ed.) Justice under pressure – repressions as a means of attempting to take control over the judiciary and the prosecution in Poland. Years 2015–2019**.** (hereafter 'Kościerzyński 2020').

Regarding systemic changes, see for instance: Fryderyk Zoll & Leah Wortham, 'Judicial independence and accountability: Withstanding political stress in Poland', Fordham International Law Journal, 42, 875 (2020).

Regarding administrative decisions, see for instance: Małgorzata Szuleka, Marcin Wolny & Maciej Kalisz, 'The time of trial. How do changes in the justice system affect Polish judges?' (Helsinki Foundation for Human Rights 2019).

Rulings

International tribunals have also provided important guidance on how to distinguish between attacks on courts and judicial independence and court reforms undertaken in good faith. Both the ECtHR and CJEU look not only at detailed, specific changes to the law but also at the entire process of declared reform. Such a comprehensive assessment facilitates a better understanding of the goals of the changes being introduced.

In Grzęda v. Poland the ECtHR stated (emphasis added in bold by ŁB):

'348. The Court notes that **the whole sequence of events in Poland** (see paragraphs 14-28 above) vividly demonstrates that successive judicial reforms were aimed at weakening judicial independence, starting with the grave irregularities in the election of judges of the Constitutional Court in December 2015, then, in particular, remodelling the NCJ and setting up new chambers in the Supreme Court, while extending the Minister of Justice's control over the courts and increasing his role in matters of judicial discipline. At this juncture, the Court finds it important to refer to its judgments relating to the reorganisation of the Polish judicial system (*see Xero Flor w Polsce sp. z o.o.; Broda and Bojara;* and *Reczkowicz*, all cited above), as well as the cases decided by the CJEU (see paragraphs 150-56 and 160-61 above) and the respective rulings of the Supreme

Court and Supreme Administrative Court (see paragraphs 100-08 and 109-19 above). **As a result of the successive reforms, the judiciary – an autonomous branch of State power – has been exposed to interference by the executive and legislative powers and thus substantially weakened.** The applicant's case is one exemplification of this general trend.'

In Żurek v. Poland, Judgement of 16 June 2022, the ECtHR evaluated the hostile environment faced by Polish judges – in relation not to adjudication but freedom of speech. The ECtHR reiterated (emphasis in bold by ŁB):

'227. Against this background and having regard to the **accumulation of measures taken by the authorities**, it appears that they could be characterised as **a strategy aimed at intimidating** (or even **silencing**) the applicant in connection with the views that he had expressed in defence of the rule of law and judicial independence. On the material before it, the Court finds that no other plausible motive for the impugned measures has been advanced or can be discerned. It notes that the applicant is one of the most emblematic representatives of the judicial community in Poland who has steadily defended the rule of law and independence of the judiciary. The Court considers that **the impugned measures undoubtedly had a 'chilling effect'** in that they must have discouraged not only him but also other judges from participating in public debate on legislative reforms affecting the judiciary and more generally on issues concerning the independence of the judiciary (see *Baka*, § 173, and *Kövesi*, § 209, both cited above)

228. ...the Court is of the opinion that the impugned measures taken against the applicant were not 'necessary in a democratic society' within the meaning of that provision.

229. Accordingly, the Court concludes that there has been a violation of Article 10 of the Convention.'

In Case C-634/22 (inadmissibility of a request for a preliminary ruling from the Sofia City Court, Bulgaria) the CJEU found no contradiction with EU law in relation to the abolition of the specialised criminal court in Bulgaria and the subsequent reorganisation of the court system. The CJEU reiterated (emphasis added in bold by ŁB):

'32. In the present case, the referring court asks, in essence, whether Article 2, Article 6(1) and (3) and the second subparagraph of Article 19(1) TEU, read in conjunction with Article 47 of the Charter, must be interpreted as precluding the members of a court abolished by a Member State in order to uphold the constitutional principle of the independence of the judiciary and the protection of the constitutional rights of citizens from being able to hear, as members of the court which has succeeded the court abolished in this way, some of the cases which have been brought before them as members of the abolished court.

33. The questions... concern, more specifically, the interpretation of the principle of judicial independence, as guaranteed by the provisions of EU law referred to in the previous paragraph.

34. In that regard, it should be recalled that, while **the distribution or reorganisation of court jurisdiction in a Member State comes, in principle, under the freedom of the Member States** guaranteed by Article

4(2) TEU, **that distribution or reorganisation must not, in particular, undermine respect for the rule of law** set out in Article 2 TEU and the requirements arising, in that regard, from the second subparagraph of Article 19(1) TEU, including those relating to independence, impartiality and the previous establishing by law of the courts and tribunals called up to interpret and apply EU law (judgment of 5 June 2023, Commission v Poland (Independence and private life of judges), C-204/21, EU:C:2023:442, paragraph 263).
40. In those circumstances, while **it is true that every court is obliged to verify that it constitutes an independent and impartial tribunal previously established by law**, within the meaning, in particular, of the second subparagraph of Article 19(1) TEU, **where a serious doubt arises on that point** (judgment of 9 January 2024, G. and Others (Appointment of judges to the ordinary courts in Poland), C-181/21 and C-269/21, EU:C:2024:1, paragraph 68 and the case-law cited), the fact remains that the request for a preliminary ruling does not indicate the reasons for which such a doubt would exist in the present case.'

Possible judicial responses to political attacks

As noted by Hans Petter Graver, 'It is difficult to draw sharp lines between criticism of the regime, defiance, oppositional activity, and active resistance'. Graver discusses such terms as '**judicial resistance**', '**judicial obstruction**', '**judicial opposition**' and '**judicial dissent**'. He focuses mainly on judicial opposition by individual judges, stating that, in Nazi Germany, 'there is no evidence of any organised resistance among the judges'. In his recent writings, Graver has spoken about '**legal heroes**' and mentions different theoretical approaches to the judges' attitudes, focusing especially on **virtues** and **virtue ethics**.

For Ian Kershaw, 'resistance' is an organised activity seeking to undermine the regime and as such is a specific kind of 'opposition'. In contrast, 'dissent' is understood as a passive resentment, involving voicing opinions.

Analysing the Polish situation, Jerzy Zajadło focuses on two phenomena and associated terms: **judicial disobedience** and **judicial conscience**. He analyses judicial disobedience as a possible form of civil disobedience and points to its potential forms/methods: escape by judges into formalism; rejection of the law and adjudicating *contra legem;* resignation from office; escaping into judicial activism; and dynamic interpretation of the law.

Authors analysing the activities of Egyptian judges write about **'judges' revolt**' (or **judicial rebellion**) and claim that the Egyptian case is an example of the longest protest in defence of judicial independence, in both the Islamic and the Western world.

Other relevant interesting terms and concepts that are relevant to our subject matter and are the subject of discussion are **judicial activism**, **judicial autonomy** and **judicial mobilisation**.

Academic sources

Hans Petter Graver, 'Why Adolf Hitler spared the judges: Judicial opposition against the Nazi state', German Law Journal, 19, 845-878 (2018).

Ian Kershaw, 'The Nazi dictatorship: Problems and perspectives of interpretation', Chapter 8, 'Resistance without the people?' (2015).

Jerzy Zajadło, 'Sumienie sędziego' [Judicial conscience], Ruch Prawniczy, Ekonomiczny i Socjologiczny, Rok LXXIX (zeszyt 4), 31-41 (2017).

Jerzy Zajadło, 'Nieposłuszeństwo sędziów' [Judicial disobedience], Państwo i Prawo 71(1), 18–39 (2016).

Mohammed Said, 'A political analysis of the Egyptian judges' revolt' in Nathalie Bernard-Maugiron (ed.), 'Judges and political reform in Egypt' (2015).

As we can see, there are many concepts and terms to describe possible responses by judges in the face of threats to the rule of law or attacks on the independence of the courts. Does this mean that a concept is being developed of judges' self-defence against political attacks on their independence and that judges have the knowledge of what to do and how to do it? This is unfortunately not the case. Similar to the long-ago example of the Weimar Republic, as well as in other historical and more recent examples of attacks on the independence of the judiciary, judges become 'agents' of the state rather than defenders of independence or civil rights. As noted by Hans Petter Graver, 'the history of our legal institutions where they are put to the test is largely nothing to be proud of'.

Is it therefore possible, and what conditions must be met, for independent judges to be willing, able and capable of defending the rule of law in the event of a political attack on the judiciary? The answer to this question is yes, as exemplified by Polish judges. The following original concept of judicial resistance is based on a case study of the Polish crash test in the years 2015-2023.

The concept of judicial resistance

Definition

Judicial resistance encompasses actions by judges – individual and collective, in and out of court – undertaken to oppose various political activities that are aimed at undermining judicial independence and are in violation of the law (definition proposed by Ł. Bojarski).

Academic sources

The normative concept of judicial resistance, claiming that in given circumstances judges have the legal, professional and moral right and obligation to undertake judicial resistance, was presented in:

Łukasz Bojarski, 'Judicial resistance – missing part of judicial independence? The case of Poland and beyond', *Oñati Socio-Legal Series*, (2024).

The proposed definition/ characterisation of judicial resistance contains two elements: an unjustified attack on judicial independence (or more widely on the rule of law) and legitimate resistance to this attack, its forms and methods.

The **political aspects** of an unjustified attack may be characterised in the following way:

- They aim to limit judicial independence.
- They may take various forms (including, as already mentioned, legislative acts, executive decisions and use of propaganda).

- They are undertaken against or in breach of the law or rule of law standards accepted by the state itself and enshrined in its national law, including the constitution, and international law.
- Finally, the said breach of the law or standards (or action against the law or standards) is confirmed, at some point, by independent bodies, national or international.

According to this concept, in order for the judicial resistance to be justified, the government actions or proposed legal changes must be illegal and the breach of law must be confirmed. In the case of the situation in Poland, this confirmation was provided in a number of ways:

- Formal assessments made by various bodies and institutions within legal procedures: court verdicts (national and international).
  See, throughout this Guide, several court verdicts by the CJEU and ECtHR.
- More formal and significant procedures, such as European Commission actions, and less formal ones, such as opinions of the Venice Commission.
  See, for instance: Commission Recommendation (EU) 2016/1374 of 27 July 2016 regarding the rule of law in Poland, OJ L 217, 12.8.2016, p. 53.
  See European Commission for Democracy through Law (Venice Commission) opinions on Polish 'judicial reform'.
- Various documents, opinions and positions formulated by other international institutions and bodies of which Poland is a member, including the EU, CoE, UN and the Organization for Security and Co-operation in Europe (OSCE). See for instance:
  European Parliament resolution of 21 October 2021 on the rule of law crisis in Poland and the primacy of EU law.
  Dunja Mijatović, Commissioner for Human Rights of the Council of Europe, Report following her visit to Poland from 11 to 15 march 2019, Strasbourg, 28 June 2019, CommDH(2019)17.
  UN, Report of the Special Rapporteur on the independence of judges and lawyers on his mission to Poland, A/HRC/38/38/Add.1, 5 April 2018.
  OSCE (20 November 2017), Opinion on Certain Provisions of the Draft Act on the Supreme Court of Poland (as of 26 September 2017).
- Auxiliary sources, often important symbolically even if legally not significant (such as opinions of academics or lawyers' bodies. For more detail, see the section on the Legal complex below).

Once the existence of an 'unjustified' attack has been determined, we can analyse 'legitimate' resistance to this attack, its forms and methods. According to the proposed concept, resisting activities include:

- Activities by **individual** judges and **groups** of judges (**in court** and **out of court**).
- Activities including but **going beyond** adjudicating/administration of justice.
- Activities of **direct** and **indirect** resistance (if they are relevant).

The proposed division of the methods of judicial resistance into *individual – collective* and *in court – out of court* is arbitrary but it helps to structure and analyse the issue, it is also in my view natural and relatively simple. In fact, these divisions already exist, albeit in slightly different contexts.

Individual and collective judicial resistance

It is one thing to choose individually to resist and another to have a whole group building a strategy and taking the decision together to resist. Individual resistance seems to require more civil courage. It draws attention to a specific person and exposes the individual to consequences, including organised hate speech but also disciplinary action and other forms of professional harassment. In general, we are braver and feel safer in a group. In the case of judges, this is even more important given the constraints on the profession, such as the ban on engaging in political activity.

In addition, when there is controversy about the appropriateness or legality of a particular form of resistance, it is easier for a group than for an individual to defend themselves. This is probably why in Poland thousands of judges engaged in group resistance and fewer, probably hundreds, were involved in individual resistance.

However, although individual resistance exposes judges to much greater harassment and repercussions than participation in a collective act of resistance, disciplinary authorities also initiate proceedings in the case of collective protests, in order to identify the leaders ('provocateurs') of the protest and also to put pressure on the whole community.

Case study
In January 2019 the deputy disciplinary prosecutor of common court judges in Poland, Przemysław W. Radzik, requested from the President of the Court of Appeal in Kraków information regarding the resolutions undertaken in this court. He demanded: a photocopy of the resolutions adopted during the meeting; a photocopy of the minutes of the meeting; a photocopy of the list of judges present at the meeting; and information regarding persons who took part in drafting resolutions (when these drafts were prepared and by whom, on whose instructions and who distributed them to judges using official email accounts).

In the opinion of the disciplinary prosecutor, judges included in the resolutions 'inadmissible and dishonest statements and assessments concerning the activities of constitutional state bodies, including the President of the Republic of Poland, the National Council of the Judiciary and public authorities' and called on judges to disobey the legal order.

For more detail, see: Jakub Kościerzyński (ed.) and others, Justice under pressure – repressions as a means of attempting to take control over the judiciary and the prosecution in Poland. Years 2015–2019, p. 43, 71 (2020).

Judicial resistance inside and outside the courts

The division between resistance in court and out of court is also significant. Judicial resistance in court, whether individual or collective, has a legal basis, with relevant procedures and past practice or precedents. This includes adjudicatory activities, but also other activities, such as court administration or decision-making procedures in court – all those activities or actions that are the duty of judges or have a clear legal basis.

What happens outside the court, on the other hand, is of a different nature. It draws attention to the actions of judges not only as judges but as citizens who, like others, exercise their civil rights. Resistance activities also go beyond the law or court procedures and, in my understanding, may also include, for example, educational activities (when judges educate people about the rule of law, the role of the courts, judicial independence and attacks on it).

When analysing specific manifestations of judicial resistance, it matters whether they occur in or out of court. This is because we assess the actions of a judge 'in court' and 'out of court' in a different way. In general, we have more tools available for the analysis of activities in court, with procedures and established evaluation criteria.

When analysing activities out of court different questions arise, for instance about whether a person resisting does so as a judge or merely as a citizen. Does the fact that the individual is a judge restrict their freedoms in any way and, if so, how? There seem to be more question marks here and the assessment may be more difficult. This is also because

judicial resistance outside the court is a phenomenon that has not yet been adequately encapsulated, whether by standards of judicial ethics, disciplinary jurisprudence or in the professional literature. For we speak mainly about the right of judges to participate in public debate, or even their obligation to speak up for democratic values and the rule of law, but we associate this with traditional forms of expression (such as participation in a debate or an open letter) rather than with the surprisingly rich variety of forms of resistance in practice.

Examples of judicial resistance

For several decades, the topic of freedom of speech and public activity by judges has been considered mainly from the point of view of the restrictions to which judges should be subjected. The judicial profession certainly does require consideration and sometimes restraint. But it is worth extending this reflection to specific situations when we can demand more from judges – resistance rather than silence, activity rather than passivity.

Individual resistance in court

In court individual resistance covers situations when the judge acts as an adjudicator (in a particular trial), as an administrator (performing administrative functions in a court) or as an employee of a court (who is subject to the laws on labour relations).

Adjudication in 'political cases'

Judicial rulings in such cases can be included in the category of judicial resistance post factum, when a judge, in accordance with their conscience, does one or more of the following:

- makes a judgment that is not in line with the wishes expressed by the authorities;
- makes a judgment that is delivered despite the pressure;
- is aware of the publicly proclaimed expectations;
- is aware that the judgment might result in attacks on themselves (and possibly their family);
- and is aware that they are exposing themselves to disciplinary proceedings.

Another feature of judgments which I classify as falling into the category of judicial resistance is a reference by the ruling judge to the general situation in the administration of justice, such as an apparent reference to the attacks by the authorities on the independence of the courts or to the obligation of judges to defend that independence.

What is a 'political case' and how can it be distinguished from other cases? Currently, almost any court case can become political. This happens in all areas of law and at all levels of courts.

Below, I provide five different examples of such cases.

Case study[2]

Swearing in public

Judge Sławomir Jęksa (District Court in Poznań), acquitted the wife of a local opposition politician of the charge of using obscene words in public. During a demonstration organised by the International Women's Strike, she had said from the stage 'I'm fucking angry'. When justifying his decision, the judge argued that despite the fact that the defendant had used vulgar words that were heard by

2 Quotes from Kościerzyński (2020), pp. 33-34, 43, 76.

children, which is an obvious wrongdoing, the much greater evil was what was happening in Poland:
'We have a series of violations of the Polish Constitution related to limiting the freedom of assembly, taking over constitutional institutions such as the Constitutional Tribunal, the National Council of the Judiciary or the Supreme Court, violation of the principle of the division of powers, refusal to publish the rulings of the Constitutional Tribunal, application of the right of grace in ongoing criminal proceedings, introduction of unauthorised persons into the Constitutional Tribunal'. Hence, in the judge's view, the strong words were provoked by the situation in the country, to which the demonstration related.

Case study

Symbolic T-shirts

Judge Dorota Lutostańska (District Court in Olsztyn), when upholding on appeal the lower court's decision, ruled that placing T-shirts with the inscription 'Constitution' on the Prussian Women sculptures in Olsztyn, was not 'socially harmful', but was a manifestation of views in a public debate regarding respect for constitutional standards.

However, as argued later by the disciplinary prosecutor, Judge Lutostańska 'on the occasion of the 100th anniversary of Poland's independence, photographed herself with a group of other judges on a commemorative photo in a T-shirt with the inscription Constitution' and therefore was not impartial in deciding the case and should recuse herself.

For some time, dressing monuments and sculptures in such T-shirts became popular and hundreds of monuments in Poland and around the world were adorned in this way.

Case study

Rulings based on the Constitution

The example of Judge Łukasz Biliński (District Court in Warsaw-Centre) is especially intriguing. As a court judge in Warsaw, where numerous demonstrations and protests take place, he adjudicated in dozens of cases of demonstrating citizens charged with various misdemeanours. He regularly acquitted the demonstrators and often referred in his judgements to the Constitution and the protection of fundamental rights. Besides the media reports on his rulings, the judge was not otherwise visible or vocal about the situation in the country. He did not speak outside of court, he spoke out only through his rulings. However, his rulings met with criticism from those in power and a unique strategy was developed to get rid of him – the District Court for Warsaw-Centre was abolished (see below).

QUESTION
Can adjudicating in ordinary cases be seen as resistance?

It may seem controversial to place the adjudication of 'ordinary cases' (even if, by some criteria, we would classify them as 'political') among methods of resistance. It is, after all, an ordinary judicial duty. However, in Poland in the period under consideration and in general, we may talk about 'political' cases when they attract the attention of the authorities and when certain expectations are formulated in relation to judges (directly or indirectly), including attempts to impose a specific interpretation of the law on them.

It is evident that an independent judge should not succumb to pressure and that civil courage is a prerequisite for practising this profession. And yet, there are cases where both experts and the public recognise the steadfastness of the judge. All the more so, because judges who rule in such cases 'against the will of authorities' are no longer anonymous and may experience a variety of harmful consequences due to the choices they make.

Let's analyse the above example of Judge Biliński who ruled in dozens of cases of protesters, acquitting them based on the Constitution, but never spoke out publicly. Would he himself call what he did judicial resistance? Probably not. But as a consequence of his rulings, the authorities abolished the court in order to get rid of him. After the reorganisation, all the judges who had previously adjudicated together with Judge Biliński were transferred to the new criminal division. But Judge Biliński was transferred to the family division by a decision of the President of the District Court, Maciej Mitera (a member of the neo-NCJ – the prefix 'neo' as in the terms 'neo-NCJ' or 'neo-judge' is a way of signalling condemnation of the beneficiaries of the regime, and the bodies they sustain, which implicitly indicates their illegitimate nature). At the same time, a judge from the family division was transferred to the civil division, without having applied to do so. This is a clear illustration of manipulation.

Nevertheless, each 'political case' can be analysed individually in detail (before labelling it as resistance), by determining the attitude of the judge.

Another source of information on 'political cases' are advocates. This can be illustrated by two cases.

Case study

Refusal to approve a pretrial detention
'In 2016, Józef Pinior, a 'Solidarity' hero and then politician, was arrested. His arrest was presented as a success by those in power in their fight against the previous, corrupt government. The public prosecutor's office requested his prolonged pretrial detention, despite the lack of grounds. The case acquired political overtones. The government-controlled media started to put unprecedented pressure on the court to approve pretrial detention. Before the court session itself, the prosecution held a press conference, broadcasted by the media, to explain the necessity of remanding the opposition politician in detention. Judge Monika Smaga-Leśniewska did not succumb to the pressure. Following her decision, the government media launched an attack on the judge by infiltrating her private life. They also investigated her previous cases with a view to possible disciplinary proceedings against her.'

Source: communication with advocate Jacek Dubois.

Case study

Can a police officer be a victim?
July 2022: 'Paweł Kasprzak, leader of the Citizens of the Republic of Poland movement, was accused of insulting and violating the physical integrity of a police officer. Indeed, several times, just to attract attention, he shook the policeman's hand and called him a 'jerk'. His aim was to force the police officers to take action, after they had cordoned off demonstrators for several hours during the night in December. The judge of the District Court in Warsaw-Centre, Justyna Koska-Janusz, acquitted Paweł Kasprzak. She stated that the criminal law only protects police officers performing their official duties. On the video recordings of the incident, she said she did not notice any lawful behaviour by the alleged victim or other police officers. Instead, she saw unlawful behaviour. Hence she did not grant the alleged victim protection. Although he was wearing a uniform, he did not act on the basis and within the limits of the law.'

Source: communication with advocate Radosław Baszuk.

Adjudication – References for preliminary rulings and implementing EU law

The 'Polish judges cases', relating to judicial independence and decided by the international courts, are the subject of numerous studies.

Academic sources

Laurent Pech & Dimitry Kochenov, 'Respect for the rule of law in the case law of the European Court of Justice: A casebook overview of key judgments since the Portuguese judges case' (SIEPS 2021).

But what is the connection between these cases and judicial resistance? Before 2015, Polish judges rarely used the possibility of requesting a preliminary ruling from the CJEU and never in cases concerning the status of judges or the independence of the judiciary. The political attack on the courts changed this situation. Following group discussions and as part of developing strategies to defend the courts, judges began to use this procedure. The questions were formulated by judges from both the Supreme Court and the Supreme Administrative Court (in panels of several judges), as well as by individual judges from the ordinary courts.

It is worth drawing a distinction between questions formulated by local courts and individual judges and questions formulated by multi-member supreme court panels. Although, in principle, these are the same judges and are subject to the same protection, in reality asking preliminary questions demonstrates the judges' individual commitment to the defence of the rule of law and judicial independence, their imagination and their civil courage. This applies particularly to individual judges of ordinary courts who were publicly stigmatised when they addressed the CJEU and had disciplinary proceedings initiated against them.

Another important type of adjudication is the attempts by Polish judges to implement European law and rulings of the European courts related to the judiciary. These efforts are undertaken notwithstanding the lack of acceptance and implementation on the side of other state authorities and despite the consequences for the judges.

Case study

Legality check for the neo-NCJ
Judge Paweł Juszczyszyn (District Court in Olsztyn) was the first judge who, when examining an appeal, decided to implement the CJEU judgment of 19 November 2019 (in the joint AK cases). He took this step on 20 November 2019, just a day after the judgment had been issued. His intention was to examine the legal status of the judge who issued the first instance ruling. In order to do this, Judge Juszczyszyn sought first to assess the legal status of the neo-NCJ and the legality of the election of its members. The judge, until then utterly anonymous at the national level, suddenly became the focus of attention from the authorities and the media and faced numerous consequences following his decision (including a 2.5-year suspension and a 40% salary cut).

Judge Juszczyszyn was the first to implement the AK judgement, but others soon followed. However, this brought an immediate reaction from the disciplinary prosecutor, who accused judges of 'an illegal interference in the statutory procedure of appointing judges and court assessors to adjudicating panels… detrimental to the public interest expressed in the proper functioning of the justice system' (Kościerzyński 2020).

Case study

Independence under threat? The Celmer case
Judgment of the CJEU (Grand Chamber), C-216/18 PPU, 25 July 2018, ECLI:EU:C:2018:586 (known as the Celmer case).

Finally, there are examples of judges who, within various court procedures, have sought to inform the global legal community about the developments in Poland. One such case resulted in an important CJEU preliminary ruling in response to the High Court of Ireland.

In answer to questions from the Irish court deciding on a European Arrest Warrant case, the official opinion of the president of the Polish court did not confirm any threats to judicial independence in the government's actions. In response, a judge from the same court, Piotr Gąciarek, voluntarily prepared and sent his contradicting opinion. Thanks to his initiative, the Irish court (and also the entire legal world) 'received clear and precise information, coming directly from the judge-practitioner, about the threats to the independence of courts and the independence of judges, which result from the analysis of changes introduced in recent years in the Polish legal system'. The information provided by Judge Piotr Gąciarek to the Irish Tribunal resulted in disciplinary action being taken against him (Kościerzyński 2020, p. 32).

Assessment of the effectiveness of references for preliminary rulings as part of judicial resistance requires detailed analysis. In general, however, the preliminary rulings delivered in several of these cases are of key importance not only for the situation in Poland, but more broadly they have developed a new line of jurisprudence for the independence of the judiciary across the EU.

Academic sources
Laurent Pech, 'The European Court of Justice's jurisdiction over national judiciary-related measures', Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies (2023).

The examples provided of different types of rulings and trial decisions by judges are evidence of their independence notwithstanding the risks. These judges are supported in different ways. Rulings by international courts underline the right of judges to undertake activities which we have labelled 'judicial resistance'.

Ruling
European Commission v Republic of Poland, CJEU (Grand Chamber), C 791/19, judgement of 15 July 2021.

Due to the disciplinary consequences faced by judges requesting preliminary rulings, the CJEU declared that:

'by allowing **the right of courts and tribunals to submit requests** for a preliminary ruling to the Court of Justice of the European Union **to be restricted by the possibility of triggering disciplinary proceedings**, the Republic of Poland has failed to fulfil its obligations under the second and third paragraphs of Article 267 TFEU'.

Refusals – Boycotts

A number of judges refused to appear in response to the summons of the disciplinary prosecutor or refused to provide written explanations in reply to the prosecutor's motion. Their argumentation was in part individual and in part the same as that of their colleagues and inspired by the refusal of the President of Iustitia, Krystian Markiewicz.

Case study[3]

Rejecting the disciplinary prosecutor
In a published statement in May 2019 President of Iustitia, Krystian Markiewicz specified inter alia:

'As a judge and professor, I have the duty to uphold the law and to observe the highest ethical and constitutional standards. Due to repeated violations of the law by the disciplinary prosecutors appointed by a politician – Minister of Justice Zbigniew Ziobro – and in light of the revealed 'haters' campaign' scandal against judges, I was faced with one of the most difficult decisions in my professional career.

As an independent judge, I decided not to appear today in response to the summons of the disciplinary prosecutors Schab, Lasota and Radzik, as people who were chosen in a political procedure and, according to media reports, participated in a group that harassed both me and my family.'

Markiewicz went on to say that, until the CJEU ruled on the allegations of a repressive and political system disciplining judges, he would only appear in court and not in the presence of persons 'who exercise functions of political expediency

3 Quotes from Kościerzyński (2020), pp. 22-23, 30-31, 40-41, 50, 52, 61-62.

and harass independent judges'. He concluded by saying that he was presenting his statement 'for consideration by all persons summoned by the above-mentioned prosecutors'.

Acting in his capacity as President of Iustitia, Judge Krystian Markiewicz also sent a letter in May 2019 to judges of disciplinary courts, calling on them to refrain from ruling until the CJEU had resolved doubts about the legal status of the Supreme Court Disciplinary Chamber and the organisation of disciplinary proceedings.

The same letter also addressed judges targeted by the disciplinary system. By noting that he was presenting his statement 'for consideration by all persons summoned by the above-mentioned prosecutors', Markiewicz was in fact encouraging them to boycott disciplinary summons.

This was the first declaration of its kind and it was followed by several statements by other judges who took similar decisions, expressing solidarity with Judge Markiewicz. They stated that they shared the same values, arguments and legal assessment and in some cases they provided additional argumentation addressing:

- the fact that those involved in the disciplinary system were in official dependence on the Minister of Justice;
- the politicisation of disciplinary functions;
- the lack of will on the part of disciplinary prosecutors to investigate real scandals and their practice instead to escalate their 'investigative' activities in relation to judges who oppose the subordination of the courts to the executive power;
- the fact that disciplinary prosecutors were exceeding their powers, as they were not authorised to initiate proceedings concerning district and regional court judges;
- the engagement of disciplinary prosecutors themselves in systemic defamation of judges;
- the ignoring by disciplinary prosecutors of statutory deadlines and violations of the rights of defence; and
- the manipulation of facts by disciplinary prosecutors in official statements.

Case study

Judges harassing judges

The absurdity of some of the actions of the disciplinary prosecutors are well illustrated in a statement by Judge Bartłomiej Starosta:

'I oppose the harassment which consists of calling judges by sending them summonses written in a hurry, in violation of the procedure, sent immediately in advance of or even during a period of holiday leave, requiring their presence for interrogation for irrational reasons, such as going to a music festival, participating in simulated hearings presented for young people, or posting texts on the internet which are critical of the Ministry of Justice's actions. In my opinion, this is all intended to limit the right of judges to express themselves and to humiliate them publicly, not to mention disrupting their duties as judges. My objection also concerns the price that will have to be paid by the citizens for the actions of the above-mentioned disciplinary prosecutors, as their cases will have to be postponed for a long time.'

Case study

Abstaining from the Supreme Court College
Another example of judges refusing to participate in formal activities was a decision taken by members of the Supreme Court's College, its presiding body *(Kolegium Sądu Najwyższego)*. A total of eight judges from the three chambers of the Supreme Court stated that they would abstain from participating in the work of the Supreme Court College until the Disciplinary Chamber was completely discontinued and the CJEU rulings were thus actually implemented (Statement, Warsaw, 30 September 2021).

Case study

Boycotting elections to the neo-NCJ
A remarkable example of a boycott, due to its scale and consequences, was the situation with the election of judge members to the neo-NCJ. Since the neo-NCJ has been seen as illegitimate by legal and academic circles from the very beginning (due to the passing of a law that shortened the constitutionally protected term of office of previous members and changed election procedure), judges' associations and a number of CSOs involved asked judges not to participate in the election procedure (neither as candidates, nor by signing the required candidate support lists).

As a result, during the first election in March 2018, only 18 individuals (from a total of around 10,000 judges) decided to run for the 15 positions. Most of those ultimately elected (12 out of 15) were linked to the Ministry of Justice. After the four-year term, in December 2021 before the second election to the neo-NCJ, Iustitia called for a boycott. This time, 19 judges decided to run for the positions. Of the 15 elected judges, 11 were elected for a second term.

The boycott demonstrated the strength of solidarity within the judicial corps. Reports show that the vast majority of those who decided to apply, and those who supported them, were linked to the Ministry and politicians and were themselves 'beneficiaries' of the changes (appointed or promoted during the reform). The rather small number of judges who took part in the procedure reveals a clear picture of a well-defined group of supporters of the reform. They can be counted in the dozens when it comes to the elections to the neo-NCJ or a few hundred if we include the judges who agreed to take on administrative positions after the dismissal of presidents and similar.

Testing procedures (kamikaze judges)

An exception to the boycotting policy is the resistance method used by judges who consciously participate in controversial procedures even though they consider them to be legally flawed, such as the competition for the position of judge in a higher court. There is an apparent contradiction here. On the one hand, a particular judge believes that judges should not take part in the competition for the position of judge in the Chambers of the Supreme Court. This is either because the newly created Chambers are, in the judge's view, illegal or because the competition is being conducted by the neo-National Council of the Judiciary, which was appointed in violation of the Constitution. But on the other hand, the same judge does take part in a different competition.

These candidates have not always revealed their motivations publicly in advance of the competition (although there are exceptions). However, a number of them have been

identified, either through analysis of their conduct or through private conversations with them. These judges are colloquially described as 'kamikaze', because their efforts to gain office are, they believe, doomed to failure. However, they not enter the competitions for the purpose of being selected for office.

Case study

'So why am I tarnishing my name by applying to the pseudo NCJ to become a pseudo-judge of the Supreme Court? Because I believe that every person applying to the Supreme Court should use this opportunity to challenge the legality of the current procedure for appointing judges… This position is shared by me and a group of committed and conscious candidates for the Supreme Court. They risk their reputation so as to prevent the ruling party from barbarically taking over the Supreme Court, ultimately stifling an independent third power in Poland. We hope that other candidates will join us. The illegal procedures should be condemned fiercely.' (Kościerzyński 2020, p. 164)

QUESTION
Should judges engage in kamikaze-type strategic litigation?

The so-called kamikaze action by judges, de facto classic strategic litigation, is an original method when it comes to representatives of the judiciary. Despite calls to boycott the competition to the Supreme Court, they participated in the contest (2018). What are the practical results of such action? I see the following potential objectives:

- To undertake legal actions of a strategic litigation nature to prolong, halt or block the competition procedure and to challenge its legality. Activities include complaints to both Polish and international courts. The participation of 'kamikaze' judges in the competition allows them to use a range of legal remedies.
- To obtain information that is only available to participants in the proceedings (or which is much more readily available to them). Such information is used by judges to guide further action, but also to let the public know what the procedure conducted by the neo-NCJ looked like.
- To compare the competences of different candidates taking part in the competition. If a highly qualified 'kamikaze' judge takes part in the competition, but the neo-NCJ selects people with much lower qualifications (which is the case in many instances), it is easier to visualise reasons for the selection that are not competence based (and instead, for example, political).

Summing up, this form of resistance triggers rapid reactions from the executive and legislative branches, who know or suspect the actual reason for the kamikaze actions, and the whole process turns into a battle against the 'enemy' and a race against time. Decision-makers amend the laws at express speed, limiting the legal means available for the 'kamikaze' candidates who, in turn, try to challenge these new regulations.

Individual resistance outside the courts

Individual judicial resistance outside of the courts covers situations when a judge acts in a private capacity, even if this is within court procedures, exercising their citizens' rights. This can happen both in situations where their judicial profession is known and where they appear as anonymous citizens.

Judges' lawsuits against 'the state'

In CJEU cases, judges formulating questions for a preliminary ruling feature in their official role, as national court judges. In the cases described below, the judges also feature – as complainants of various kinds – but they do so exercising their individual right to apply to a court. I therefore categorise these resistance activities as 'out of court', even though they involve court cases and judicial matters, including those directly related to the professional status of judges. The examples below show the main legal routes used by judges, but not all of them.

One category of cases are lawsuits for the protection of personal rights. Judges have filed these against various persons and entities, including the Minister of Justice and public television networks.

Resources

Barbara Grabowska-Moroz & Małgorzata Szuleka, 'It starts with the personnel. Replacement of common court presidents and vice presidents from August 2017 to February 2018' (Helsinki Foundation for Human Rights 2018).

Case study

Minister defaming judge

Judge Beata Morawiec, a well-known critic of 'judicial reform' as chair of the Themis Judges Association, also served as president of the Kraków Regional Court. She was one of numerous presidents who were dismissed (by fax) before the end of their terms. Information about her dismissal was made available on the website of the Ministry of Justice. The Ministry's communiqué suggested that Judge Morawiec, as president, had neglected or failed to exercise supervision over the Court's finance director and thus linked her dismissal to a corruption investigation (involving arrests), which was also reported by the Ministry.

The Warsaw Regional Court found in January 2019 that the Ministry of Justice had knowingly acted with intent to damage the good name of Judge Morawiec, by deliberately juxtaposing information about her in the same place as information about the individuals who had been detained. In actual fact, it is not the court president, but the Ministry of Justice which appoints, supervises and dismisses the finance directors. The Regional Court ordered the Minister to post an apology on the Ministry's website and to pay PLN 12,000 to a social cause, as requested by the judge. In January 2021 the Warsaw Court of Appeal upheld the verdict and dismissed the Minister's appeal.

Case study

Public media in the service of hate

Judge Piotr Gąciarek (Warsaw Regional Court) sued the public television station TVP for broadcasting a television programme devoted entirely to him. His activities in defence of the courts were presented together with untrue information intended to portray him in a bad light. According to reports, the TV footage was allegedly created in response to a political order from within the Ministry of Justice.

In July 2021, the Regional Court ruled that the television company had violated the judge's personal rights – his good name and dignity. Subsequently, the Court of Appeal in Łódź upheld the verdict in May 2022 and dismissed TVP's appeal. The courts ordered an apology and the removal of material on the topic from the TVP website. The court awarded the judge PLN 40,000 in damages (Łódź Court of Appeal, 12 May 2022, I Aca 1461/21; Łódź Regional Court, 29 July 2021, XII C 436/20). The rulings were executed. See here for more info.

A separate category of cases is related to the reinstatement of the suspended judges and legality of the Supreme Court Disciplinary Chamber.

Case study

Against all the odds[4]

Judge Paweł Juszczyszyn filed a civil motion for an interim measure (protective order) to secure his rights pending a final ruling. He decided to sue the Supreme Court Disciplinary Chamber for the protection of his personal rights. His claim was that the Supreme Court Disciplinary Chamber decision to suspend him and to reduce his salary was not legal, as it was not issued by a legal Supreme Court. The motion was filed in all 46 regional courts in March 2021 with clear intentions: as a means to allow the judge to return to his job and as a way to obtain the courts' assessment of the status of the Disciplinary Chamber and the legality of its decisions, but also as a test of judicial independence and the scale of the 'chilling effect'.

The judge's attorney, Professor Romanowski, was direct in his assessment of the situation: 'The fate of Polish judges and ours lies in the hands of regional court judges. We provide them with a procedural opportunity to take a stand. Their decisions will be judged by history.'

The applicants did not know whether the case would be taken up and, if it was, by which court and when. In May 2021 Olsztyn Regional Court ruled on the case, granted the requested protective order and ordered the District Court to reinstate judge Juszczyszyn and the Supreme Court to announce that the decision to suspend Juszczyszyn had been deferred for the duration of the proceedings. The court order was immediately enforceable.

On 30 July 2021, the court ruled on merits in favour of Judge Juszczyszyn. Finally, on 28 December 2021, the Olsztyn Regional Court considered the objection to the decision issued in July and declared the Supreme Court Disciplinary Chamber's decision to suspend Judge Juszczyszyn as unlawful. The court ruled that the Supreme Court Disciplinary Chamber had exceeded its powers, because it was not legally authorised to deal with the case, and ordered the decision to be removed from the Supreme Court's website.

Resources

Mariusz Jałoszewski, 'Szarża sędziego Juszczyszyna. Blisko 200 sędziów zdecyduje, czy uznają Izbę Dyscyplinarną' [Judge Juszczyszyn's charge. Nearly 200 judges will decide whether to recognise the Disciplinary Chamber], OKO.press, 29 March 2021.

4 Quotes from Mariusz Jałoszewski, see resources below.

Mariusz Jałoszewski, 'Polish court challenges Disciplinary Chamber's order. Judge Paweł Juszczyszyn can return to adjudicating', Rule of Law, 12 May 2021.

Another strategy used by Judge Juszczyszyn and his attorney was a labour case for reinstatement including a motion for an interim measure. On this occasion, in April 2021, the labour division of the District Court in Bydgoszcz ruled in favour of the judge and obliged the president of the court, Judge Maciej Nawacki, to 'authorise Mr Paweł Juszczyszyn to exercise all the rights and perform all the duties which Mr Paweł Juszczyszyn is entitled to by virtue of his office as judge of the District Court in Olsztyn, in particular to exercise the adjudication functions of a judge'. On 17 December 2021, the Bydgoszcz District Court considered the merits of the claim and ordered the judge to be reinstated.

Since the courts' rulings, like those mentioned above, were not executed by either Judge Juszczyszyn's District Court president Maciej Nawacki (formally his employer) or the Supreme Court which had suspended Judge Juszczyszyn, an additional strategy was developed to pressure the individuals responsible for the execution (the presidents of the two courts), by filing a criminal notice against them. The motions filed (notification of a possible criminal offence) referred to the crimes of abuse of powers and failing to fulfil official duties (Article 231, Penal Code) and persistent violation of employment duties (Article 218, Penal Code).

In the case of Court President Nawacki, the notice was filed after he failed to comply with two court rulings which should have resulted in Judge Juszczyszyn's immediate re-admission to adjudication. A similar notice was filed in relation to Supreme Court president, Professor Małgorzata Manowska, in June 2021. Judge Juszczyszyn also requested a fine of PLN 15,000 on both presidents for non-execution of the court ruling.

European Court of Human Rights

Another group of cases brought by judges comprise complaints to the ECtHR. Dozens of complaints were filed in connection with the judicial crisis in Poland, some of them by judges (see below for a list of cases). According to the ECtHR's Press Unit:

'The cases concern judicial decisions rendered by various chambers of the Supreme Court in civil cases, following appeals with regard to applications for vacant judicial posts, or regarding a disciplinary case regarding a lawyer or decisions by the National Council of the Judiciary. It is alleged that the judicial formations dealing with the applicants' cases were not 'independent and impartial tribunals established by law' since they included judges who had been appointed by the new National Council of the Judiciary.'

The relevant press releases list 20 and 37 applications (see below), in total. However, as of December 2024 the ECHR had reported on 195 cases regarding 'judicial reform', with the vast majority of applications brought by judges. The importance of these cases is demonstrated by the fact that the Court 'has decided that all current and future applications concerning complaints about various aspects of the reform of the judicial system in Poland should be given priority (Category I)'. According to Court policy, Category I level priority is assigned to urgent cases.

Resources
ECHR Press Release, Notification of 20 applications concerning judicial independence in Poland, ECHR 136 (2022), 25 April 2022.

See also:
ECHR Communique de presse, Communication de 37 requêtes relatives à l'indépendance de la justice en Pologne, CEDH 248 (2022), 25 July 2022.

ECHR, Poland. Press Country Profile, December 2024. There are currently 195 applications pending before the Court which raise issues relating to various aspects of the reform of the judicial system in Poland under laws that entered into force in 2017 and 2018.

QUESTION
How can judges build a strategy of lawsuits against the state?

When it comes to judges' lawsuits against 'the state', there are different strategies for commencing specific proceedings. Sometimes these are individual initiatives by judges who are looking for legal solutions. But there are also regular brainstorming sessions within the community in search of new legal routes. Judges are helped and inspired by their lawyers, as well as by academics and civil society organisations. In the current crisis, judges, who were previously introduced to the idea of strategic litigation by CSOs, are learning to think in this way and are more open to different ideas.

While this may look post facto like the conscious strategy of a group or organisation, it is clear from following the events and talking to the protagonists that the overall picture of legal actions taken by judges is made up of many, diverse, both individual and collective, ideas and decisions.

Media appearances – Awareness-raising – Education

A media review of websites, social media, press, TV and radio reports featuring judges, which was undertaken by the author in Poland for the years 2016-2021, revealed thousands of examples of media appearances by judges (the most active judges appear as commentators hundreds of times over this period). They are mostly concerned with threats to the rule of law and the independence of the courts and judges. This includes general statements and specific comments, often direct criticism, of solutions concerning the judiciary, or more broadly the rule of law, as proposed and introduced by the executive and legislative powers. There are voices in defence or expressing solidarity with specific judges under attack. It also covers widely understood awareness-raising activities of an educational nature, bringing the role of the courts and judges in society closer to the public. I provide some examples below.

Over the years, there have also been hundreds of meetings with judges, open to the public and organised by different actors (including CSOs, academics, the legal profession and judges themselves). Some judges, who became symbols of resistance, have taken part in numerous such meetings all over the country and occasionally abroad.

Many of the individual statements from judges address the issues directly and without evasion.

Case studies

The following examples have all resulted in some kind of involvement by disciplinary bodies.[5] They include comments to a range of media, including Twitter, internet portals, TV, newspapers and speeches at rallies (year provided in brackets).

Case study

Hanging the constitution
(2017) Retired judge of the Constitutional Tribunal and its former president, Jerzy Stępień, took part in the Freedom March demonstration on 6 May 2017, during which he stated that 'the rulers hung the Constitution on a hook'. He was charged with active participation in a political rally and breaking the principle of apoliticism through his words.

Case study

Beauty contest
(2018) Judge Bartłomiej Przymusiński (District Court Poznań-Stare Miasto), a spokesperson for Iustitia who uses language tailored to communicate with the public, went on TV and criticised the selection procedure of the neo-NCJ for the Supreme Court judges' positions. He compared it to a 'beauty contest', due to the fact that it was based on short meetings with candidates that only lasted up to 15 minutes and were held behind closed doors.

Case study

Political manifesto?
(2019) Judge Waldemar Żurek was subjected to numerous disciplinary cases, including several related to statements he made which were described by the disciplinary prosecutor as 'delivering a political manifesto'. In an interview for the professional online portal prawo.pl, he shared his views and assessments about the status quo, the operation of the Constitutional Tribunal and the NCJ, as well as questioning the appointment of one particular judge to the Supreme Court.

Case study

Scandalous system
(2019) Judge Olimpia Barańska-Małuszek (District Court in Gorzów Wielkopolski), commented in the media that a candidate for the position of judge in the Supreme Court Disciplinary Chamber had no experience and had a record of human rights violations (an incident that was widely discussed at the time). On a different occasion she commented on Twitter that the actions of the Minister of Justice 'produced a scandal' and that he was 'responsible for creating a corrupt system in courts and prosecutors' offices, making the judiciary subservient to political will'.

5 Quotes from Kościerzyński (2020), pp. 13, 25, 56, 68.

Although there are no detailed studies on this topic, it is apparent to an observer of the judicial community and public debate in Poland that there has been a clear increase in media and public activities by individual judges since 2015. Judges are much more visible than before. The examples of media and public appearances by judges, resulting in disciplinary repercussions as shown above, proves that judges continue to comment on the situation in the judiciary on an ongoing basis, despite disciplinary measures and various actions by the government. These include changes to the law to limit judges' freedom of speech (the famous 'muzzle law'), with the aim of silencing them and creating a chilling effect.

Resources
Laurent Pech, Wojciech Sadurski and Kim Lane Scheppele, 'Open letter to the President of the European Commission regarding Poland's 'Muzzle Law', Verfassungsblog, 9 March 2020.

Judges also use various forms of communication to reach different audiences.

Social media private communication
Former Supreme Court Judge Stanisław Zabłocki, now retired, was one of the first judges to use his Facebook page, not only to comment on developments in the country, but also as a means of communicating with citizens. He published statements explaining the motives for his personal decisions, for example whether to leave the Supreme Court as a form of protest.

Travelling judge
Suspended judge Paweł Juszczyszyn regularly published information about his activities on his Facebook account, as he felt obliged to work for the public good (and other suspended judges said the same). During his 2.5-year suspension, he therefore took part in dozens (if not hundreds) of meetings with citizens and in numerous other events throughout the country.

Naming and shaming – condemnation and ostracism

One of the forms of resistance used by judges to emphasise their attachment to the rule of law, the Constitution and the independence of the judiciary was (and is) the way in which they treat those among their peers who participated in or supported the actions of the authorities which were assessed as an attack on justice.

This group includes:
- judges who publicly supported the ruling majority in the dispute;
- judges who enjoyed various perks associated with their involvement in the reform/attack;
- judges who accepted positions after colleagues were illegally dismissed;
- judges who accepted various additional public roles and privileges associated with this;
- judges who took part in elections to the neo-NCJ and to judicial positions, despite calls for a boycott (this also applies to non-judges who only became judges 'under the new conditions').

Naming – the most common way of signalling condemnation is the use of terms against the beneficiaries of the regime, and the bodies they sustain, which implicitly indicate their illegitimate nature. Judges are called stuntmen, understudies, fake judges, non-judges or neo-judges and the prefixes 'neo' or 'pseudo' are added to the names of bodies, such as in the case of the neo-NCJ or pseudo-Constitutional Tribunal.

What results might be expected from using 'naming and shaming' as a method of resistance? Apart from the expression of disapproval or disgust, there is a very concrete strategic goal. Such documenting is intended by its authors also to serve potential charges in the future which, in the event of breaches of the law, such as disciplinary torts or crimes, should be brought against those responsible (when political conditions are more favourable).

Condemnation is a means of documenting violations on the one hand and exposing their perpetrators on the other. This is why various organisations documenting cases of pressure, repressions and harassment against judges indicate not only the victims but also the perpetrators. One example is 'The list of judges and persons who have actively engaged in activities supporting the change in the shape of the… courts and tribunals, initiated in 2015'. The list covers both judges and people aspiring to the profession of judge and includes judges who nominated themselves in 2018 for membership of the neo-NCJ, judges who were connected with and participated in the takeover of the Constitutional Tribunal and the Supreme Court, and judges who participated in the repression of their peers, such as through disciplinary proceedings.

Resources

Jakub Kościerzyński (ed.) and others, 'Justice under pressure – repressions as a means of attempting to take control over the judiciary and the prosecution in Poland. Years 2015–2019' (2020):

Chapter III, 'The list of judges and persons who have actively engaged in activities supporting the change in the shape of the constitutional bodies of the State listed in Chapter VIII of the Constitution of the Republic of Poland 'Courts and tribunals', initiated in 2015', pp. 93-170.

Ostracism is encountered in cases of direct contact (or avoidance) between 'old' and 'new' judges. In terms of relations in the Supreme Court, these problems have even become the subject of public debate and correspondence addressed to the authorities.

Case study[6]

One of the new Supreme Court neo-judges, Professor Antoni Bojańczyk, complained in a letter to the First President of the Supreme Court (copied, inter alia, to the President of Poland and the Chairman of the neo-NCJ), about his poor treatment in court by 'senior' judges. He reported that another judge of the Supreme Court would not shake hands with him (an accepted way of greeting in Poland). Saying a perfunctory 'good morning' without shaking hands was, according to Bojańczyk, 'an ostentatious violation of the fundamental and sacred norms of Polish culture'. Bojańczyk did not mention the possible reasons for this behaviour, presenting it as evidence of a conflict between seniority and youth. He complained that 'no institutional steps have ever been taken to ensure that the highest court creates an atmosphere of inclusiveness and comradely treatment of new Supreme Court judges by the large group of older judges of the court'.

When it comes to interpersonal relations and the use of ostracism as a method of resistance, there are no simple patterns and the treatment of 'agents of the good change' depends on many individual factors (good change [Dobra zmiana] was a political slogan

6 Quotes from a column 'Bon ton in courts and tribunals', where I write more on this subject, see: Łukasz Bojarski, 'Bon ton sądowy i trybunalski', Prawnik. Dziennik Gazeta Prawna (2019).

of the ruling majority). People who were fully committed to the attacks on judges defending their independence were treated differently from those who, although they didn't engage in disputes and didn't speak out in public, nevertheless 'took advantage of the opportunity' created by the boycott of specific procedures and applied for the highest judicial positions.

QUESTION
Does ostracism and condemnation affect family?

Social ostracism has the additional, and for some controversial, aspect that such behaviour affects the loved ones of the person ostracised, meaning that blameless people become victims of the situation. However, in my opinion, 'It is unavoidable, moreover, it is a well-known mechanism. Our choices affect people close to us and their assessment may influence our behaviour'.

Some proponents of condemnation and ostracism declare their approach publicly, as if to pre-empt those who engage in the regime's illegal activities. It is not a question of instrumental exploitation of the family, but rather of being aware that public criticism reaches them. Thus, if the behaviour of judges supporting a regime is evaluated negatively by those closest to them, they can potentially influence the attitudes of the judges. Being aware of the possible impact of such a mechanism does not equate to stigmatising the judges' loved ones (however, there are no concrete data that would prove this argument, only speculation).

Group resistance in court

Group judicial resistance in court activities are undertaken by different official bodies, such as assemblies of judges from a given court (or assemblies of judges' representatives from a given jurisdiction), the college of a given court (which consists of several members) or groups of judges compiled or brought together based on other criteria, such as judges working in a particular division in the court.

General resolutions – Calls for action

Immediately after the Extraordinary Congress of Polish Judges on 3 September 2016 (see below), a number of General Assemblies (GAs) of Judges declared their support for its resolutions. For instance, the Resolution of the General Assembly of Poznań Appellate Judges, adopted on 12 September 2016, declares its support and also 'adopts Resolution No. 1 of the Congress as its own'. This was the first initiative to spread throughout the country and it involved many judges who voted in favour of local resolutions.

In general, on various occasions, different local bodies have passed resolutions. For example, on 12 October 2018, representatives of the Kraków appellate jurisdiction adopted several resolutions.

The judges criticised the actions of the Minister of Justice and the legislature for badly affecting the functioning of the courts; condemned various illegal and unauthorised actions of the politicised disciplinary bodies; criticised changes in the law concerning the Supreme Court, the NCJ and the procedure for appointing judges which does not guarantee transparency; and criticised the unjustified decision of the president of the Kraków District Court to transfer a judge (a de facto form of harassment).

Sometimes resolutions are initiated by one or more courts and then adopted by successive General Assemblies of judges across the country. A significant development of this kind was the adoption of **resolutions refusing to provide an opinion on candidates for judges**. When there was a competition for a judicial post in a given

court, the General Assembly of judges of that court or jurisdiction provided an opinion on all candidates and forwarded these opinions to the National Council of the Judiciary. Judges from the Gdańsk appellate jurisdiction were the first to adopt such a resolution (22 November 2018) and were followed by judges from the Białystok, Kraków and Warsaw appellate jurisdictions. The idea then spread further.

On 3 January 2019, representatives of the Judges of the Regional Court in Poznań also adopted **a resolution to refrain from providing an opinion on the candidates, until a preliminary ruling from the CJEU** regarding questions referred by the Supreme Court and the Supreme Administrative Court. These questions concerned the compatibility with the principles of European Union law of the procedure for appointing judicial members of the NCJ and appointment procedures for judicial posts by the NCJ. In the resolution, the judges also criticised the way the competition for vacant positions for judges was conducted in their jurisdiction. Finally, since judges in Poznań were not the first to raise these issues, they also expressed their support for previous resolutions from other courts which refused to provide opinions on candidates.

In response to the resolutions of the Assemblies refusing to issue opinions on candidates for judges, the Parliament changed the law, eliminating this element of the procedure. However, at the same time, these actions played a very important role in mobilising judges to speak out. Through resolutions in different jurisdictions, judges learn from and inspire each other. Fewer than half of judges belong to judges' associations, but all judges are members of bodies within their courts, in their jurisdictions.

Resolutions passed by general assemblies in individual courts were not based on a roll-call vote (although if, as often happened, the result of the vote was unanimous, the attendance list obviously did not ensure anonymity). This allowed people who were reluctant to engage in 'controversial' actions and statements to take a stand.

Resolutions regarding individual judges

There are resolutions from general assemblies that express their support for particular judges (see Kościerzyński 2020, pp. 38, 44). For instance, the General Assembly (GA) of judges of the Olsztyn District Court took a position regarding their colleagues. In its resolutions of 21 February 2019, the GA supported Judge Dorota Lutostańska, who faced disciplinary proceedings related to wearing a T-shirt with the inscription 'Constitution', as a symbolic expression of her attachment to constitutional values (see above for more detail).

In another resolution, of 2 December 2019, the same GA expressed its full support for suspended judge Paweł Juszczyszyn, calling for his immediate reinstatement, condemning 'the actions of the political authorities, the disciplinary prosecutors and the president of the Olsztyn District Court' and demanding their immediate dismissal. In fact, judges all over Poland supported Judge Paweł Juszczyszyn in various ways, condemning the political activities of the disciplinary prosecutors (Paweł Juszczyszyn was the first judge to implement the CJEU ruling in AK, see more above).

Resolutions on personal issues, defending or just expressing solidarity with a particular person who is a victim of persecution or reprisal, are important both for the judges concerned and also for the community. Thanks to these actions, no-one feels left alone, everyone has the support of the group which, especially in the case of a hate campaign, is an important counterbalance to the attacks mounted on some judges by politicians and by the media controlled or influenced by them.

Defence by the Court College

In Poland, according to the previous wording of the law, the regional court college consisted of the regional court president and eight members, elected by their peers, including four regional court judges and four district court judges. This created a situation where, even if the Minister of Justice appointed a new president of the court, the judges could still elect their representatives and voice their concerns.

On numerous occasions these colleges defended judges and stood up against the decisions made by new court presidents, decisions which were presumably (or directly and publicly) expected by the Ministry of Justice.

Case study

The example of Judge Aleksandra Marek-Ossowska illustrates the issue. For several months in 2018 (May–December) the vice president of the **Toruń Regional Court** attempted, four times altogether, to transfer her, a criminal judge with over 20 years of experience, from the penal division to the economic division of the court.[7] However, the vice president's actions were unequivocally condemned by the College of the Regional Court. This condemnation was supported by the argumentation that she was not the most junior judge in the penal division (where a transfer is necessary, it is usually the judges with the least experience who are moved and those with more experience stay).

Nevertheless, in September 2018, the vice president ordered the judge to leave the room she had previously occupied and assigned her to a room without a telephone or internet and with archive cabinets in poor condition. She was deprived of the secretary with whom she had worked for over 10 years and was denied a parking space. Finally, the president decided to impose administrative supervision of all 120 cases from her case load, ordering her to write monthly reports on each of them. On the one hand, this example shows the role of the Court College (before the changes to the law) and, on the other hand, it illustrates the possibilities that still exist to make judges' professional lives harder or to submit them to de facto harassment.

Case study

The College of the Kraków Regional Court was an arena of serious clashes, demonstrating the nature of the court 'reform' and interpersonal relations in that court. The previous president of the court, Judge Beata Morawiec, was dismissed by the Minister of Justice, before the end of her term of office and by fax. The new 'fax president' (this is how judges and the legal community describe the presidents who agreed to replace former presidents whose positions were revoked before the end of their term by fax), Judge Dagmara Pawelczyk-Woicka, was an outspoken supporter of the new government and became a member of the neo-NCJ.

Judge Waldemar Żurek was at that point the spokesperson for both the Regional Court and the previous, legal, NCJ. Due to his role, both as a member of and spokesperson for the NCJ, he was very active in critically commenting on developments regarding the judiciary, including the change of court presidents. And this was when his ordeal began. Below are three examples showing the role of the court college in his situation (for more detail, see the ECtHR judgement of 16 June 2022, Żurek v. Poland).

7 Communication with the judge.

(1) The president of the court dismissed Judge Żurek from his position as court spokesperson, claiming this was done with the approval of the court's College (by acclamation). In response, six members of the College announced that no such item had been on the meeting agenda and there had been no vote or acclamation. As a protest, they resigned from the work of the College (a notification filed with the public prosecutor's office, claiming that the minutes of the court College meeting had been falsified, was dropped by the prosecution).

(2) The president of the court requested that Judge Żurek be transferred to another division of the court (transferring judges involved in judicial resistance between court divisions is a strategy used to make their lives more complicated). The judges of the new College (who were nevertheless still elected by their peers) refused to give an obligatory opinion and demanded to be presented with the data justifying the transfer decision.

(3) At the next meeting, the College members were given some information which did not satisfy them. The court president wanted to force a vote by handing out ballot papers. Of 10 College members, only two completed the ballot papers. Notwithstanding the protests of the judges' representatives, their refusal to give an opinion and the lack of a quorum, the president of the court ruled that the required opinion had been voted for. Despite subsequent appeals, the judge was not reinstated in his previous court division.

Again, in revenge for decisions that the government did not agree with, and in order to rule out this possibility, the law was changed. After an amendment, the regional court college now consists of the president of the court and the presidents of the district courts (all at least partially dependent on the Minister of Justice). Judges' representatives were excluded from the court college.

Group resistance out of court

Judicial resistance group activities are undertaken by numerous bodies and groups of judges.

These include members of the National Council of the Judiciary (NCJ), until it was de facto dissolved, when the term of office of its judicial members was illegally shortened in 2018 (as confirmed by the ECtHR in Grzęda v. Poland, Judgement of 15 March 2022).

A number of groups' activities are linked with judges' associations. These include the Iustitia Judges' Association, the Themis Judges' Association and two associations of family judges: the Association of Family Judges in Poland and Pro Familia Family Judges' Association.

Altogether, fewer than half of Polish judges (the judicial corps numbers around ten thousand) are members of judges' associations. Within Iustitia, which is the largest organisation (approximately 3,700 members), there are also 32 self-governing local branches that undertake independent initiatives. All the groups mentioned were active before 2015 and involved in various types of projects and activities (relevant information is available on their websites).

Other groups have emerged during the crisis. The Association of Administrative Court Judges was established in February 2018, with the aim of defending judicial independence.

Another important group is the Judges' Cooperation Forum created in 2017.

Judges are also active through group initiatives such as the Extraordinary Congress of Polish Judges or the three Congresses of Polish Lawyers, organised jointly with advocates and legal advisers.[8]

In addition to these high-profile initiatives, attracting hundreds or thousands of participants, there are various smaller gatherings of judges, including conferences, seminars and informal meetings. Judges have also established informal groups via social media and other communication channels. Some of them are permanent, while others have been created ad hoc to solve a specific problem or task. Most of them are private but some are open to invited individuals.

International standards
Most of the collective actions taken by judges can be attributed to the tasks imposed on them by international standards on the role of judicial associations, especially in their latest iteration, from 2020.

See: CCJE Opinion No. 23 (2020), The role of associations of judges in supporting judicial independence.

These standards include information and communication, education, standing up for the rule of law and judicial independence, and international cooperation.

Monitoring and reporting

Entities like Iustitia, Themis and the Judges' Cooperation Forum are involved in monitoring and reporting on the situation in the judiciary, both in general and in relation to concrete developments. Monitoring includes conducting various causal studies. Reporting takes place in several forms, such as publishing reports, giving presentations at events and providing information to interested institutions and the media, on both the national and international level.

Through monitoring activities and their own and commissioned research, judges have access to knowledge and data and do not have to rely on uncertain public information. With a network of judges across the country and in each of the several hundred courts, the profession is kept abreast of events and can both react instantly and build a strategy of resistance. In turn, through reporting, judges keep both their peers and the outside world informed of developments, facilitate the exchange of information and experience, strive to de-emphasise propaganda and maintain a spirit of solidarity and cooperation.

Some examples.

Poland: The Iustitia Judges' Association produced the report which is cited numerous times in this Guide: '*Justice under pressure – repressions as a means of attempting to take control over the judiciary and the prosecution in Poland. Years 2015–2019*'. Another example is a report (in Polish) entitled 'P*romises versus reality – district court statistics after five years of 'reforms' (2015-2020)*', showing that access to court for citizens is deteriorating.

The findings of monitoring by the Themis Judges' Association have been distributed on a wide scale due to the international contacts of its spokesperson, Judge Dariusz Mazur (at time of writing, in 2025, Deputy Minister of Justice). He has presented information dozens of times since 2016 through various fora (including international conferences, seminars, meetings, media interviews and publications).

See for instance: Dariusz Mazur, Laurent Pech & Patryk Wachowiec, '1825 days later: The end of the rule of law in Poland', parts I and II, verfassungsblog.de (2021).

8 May 2017 in Katowice, June 2019 in Poznań and June 2023 in Gdańsk.

Bulgaria: the Bulgarian Judges' Association has conducted monitoring studies to identify, explore and track over time the attacks in Bulgaria against courts, judges and their professional organisations. The findings were published in two reports:

Galina Girginova, 'Media monitoring and analysis of attacks against courts' (Summary) in the period 1.01.2015 - 1.07.2017.

Galina Girginova, Yordan Vladov, 'Media monitoring and analysis of attacks on court during the period 1.8.2017 - 30.11.2019'.

As the authors explain in the introductions to the reports: 'The media monitoring study and analysis had two main aspects:
– In the first place, they outline the attacks against courts in the media and those implicit in statements made by public figures with strong opinion-making potential, including attacks from representatives of the three branches of government — judiciary, executive and legislative — and by representatives of non-governmental organisations, including sociologists and political scientists. The analysis then seeks to uncover and explore the underlying reasons, gauge the intensity and explore the nature of the attacks against courts on the part of leading opinion makers in Bulgaria.

– They also provide a chronological account of the media publications containing attacks against courts, judges and their professional organisations. The monitoring exercise takes a critical look at journalistic articles purporting to report on developments in the judiciary (materials and information updates relating to key events); interviews with opinion leaders; analyses; commentaries and investigations with implications for the judiciary.'

In order for the monitoring to be credible, judges need to know the developments taking place all over the country. This is why, in 2017, they created a forum to facilitate information exchange and drafting of joint positions.

Resources
The Judges' Cooperation Forum
(Forum Współpracy Sędziów, FWS) 'is a non-formalised interface, a platform for cooperation, providing communication between judges of different courts in Poland... The primary task of the FWS is to develop the positions of the judicial community on the most important issues for the judiciary'.
The Forum focuses on monitoring threats to the independence of judges and the courts. During the crisis FWS represented judges from around half of Polish courts (representatives of the courts, elected democratically by judges).

The Forum's day-to-day running is managed by a permanent presidium composed of 15 persons. It produces statements and opinions, collects and makes available important information and educational materials, including jurisprudence from courts and tribunals regarding the independence of the judiciary, and information on publications of relevance to the judiciary.

Some entities are also involved in monitoring the legislative process and preparing opinions on draft laws and on the dangers posed to judicial independence by the laws prepared and enacted. Occasionally, they also prepare and promote their own proposals. The best known and most widely promoted of these is Iustitia's draft law restoring the rule of law in Poland and implementing the rulings of the CJEU and the ECtHR. Iustitia claims that this is the only draft law that, if passed, would fully implement the judgements of the CJEU and the ECHR.

Public statements – Open letters – Calls for boycotts

An important tool for expressing judges' views are all kinds of group public statements prepared during specific events or separately, as an independent activity. Both the NCJ and the judges' associations, as well as individual judges, provided reactions to the attack on the judiciary from the very beginning (late 2015) in the form of positions and appeals.

The Extraordinary Congress of Polish Judges

The first big judicial event was the Extraordinary Congress of Polish Judges which took place in Warsaw on 3 September 2016 and brought together around a thousand participants, including invited foreign guests and many eminent figures from Polish legal circles.

International guests to the Congress included: András Baka – President of the Civil Chamber of the Kúria of Hungary and former President of the Supreme Court of Hungary; Thomas Guddat – Vice President of MEDEL and President of the Polish-German Judges' Association; Nils Engstad – President of the Consultative Council of European Judges (CCJE); Nuria Díaz Abad – President of the European Network of Councils for the Judiciary (ENCJ); and Marek Safjan – a Polish judge from the Court of Justice of the European Union and former President of the Constitutional Tribunal.

The Congress was organised by the NCJ and four judges' associations, under the honorary patronage of the First President of the Supreme Court and President of the Supreme Administrative Court.

Photo: The Extraordinary Congress of Polish Judges. A symbolic image of empty chairs set up for invited guests who did not attend, including the President of the Republic, the Speaker of the Senate, the Minister of Justice, and the Prime Minister. Featured in the photo, in the front row from the left, are three presidents of the Constitutional Tribunal—Professors Andrzej Rzepliński, Andrzej Zoll and Marek Safjan—alongside Danuta Przywara, Chairwoman of the Helsinki Foundation for Human Rights, and Professor Jerzy Ciemniewski, former judge of the Constitutional Tribunal. Source: Kuba Atys/Agencja Wyborcza.pl.

The Congress adopted three resolutions. The first emphasised the role of judicial independence, opposed attacks on the courts and also called on the community to reach out to citizens informing them about the situation and urging 'public opinion and representatives of the media to support the efforts of the judiciary aimed at ensuring the balance of the legislative, executive and judicial powers to ensure the citizens of the Republic of Poland the constitutional right to an independent court'.

The second resolution focused on attacks on judges and especially the situation of the Constitutional Tribunal and the NCJ. Judges emphasised that 'never in the hitherto history of independent Poland were judges from the various courts and tribunals the subject of such drastic actions aimed at downgrading their authority…'.

The third resolution was of a different character. Polish judges expressed their solidarity with Turkish colleagues, who 'have been dismissed from service, detained or imprisoned, their property has been seized and a number of restrictions have been introduced as far as the freedom of movement and the right to leave the place of residence are concerned'.

For the full texts of the resolutions (pp. 119-124) and a number of speeches and interventions from the Congress see:
Grzegorz Borkowski (ed.) *Extraordinary Congress of the Polish Judges*, Warsaw: TNOiK 'Dom Organizatora' Toruń (2016).

Polish judges' open letter to the OSCE
Other statements that brought together a significant number of signatories include the open letter sent to the OSCE regarding the presidential elections in Poland in 2020, signed by over 1,200 judges (addressed to Her Excellency Ingibjörg Sólrún Gísladóttir, Director of the Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights). The judges sent the letter two weeks before the date set for the election (ultimately the election did not take place), highlighting numerous violations of the law in the organisation of the elections.

Although the issue of elections is not directly related to the administration of justice, the judges stressed their political impartiality and legal and constitutional responsibility, as those who 'have the responsibility to resolve disputes and appeals regarding electoral matters. We uphold, among others, the roles of Election Commissioners and the members of the Election Commissions'.

For the English version of the letter see here.

Judges' appeal to the Polish authorities
In July 2021, almost four thousand Polish judges (3,911) signed an appeal to the Polish authorities calling for the implementation of European law and, in particular the order of the CJEU's Vice President and the ruling of the CJEU, 'including the immediate cessation of the operation of the Disciplinary Chamber of the Supreme Court'. The judges emphasised the fact that refusal to enforce the judgments 'constitutes a flagrant breach of EU law binding upon us (Article 19(1) TEU), but also infringes the domestic constitutional order (Article 91(2) of the Constitution)'.

Order of the Vice President of the CJEU in Case C 204/21, 14 July 2021, ECLI:EU:C:2021:593. and Case C-719/19, judgment of 15 July 2021, ECLI:EU:C:2021:506.

The appeal was a spontaneous action by judges from all over Poland, from district, regional and appellate courts, as well as the Supreme Court and administrative courts. It was initiated in accordance with the 'one for all, all for one' principle by judges from the Olsztyn district and was an expression of solidarity with Judges Paweł Juszczyszyn

and Igor Tuleya, who were removed from adjudication by decision of the Supreme Court Disciplinary Chamber.

The appeal is a good example of reference to EU law (or of using EU law as leverage). However, this is not only proof of the judges' commitment to European values and their dedication to defending the rule of law. It also demonstrates the growing scale of judicial resistance. Of all the forms of resistance in which it is possible to count the participants, the group of people who signed this appeal is the largest and represents approximately 40% of all Polish judges. Furthermore, the appeal was signed after five years of permanent pressure by politicians using the legal apparatus and disciplinary proceedings against protesting judges. This shows the civil courage of the signatories, but it can also be seen to demonstrate that collective forms of resistance are safer for participants and it is therefore easier to gain broader support for them.

Supreme Court judges' statement to the President of Poland
In May 2020, a group of judges from the Supreme Court prepared a statement to the President of the Republic, informing him about, and protesting against, events that had taken place in the Supreme Court and that sought a political takeover of the court on the occasion of the selection of five candidates for the position of First President of the Supreme Court.

As reported by a representative of the group of 50 judges, 'In fact, the aim was to include among the candidates a person who, prior to the General Assembly meeting, had already been chosen by the decision-makers to hold this position'.

The judges informed the President of the Republic about the irregularities that had occurred and expressed hope for 'the President's deep reflection on whether the appointment of the First President of the Supreme Court in these conditions will contribute to the improvement of the rule of law'. The judges also used this opportunity to 'thank everyone for the support they have given us in various forms, judges of common courts, organisations and citizens who did it through social media, as well as those who supported us here in front of the building of the Supreme Court, exposing themselves to the interventions of the Police'.

The statement from the judges shows that, regardless of their assessment of the actions of the authorities, they seek dialogue, communicate with the authorities with respect and expect them to take adequate action.

Letter from disciplinarily prosecuted judges to the Prime Minister
Another noteworthy example is a letter of May 2022 from a group of over 50 disciplinarily prosecuted judges, who addressed the Polish Prime Minister, Mateusz Morawiecki, following his false statement that 90% of disciplinary proceedings against judges were for rape, theft and driving while intoxicated.

The authors stated that none of them was charged with a common crime and expressed the belief 'that the disciplinary charges against us are related to defending the independence of the judiciary, defending the Constitution or issuing judgments that are not in line with the executive power'.

The judges expected and called upon the Prime Minister to rectify his mistake, to impose consequences on those who prepared the false information and to apologise to the Polish judges.

Both Iustitia and Themis have also prepared statements regarding individual judges. In the case of the dismissal of Judge Waldemar Żurek from his position as court spokesperson and his transfer to another court department in 2018, they described it as

'politically motivated harassment' and 'an attempt to intimidate judges who openly act against actions aimed at political subordination to justice' (Kościerzyński 2020, p. 67).

Local branches of judges' associations have also regularly taken a stand. For instance, the Management Board of the Lublin Branch of Iustitia expressed in a resolution deep disapproval of the actions of the deputy disciplinary prosecutor targeted at Barbara du Chateau – a judge of the Court of Appeal in Lublin.

Calls for boycotts

A particular category are various appeals by judicial associations to their own members or judges and lawyers in general, calling for a specific action or boycott of a given procedure. A good example is the resolution by Iustitia from July 2018 regarding applying for Supreme Court justice positions and addressed to 'Fellow Lawyers'. In three short paragraphs the Board of Iustitia: evaluates the procedure as illegal and invalid; indicates that the best (and fastest) way to challenge it is an appeal to the court, against the decision of the neo-NCJ, and promises support to those who decide to file an appeal; and indicates that lawyers 'involved in dismantling the principles of the democratic state based on the rule of law... should be aware of the serious risk to their professional and civic reputation'.

See Resolution of the Board of the Association of Polish Judges Iustitia of 22 July 2018 on applying for the positions of a Supreme Court justice (Kościerzyński 2020, p. 163).

This short resolution might be interpreted as: calling for a boycott of the procedure (since it is illegal); enhancing participation in the procedure but with the goal of challenging it ('kamikaze judges'); and 'naming and shaming' those judges who by their involvement in the 'judicial reform' ruin their reputation (see more on these different types of actions above).

Other examples of calls to boycott official procedures are related to the elections to the neo-NCJ. This happened twice, in 2018 and 2022. Before the 2018 elections, four judges' associations (Iustitia, Themis and two associations of family judges), 'recalling the content of the judges' oath', called on judges to refrain from election to the neo-NCJ and from legitimisation of 'legislation that is incompatible with the principles of the democratic state of law and the separation of powers'.

Four years later, on the occasion of new elections to the neo-NCJ, Iustitia pointed out in a resolution that the Act on the NCJ 'entrusts the election of 24 out of 25 members of this Council to political power, which makes the Council a body subordinated to political power and incapable of fulfilling its constitutional task of upholding the independence of the courts and the independence of judges'.

The resolution underlines the fact that judicial appointments made by a neo-NCJ composed in this way 'are flawed and may be declared invalid' and that the above circumstances 'have been confirmed by numerous decisions' of the CJEU, the ECtHR and national courts, including the Supreme Court and the Supreme Administrative Court. Finally, Iustitia calls on the judges 'to behave in accordance with their oath of office and refrain from any participation in this unconstitutional procedure, which is contrary to all standards of protection of human rights'.

This shows that one of the addressees of the judges' statements is their own community. Calling for a boycott of the election of judges to the neo-NCJ in 2022 after six years of crisis, Iustitia appealed to the integrity of some and warned others, those who condoned illegal actions and used the opportunity for their own ends. The effectiveness of the initiative is shown by the reaction of the neo-NCJ that Iustitia's resolution provoked. In a unique position statement the neo-NCJ declared:

'It is clear from the information that has emerged in the public domain that candidates for the National Council of the Judiciary, or those judges who support them, are intimidated by other judges who threaten them with, inter alia, ostracism, future accountability or disciplinary removal from service. This atmosphere of threat and intimidation results in judges who are interested in participating in the elections, or those who wish to support candidates, not wanting to participate or not supporting them for fear of being stigmatised…'

This reaction is interesting for several reasons. It shows that the boycott might be a practical and effective method of resistance. Symptomatically, the position was taken up by members of the neo-NCJ who had run for election to the Council four years earlier (2018) and of whom an overwhelming majority (14 members out of 15) had decided to run for another term this time (2022). They knew the situation first-hand and were de facto referring in the position statement to themselves and their efforts to win support among judges.

In October 2021 in Bulgaria, the Managing Board of the Bulgarian Judges Association urged judges not to participate in the scheduled elections for the Supreme Judicial Council. This appeal was in response to the resignation of two previous members, distrust in the remaining council members and scepticism about their ability to uphold judicial independence and manage the judiciary effectively until the end of their mandate the following year. The by-elections saw only 15% of eligible judges participate and no new members were elected to fill the two open positions.

Information – Awareness-raising – Education

Judges are involved in numerous initiatives aiming at raising awareness among the public about the situation of the judiciary and political attacks on it, spreading reliable information and educating people about the role of an independent court.

Resources

Promotional materials

Iustitia developed promotional materials used in various activities and available for anybody who might find them useful. They included graphics files for producing stickers, badges, billboards, leaflets, posters and banners. There were materials specifically designed for defending particular individual judges (for example, 'We demand that independent judges be reinstated', with a judge's name and image). Others relate to judges' participation in various initiatives ('We are united by the Constitution'), as well as some with a broader social application ('Free people. Free courts. Free elections'). Materials were/are available to the public, they could be downloaded and used by judges and other interested parties throughout the country.

Artistic endeavours

Judges are also involved in various projects of an artistic nature, including artist-initiated projects. Two examples are especially significant and are described in the next section. Information on other projects can be found in the section entitled 'Through the eye of the artist' on the FWS website.

Judges under pressure documentary film

The documentary film 'Judges under pressure' (2021) was promoted as telling 'the story of defiant judges who stand in defence of the Constitution and the separation of powers. One of these judges is Igor Tuleya who withstands the pressure and issues verdicts that are unfavourable to those in power. For the government he is public enemy number one; for protesting citizens – the face of the judges'

resistance… Meanwhile, a cruel illustration reveals the extent to which the rule of law has been dismantled… Judges take to the streets hand in hand with ordinary people to defend of the rule of law. 'The camera documented the lives of the protagonists, judges, a prosecutor, a lawyer and social activists (at times 24 hours per day). (The film is available with English subtitles.)

Justice photo exhibition
Another project was the photography exhibition 'Justice'. It presented profiles of judges, prosecutors and lawyers involved in judicial resistance, with photographs and statements justifying their stances. It has been exhibited on a number of occasions, published as a bilingual Polish-English book and is also available online.

The author explained why he chose this topic: 'Judges, prosecutors and their defence lawyers… how their roles have been reversed. The world according to Law and Justice [name of the governing party] has turned everything on its head: judges and prosecutors have now become the accused and it is they who now need defending. How did it ever come to this?'

The project was developed in cooperation with the Iustitia Association of Judges and the Lex Super Omnia Association of Prosecutors.

Educational projects

Finally, various groups of judges engage in numerous events and activities of an educational character (for more on the individual involvement of judges in educational projects, see also above).

Rocking judges – music festivals
Judges take part in events at various music festivals, talking to the audiences about the role of the judiciary as well as its current state and challenges. Several judges for instance took part in the Academy of the Finest of Arts which is organised annually during the Pol'and'Rock Festival in Kostrzyn nad Odrą.
'The Academy of Finest of Arts is a place of learning, cultural exchanges and meetings with esteemed public figures such as bestselling authors, social activists, religious leaders, politicians and scientists. It is also a place where different non-governmental organisations can showcase their work and tell the festival audience about their mission and the causes they undertake.'

Among other things, judges co-organise simulations of court hearings, introducing the work of the court, court actors and procedures. In one instance the simulation was denounced by the disciplinary prosecutor as 'a parody' and disciplinary investigations were instigated.

Information from the 2021 programme: 'Polish Judges Association IUSTITIA – Judges will conduct simulations of trials with the participation of the audience. They will answer almost all questions, including difficult ones. They will take part in a debate on the rule of law and present their profession in a discussion on the legal profession. You will find us in the Ombudsman's tent.'

International advocacy

One of the strategies adopted by the judges themselves (through their associations) or in cooperation with partners (most often CSOs and civic initiatives) is to provide information about events in Poland and to solicit relevant actions from international institutions and organisations.

This is done through:
- resolutions and appeals;
- publications on the subject;
- translation of important documents and information;
- inviting judges from other countries to Poland;
- constant communication with international judges' organisations;
- communication with representatives of various institutions, including from the world of academia;
- participation in conferences and seminars abroad (including academic ones);
- visits to the headquarters of organisations, meetings with European politicians;
- meetings with delegations and monitoring teams visiting Poland;
- contacts with embassies of various countries in Poland;
- cooperation with other Polish organisations carrying out similar activities.

These efforts incorporate advocacy at the level of international organisations, primarily the European Union, and international judicial organisations.

Polish judges contacted foreign partners directly, without the intermediation of the government, either by initiating contact or by responding to an invitation. For this, they were labelled as 'traitors' who report on their own country. This happened, for instance, to a group of judges after a visit to Brussels. They were stigmatised and their names were read out at the neo-NCJ session from a list brought by neo-NCJ member Krystyna Pawłowicz (who was at the time also a Member of Parliament) and duplicated for all neo-NCJ members.

Academic sources
Claudia Y. Matthes, 'Judges as activists: how Polish judges mobilise to defend the rule of law', East European Politics, 1-20 (2022).

Matthes focuses on the role of judicial associations and their strategy towards the European Union. The author analyses what she calls *collective action* by judges and divides it into litigation, lobbying for litigation, lobbying for political action, and protesting. She focuses on the high courts and their preliminary questions to the CJEU, seen as an indication of judicial resistance.

Demonstrations – Solidarity campaigns

One of the ways of manifesting judicial resistance is participation in a wide variety of street protests, assemblies, pickets, demonstrations and similar.

There are protests organised by other groups where judges only participate, others organised by judges jointly with other groups or organisations, and those organised by judges themselves.

Although the decision to participate in a particular form of protest is always an individual one, the initiative itself and the organisation and logistics are often the result of group efforts. Thus, these forms of protest have both an individual and a group dimension and could be listed under both headings.

When it comes to protests organised or co-organised by judges, there were hundreds of such protests over a period of eight years. Two of them, based on conversations with judges and observation of public debate, are worth noting as breakthroughs. These two events in particular played a significant role in the mobilisation of judges. According to interviews and conversations with judges, they were very important events for them as a group and something they discussed among themselves in depth.

Chain of lights

Photo: Citizens and Judges (Iustitia & Akcja Demokracja – Chain of Lights), Warsaw July 2017. Citizens project the slogan 'THIS IS OUR COURT' (To jest nasz sąd) on the Supreme Court building. Source: Franciszek Mazur/Agencja Wyborcza.pl.

After the unexpected announcement of a draft proposal for a law, including the de facto abolition of the Supreme Court and the dismissal of its judges, the Iustitia Judges' Association, together with the CSO Action Democracy (Akcja Demokracja), organised the so-called Chain of Lights in front of the Supreme Court building and in its defence.

On 16 July 2017 citizens and judges gathered in the evening, holding candles and standing in silence, to protest in defence of the court. The scale of the public protest surprised the organisers; over the following days, and despite it being during the holiday period, the protests spread across the whole country (and internationally at Polish embassies) and took place in hundreds of towns and cities, in front of local court buildings. For maps of the protests, see here.

On the one hand, judges saw hundreds of thousands of citizens coming out in defence of their independence (in Warsaw under a slogan projected on the Supreme Court building declaring 'This is our court'). On the other hand, the judges themselves came out from the court buildings and (often for the first time in their lives) protested together with citizens. For more on the Chain of Lights, see Part 4, below.

March of a Thousand Gowns

The 'March of a Thousand Gowns' was organised by the Iustitia Judges' Association on 11 January 2020 in Warsaw. Judges and representatives of the legal profession were invited to this demonstration – not only from Poland (as usually happens), but also from abroad. Delegations from over 20 European countries took part in the event with support from their local organisations, including judges' associations in the respective countries (see the cover photo). The ceremonial march of judges and lawyers dressed in their gowns was accompanied by members of the public gathered along the route (for more about the march, see Part 4, below).

'Thousands protest against Poland's plan to discipline judges', Reuters, 11 January 2020.

Such broad support from both domestic and foreign judges and lawyers made many Polish judges realise that they were not alone and that their resistance was seen

as legitimate by their peers. In a way, the foreign judges appearing not as private individuals but as judges, wearing their official robes and carrying banners showing their country of origin, speaking to local and international media, confirmed that European judges have the right to resist, the right and obligation to stand up against attacks on judicial independence.

Various groups and configurations of judges organised hundreds of resistance events of different kinds, from protests and expressions of solidarity with persecuted judges to public awareness-raising campaigns.

Bulgarian judges protesting in gowns
In December 2015, judges from several courts in Sofia, including the Sofia Regional Court, the Sofia City Court, the Sofia Appellate Court, and the Supreme Court of Cassation, staged a protest in front of the Palace of Justice. The demonstration was sparked by the refusal of the National Assembly to endorse constitutional amendments proposed by the Justice Minister, which were aimed at ensuring a majority of judges within the Supreme Judicial Council were elected by their peers. The protesting magistrates received support from about a hundred members of the public who gathered, applauding their efforts. Notably, several prominent lawyers were also present among the protestors.

Resources

Solidarity with suspended judges
Judges' associations regularly reminded the public of suspended judges and demanded their reinstatement under the slogan (used in campaigns and on posters): 'We demand the reinstatement of independent judges'. Various methods were used to publicise this issue, including regular actions:

- Iustitia decided to designate the 18th day of each month as a 'Day of Solidarity with Repressed Judges' and to hold solidarity protests on that day;
- A clock was created on the Iustitia website counting (in real time) the number of years, days, hours and minutes since the suspension of judges Paweł Juszczyszyn (2 years, 83 days) and Igor Tuleya (1 year, 160 days);
- Special events were organised. For example, on the occasion of the first anniversary of the suspension of Judge Igor Tuleya (18 November 2021), a protest organised by Iustitia was held in front of the Supreme Court building, repeating the demand for his reinstatement.

Self-denunciation as a way to resist
An excellent example of a solidarity campaign were the statements made by judges in reaction to the information that the disciplinary prosecutor of the court in Piotrków Trybunalski initiated disciplinary proceedings against 16 judges from this court who signed the letter to the OSCE. In response, over 400 judges from all over Poland filed 'self-denunciations' to the disciplinary bodies, stating that they too had signed the letter.

At the same time, the judges receive support from Professor Marek Safjan, a Polish judge at the CJEU, who stressed in an interview that judges are the right people to make such statements. In fact, he said they have a 'moral obligation to criticise bad legislation' and that the reaction of the disciplinary authorities was outrageous (wyborcza.pl).

Judges with citizens on Independence Day

Photo: A still from the film of Polish judges from Kraków wishing the public 'Happy Independence Day' on the 100th anniversary of Independence Day in November 2018. The judges wore T-shirts with the word 'Constitution' and within the word 'KONSTYTUCJA' the words 'you' (TY) and 'me' (JA) are underlined in different colours. The 'KONSTYTUCJA' graphic used on the T-shirt was designed by: Luka Rajski. Film available at: https://www.facebook.com/135116657130372/videos/272641733390914/?t=16 .

It is also worth mentioning some innovative approaches to communication with the public. These include events that hadn't previously taken place, which originated from the judges' resistance. For example, Kraków judges organised an event on the occasion of Independence Day (11 November 2018). It consisted of:

- taking a group picture of around one hundred judges in 'Constitution' T-shirts in front of the court building;
- producing a film wishing the public 'Happy Independence Day';
- organising a blood donation campaign among judges on that day.

Solidarity with victims – Legal, psychological and financial assistance

In addition to solidarity campaigns, some of which are mainly of a symbolic character, judges who face various challenges in connection with their involvement in judicial resistance can also benefit from concrete forms of assistance. This may be organised by judges themselves or by other actors, such as civil society organisations (see Part 4 below).

Legal services for judges under stress

Some judges appear as parties in parallel in dozens of cases, for example the icons of the resistance, judges Paweł Juszczyszyn, Igor Tuleya and Waldemar Żurek. In part, these are cases brought against them, including numerous disciplinary charges or cases for waivers of immunity (in order to present criminal charges). Then there are cases brought by judges themselves: criminal, labour and civil cases against government actors and the state, including complaints to the ECtHR. Some judges have been involved in all these types of cases.

Legal services and representation are provided for judges who need it through a number of assistance schemes. Sometimes this assistance is offered or organised by judges themselves, in other cases it comes through judges' partner organisations or in cooperation with them. Any judge who needs legal help or representation can be assisted

by another judge (judges can represent their colleagues in disciplinary proceedings). In addition to this, legal services (almost entirely pro bono) are also provided by lawyers: advocates and legal advisors. In some cases, judges are represented by teams of lawyers or mixed teams of judge(s) and lawyer(s).

Judges obtain legal assistance in three main ways. Some organise legal assistance themselves. Some approach the judges' association or other organisations, such as the KOS, directly. Others are contacted by organisations. The system of assistance from organisations works so that, if information is provided about a 'political attack' on a judge (from the individual concerned or their friends and acquaintances or from the media or any other source), someone from the organisation will contact the individual to offer assistance.

Psychological support for judges under stress
Another type of support offered is psychological and psychiatric help, organised by KOS in cooperation with representatives of the psychological, therapeutic and psychiatric community. In consultation with specialists and their professional associations, procedures have been developed for obtaining such assistance, provided by psychologists and psychiatrists. This is largely pro bono, especially the first session. Due to the personal nature of such assistance, no detailed data are available on the scale of its provision.

Komitet Obrony Sprawiedliwości, 'Pomoc Psychologiczna dla Prawników. Pakiet Informacyjny 'Prawnik Pod Presją' ['Psychological Assistance for Lawyers. Information Package 'Lawyer Under Pressure'].

Financial support for judges under stress
An additional type of assistance is a financial support system for judges deprived of part of their salary as a result of disciplinary proceedings. The creation of such a system was one of the first tasks discussed at the KOS meetings in June 2018 (the author took part in these talks). However, at that time it was decided that it was not yet needed and it was hoped that it might not be needed at all.
Shortly afterwards, the first decisions reducing judges' salaries were made. In response, judges set up a relief fund. Those who had their salaries reduced in 'political' disciplinary proceedings could apply to receive wage compensation. Some used this opportunity. Iustitia provided financial support in the cases of five judges whose salaries were cut, supporting some of them regularly and others on ad hoc basis.

Normative approach to judicial resistance

What follows are elements of the analysis and conclusions regarding the legal, professional or moral right / obligation / duty to resist by Polish judges between 2015 and 2023. The referenced standards (legal, professional and moral) selected to apply in Poland are both national and international. However, these are provided as an example, as the situation in each specific country requires an analysis of the standards applicable in that country. I would encourage the national judiciary to carry out such an analysis.

QUESTION
Do judges have a legal, professional or moral right / obligation / duty to resist and, if so, how can it be justified with legal, professional and moral arguments?

Case study

Right/obligation of Polish judges to undertake judicial resistance
Based on: Łukasz Bojarski, 'Judicial resistance – missing part of judicial independence? The case of Poland and beyond', *Oñati Socio-Legal Series* (2025).

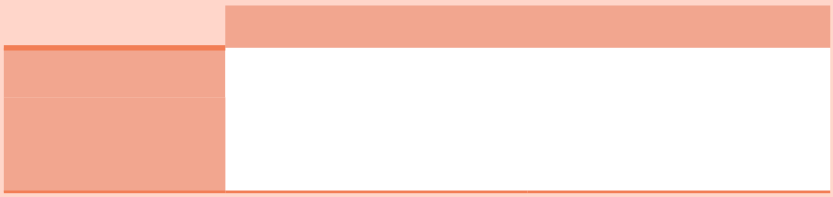

Table. Legal, professional and moral right/obligation to undertake judicial resistance (JR)

Legal right and duty to resist?

There are no direct provisions granting a judge's right to resist. Can we infer an indirect right stemming from the legislation and case law, subject to interpretation?

National and international standards
Constitutional provisions (applied directly) relating to the rule of law and judicial independence; detailing the status, obligations and boundaries of the judge's role; outlining judges rights and freedoms as citizens, including:

Article 10: The system of government of the Republic of Poland shall be based on the **separation** of and **balance** between the legislative, executive and judicial powers.

Article 173: The courts and tribunals shall constitute a **distinct** power and shall be **independent** of other branches of power.

Statutory provisions – judge's oath and duties. To uphold and administer justice by the law, act diligently and impartially, uphold dignity and honesty. An *impeccable character*: moral integrity, uprightness, self-reflection, honesty, balance, courage, independence and a strong sense of justice.

Ratified international agreements
Treaty on European Union (TEU): human dignity, democracy and the rule of law, requiring Member States to provide effective legal remedies under European Union law (Articles 2 and 19.1).
EU Charter of Fundamental Rights (CFR): the right to a fair hearing by an independent tribunal (Article 47).

Treaty on the Functioning of the EU (TFEU): allows national courts to seek CJEU preliminary rulings (Article 267).

European Convention on Human Rights (ECHR): Article 6 – right to an independent and impartial tribunal; Articles 9, 10 and 11 – freedom of thought, expression, assembly and association.

Rulings

National and international case law, including:
ECtHR, Baka v. Hungary: right and duty of a judge to express their opinions regarding judicial reform.

ECtHR, Żurek v. Poland: right and duty to critically assess reform.

ECtHR, Todorova v. Bulgaria: role and duty of the president of the judges' association to make public pronouncements about the functioning of the judicial system, the need for its reform or the imperative of maintaining judicial independence.

CJEU rulings finding 'judicial reforms' incompatible with EU law, indirectly supporting judges resisting these changes and potentially legitimising judicial resistance.

Conclusion: there is no verbatim, clear, legal obligation for judges to resist. Yet if judicial resistance counters illegal state actions against the judiciary, can it be argued that there is no legal duty to reject illicit government directives? This could, in some ways, imply a duty to resist.

Professional right and duty to resist?

The analysis of legal standards reveals an evolution: in the past, the emphasis was primarily on limiting judges' freedom of speech, but increasingly, we find formulations imposing a duty on judges to speak out.

International standards

CCJE Opinions no 18/2015, 23/2020, 25/2022
25/2022 Introduces the notion of a judge's **legal and ethical duty** to defend the rule of law and democracy (pt IV).

Judges **must be resilient and have a duty to speak out** in defence of judicial independence, the constitutional order and democracy, both nationally and internationally, when they're threatened (Rec. 2).

Judges owe **loyalty** to their nation's rule of law, Constitution, democratic institutions and fundamental rights.

18/2015 While loyalty to the state is vital, it should be secondary when democracy and basic freedoms are at risk, compelling the judiciary to **defend its position fearlessly** (para. 41).

23/2020 Judicial associations' capacity to counter unwarranted criticisms (para. 17) and inform the public about the judiciary's workings (para. 44).

As the Polish Supreme Court noted, while the principles of judges' ethics aren't legally binding, violations are seen as **breaches of the office's dignity** (SNO 29/14).

Conclusion: On the professional level, based on the sources analysed, one may argue that judges have both a right and an obligation to resist any attack on the rule of law and judicial independence.

Moral right and duty to resist?

A right to resist exists, but an obligation is contingent on the individual's moral framework.

Using international principles on the rule of law and fundamental rights as a moral benchmark, such a duty is evident.

Moral arguments, though often ad hoc, hold symbolic value. They bolster the resolve of resisting judges and enlighten observers, helping them to develop informed opinions.

Moral arguments, unlike legal or professional standards, are typically situational and unsanctioned, save for informal consequences. Nevertheless, they guide judges significantly (Graver, 2023).

Marek Safjan, commenting on the letter from a thousand judges, stressed that 'the judge has the right to write to the OSCE. He has a moral obligation to criticise bad legislation' (wyborcza.pl, 2020).

Conclusion: a right to resist exists, but an obligation is contingent on the individual's moral framework.

The right to judicial resistance understood in a normative sense is one approach. Other authors propose solutions that can be seen as alternatives or as complementary and not mutually exclusive. Below is a brief outline of 'self-defence by the institutions' and the virtue approach.

Self-defence by the institutions

An interesting discussion concerns Nicholas Barber's concept of self-defence by the institutions, further expanded by Marcin Matczak in the light of the Polish crisis, and debated among both proponents and opponents.

Academic sources

Nicholas W. Barber, 'Self-defence for institutions', Oxford Legal Studies Research Paper No. 84/2014 (2014).

Marcin Matczak, 'The clash of powers in Poland's rule of law crisis: Tools of attack and self-defense', Hague Journal on the Rule of Law, 12, 421-450 (2020).

'Debate – The Polish Constitutional Crisis and Institutional Self-Defense', verfassungsblog.de, 3-4 June 2017.

Symposium: 'The Polish constitutional crisis and institutional self-defence' (Oxford, 9 May 2017), see video recording here.

Nicholas Barber's approach, 'reflects on a group of constitutional devices: mechanisms that empower one state institution to defend itself against another. The institution is given a **shield** to protect against the attentions of another body, or is given **a sword** it can use to repel an attack. Self-defence mechanisms are interesting for many reasons, but particularly for the light they cast on the separation of powers. These measures seem contrary to the normal prescriptions of that principle, allocating a capacity to a body that it appears ill suited to possess. Understanding why the separation of powers requires these surprising allocations helps explain its operation in ordinary contexts.' (abstract).

Marcin Matczak argues that the concept of self-defence alone is not enough, that it also requires (at least in the case of Poland) changes in the formalistic legal mindset that is prevalent among lawyers. It is a mindset that limits interpretative freedom and prefers narrow formalism without regard to general constitutional principles. According to Matczak, effective defence of the rule of law is impossible without the development of a non-formalistic methodology. The crisis Polish society faced was a real test in this regard. But, paradoxically, it was also an opportunity for judges to open up and look at their role not formally, but through the prism of constitutional values.

Without going into details, it can be assumed that the concept of self-defence of courts is similar to judicial resistance. It focuses on the role of the institution (in other words partly in-court group resistance), granting it the right to defend itself in the event of an attack. If one looks at the experience of the Polish Constitutional Tribunal and the Supreme Court (but also the National Council of the Judiciary, which is not a court but a constitutional body with decision-making powers) when they were brutally attacked by politicians, it becomes evident that a well-developed concept of self-defence (additionally strengthened by appropriate legal provisions) could be of assistance to these bodies.

In fact, due to the lack of similar experiences in the past and any developed (and internalised) concepts of self-defence or resistance, these institutions were doomed to experimentation and exposed to additional accusations of violating the principle of independence by engaging in politics. Thus all of them attempted self-defence and resistance, but only partially successfully.

It seems that, based on the experience of the current crisis, the concept of self-defence (implemented by judges with a less formalistic legal mindset) is worthy of further development and refinement. Understandably, similarly to judicial resistance, it should be a self-defence that is adequately defined and is subject to conditions stemming from the concrete context, in order to avoid the risk of a juristocracy that over-reaches.

Judicial virtues

Tomasz Widłak opts for a 'virtue-centred model which explains judicial resistance through the character strengths of a virtuous judge' and is not convinced by a 'flat, one-dimensional analysis in terms of a rule-driven right or duty'.[9]

Academic sources
Tomasz Hubert Widłak, 'Judicial resistance and the virtues' (2024).

Widłak does not oppose the admissibility of judicial resistance, but argues that categories of right and duty are problematic in explaining judicial resistance. Instead, in his view, 'the act of judicial resistance to unjust law or government measures undermining the rule of law is justified if a virtuous judge performs it'.

Therefore, the emphasis is on what virtue is, and consequently, who is a virtuous judge. By leaning towards virtue rather than right or duty, Widłak avoids the disadvantage, in his view, of judging non-resisting judges as failing professional standards or deserving of legal and professional consequences and moral condemnation. For Widłak judicial resistance is more coherent ethically if the judge *wants* to engage, not when they are *compelled* to do so. And judges who do not resist? They are 'not necessarily vicious, they may be simply not virtuous', since acts of judicial resistance are supererogatory actions, meaning they go beyond what is legally or morally required.

9 Quotations are from the manuscript version of the article.

There is no reason to argue against the concept of the virtuous judge, the key is, however, whether a virtue-centred model is an alternative to or complements judicial resistance based on right/duty. I would argue for the latter.

Widłak's proposal is limited to on-bench decisions by the individual judge, so only one of the four elements of resistance we have indicated. The operation of virtues is also more general, and postulative, than a specifically formulated right (or duty) to resist in specific circumstances. Given the role of the courts, the suggestion that only those who want to would engage in the defence of basic legal values, that it is something extra, is not convincing. Traditionally, we have emphasised the role of the courts as guarantors of the rule of law and fundamental rights, we emphasise that judicial independence is not given to judges as such, it is not their privilege, it exists for them to fulfil their role, to defend fundamental rights and exercise control of other authorities. This means, in my view, that the public has the right to expect more from judges than the voluntary cultivation of virtues. They have the right to expect genuine commitment to judicial resistance.

CJEU in defence of judicial independence

One effective way to defend the rule of law and judicial independence is for national courts to refer preliminary questions to the CJEU. In recent years (since the Portuguese judges' judgment in 2018), CJEU case law has developed significantly in this respect. Below we present information encouraging national judges to use this path, including comments from practitioners, former CJEU judge Professor Marek Safjan and a lawyer specialising in such cases, Professor Maciej Taborowski.

International standards

Article 2 TEU (consolidated version)
The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 19(1)(2) TEU
Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.

Article 47 CFR – Right to an effective remedy and to a fair trial
Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Resources

'The protection of Article 2 TEU values in the EU', Factsheets on the European Union, European Parliament (2025).

See also other 'Factsheets on the European Union'.

Professor Marek Safjan, CJEU judge (2009-2024):

Judicial dialogue with national courts through references for preliminary rulings – a message to national judges[10]

Judicial dialogue with national courts through references for preliminary rulings is the foundation of judicial cooperation within the European Union. The effectiveness of this dialogue hinges on well-formulated questions by the national judge during the proceedings.

The primary duty of the national court is to accurately identify the legal issue that requires interpretation by the CJEU, as well as to precisely present the national context (both normative and factual) in which this issue arises.

Therefore, it is insufficient to merely indicate, for instance, an abstract risk of judicial independence being violated. Instead, a detailed justification of the nature of this risk is necessary, such as significant flaws in the judge appointment procedure, potential disciplinary sanctions for a ruling's content, or unexpected changes in the composition of the bench before a verdict is issued.

It is also crucial to identify the source of these risks, whether from faulty national regulation or an established interpretation of national law and the accompanying judicial practice potentially breaching European norms.

Judges should present existing legal mechanisms in a broader context. Thus, it is beneficial if the preliminary reference describes a specific national regulation in a wider framework, perhaps in comparison with other instruments that, when analysed together, can determine whether the risk of breaching European law (especially principles of judicial independence and impartiality or the effective subjective right to judicial protection) is real.

It is essential to demonstrate a connection with the European context, at least to the extent that the court posing the question is competent to decide in some area of European law (direct application of Article 19(2) of the Treaty on the European Union does not require indication of any particular link to another European norm). Asking preliminary questions is a duty, not a privilege, for courts of last instance.

Ultimately, the quality of the references determines the quality of the CJEU's responses. Experience from dialogue with Polish courts confirms this. Polish judges have been able to present both the legal problem (the reality of the threat to independence) and the broader context of the contested legal mechanism in a very convincing manner. Judicial determination and the judges' thorough preparation in the realm of judicial dialogue have created conditions for the development of the CJEU's case law on rule of law issues.

CJEU contribution to defence of the principle of the rule of law[11]

The recent crisis in the rule of law in Europe is different from others
This crisis manifested itself in a questioning of:
- the fundamental values of the rule of law;
- the very essence of integration mechanisms;
- the most important principles and values defining the functioning of the Union as a 'union of law';
- the principle of mutual trust and recognition between Member States;
- the right to effective judicial protection.

10 Text provided by Marek Safjan for publication.

11 Edited based on the presentation by Professor Marek Safjan at the JuS seminar in Vilnius, April 2024.

The CJEU's reaction to violations of the rule of law
The case law of the CJEU has, step by step, in each successive judgment, clarified the content of the principles to be interpreted, adding further significant and new elements that allow for an ever more in-depth assessment and reaction to actions that violate the foundations of the rule of law.

What are the three most important lines of jurisprudence? 1. the interpretation of Article 19 TEU (the concept of the CJEU); 2. the significance of the idea of the European Union's identity for establishing a uniform standard of rule of law within the European Union; 3. the jurisprudential concept that allowed for a comprehensive assessment of the situation from the perspective of the so-called structural crisis.

The rule of law principle – the first message
A fundamental, indispensable element of an autonomous legal order for the whole of the EU is the principle of the rule of law.

The identity of the EU is defined by all the principles and values listed in Article 2 TEU.

Article 2 TEU: 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'

Article 49 TEU: 'Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union…'

Ruling
C-157/21 – Poland v Parliament and Council. Judgment of the Court (Full Court) of 16 February 2022, ECLI:EU:C:2022:98.

Para. 145: 'The values contained in Article 2 TEU have been identified and are shared by the Member States. They define the very identity of the European Union as a common legal order. Thus, the European Union must be able to defend those values, within the limits of its powers as laid down by the Treaties.'

In accordance with the principle of the primacy of EU law, the interpretation of the rule of law adopted in the CJEU's case law cannot be called into question on the basis of a Member State's own constitutional identity and consequently also binds a Member State's constitutional court.

Ruling
C-430/21 – RS (Effet des arrêts d'une cour constitutionnelle). Judgment of the Court of 22 February 2022, ECLI:EU:C:2022:99.

Para. 70 'By contrast, that provision has neither the object nor the effect of authorising a constitutional court of a Member State, in disregard of the obligations under, in particular, Article 4(2) and (3) and the second subparagraph of Article 19(1) TEU, which are binding upon it, to disapply a rule of EU law, on the ground that that rule undermines the national identity of the Member State concerned as defined by the national constitutional court.'

The concept of a court of the Union – the second message
Developing the concept of a court of the Union by deriving from Article 19(1) TEU all the necessary conditions and prerequisites which any court competent to rule on matters relating to European law must fulfil.

Article 19(1) (2nd subparagraph) TEU: 'Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.'

Ruling
C-64/16 – Associação Sindical dos Juízes Portugueses. Judgment of the Court of 27 February 2018, ECLI:EU:C:2018:117.

Para. 36: 'The very existence of effective judicial review designed to ensure compliance with EU law is of the essence of the rule of law (see, to that effect, judgment of 28 March 2017, Rosneft, C-72/15, EU:C:2017:236, paragraph 73 and the case-law cited).'

Para. 37: '…every Member State must ensure that the bodies which, as 'courts or tribunals' within the meaning of EU law, come within its judicial system in the fields covered by that law, meet the requirements of effective judicial protection.'

Para. 29: '…as regards the material scope of the second subparagraph of Article 19(1) TEU, that provision relates to 'the fields covered by Union law', irrespective of whether the Member States are implementing Union law, within the meaning of Article 51(1) of the Charter.'
The message of this judgment boils down to this: every national court is at the same time a European court and every national judge is a European judge, and consequently the criteria relating to judicial independence and impartiality must always be respected.

The concept of systemic crisis – the third message

Rulings
C-585/18 – AK (independence of the Supreme Court's Disciplinary Chamber). Judgment of the Court of 19 November 2019, ECLI:EU:C:2019:982.

Para. 142: 'In that regard, although one or other of the factors thus pointed to by the referring court may be such as to escape criticism per se and may fall, in that case, within the competence of, and choices made by, the Member States, when taken together, in addition to the circumstances in which those choices were made, they may, by contrast, throw doubt on the independence of a body involved in the procedure for the appointment of judges, despite the fact that, when those factors are taken individually, that conclusion is not inevitable.'

C-216/18 PPU – Minister for Justice and Equality (deficiencies in the judicial system). Judgment of the Court of 25 July 2018, ECLI:EU:C:2018:586.

Para. 61: 'To that end, the executing judicial authority must, as a first step, assess, on the basis of material that is objective, reliable, specific and properly updated concerning the operation of the system of justice in the issuing Member State (see, to that effect, judgment of 5 April 2016, Aranyosi and Căldăraru, C 404/15 and C 659/15 PPU, EU:C:2016:198, paragraph 89), whether there is a real risk,

connected with a lack of independence of the courts of that Member State on account of systemic or generalised deficiencies there, of the fundamental right to a fair trial being breached. Information in a reasoned proposal recently addressed by the Commission to the Council on the basis of Article 7(1) TEU is particularly relevant for the purposes of that assessment.'

C-791/19 – Commission v Poland (Disciplinary regime for judges). Judgment of the Court of 15 July 2021, ECLI:EU:C:2021:596.

Para. 213: 'National procedural rules, such as those covered by the second part of the present complaint, may, especially where, as in the present case, they are applied in the context of a disciplinary regime displaying the shortcomings referred to in paragraph 188 of the present judgment, prove to be such as to increase still further the risk of the disciplinary regime applicable to those whose task is to adjudicate being used as a system of political control of the content of judicial decisions…'

C-718/21 – Krajowa Rada Sądownictwa (Continued holding of a judicial office). Judgment of the Court of 21 December 2023, ECLI:EU:C:2023:1015.

Para. 77: '…The combination of all those factors is such as to give rise to reasonable doubts in the minds of individuals as to the imperviousness of the persons concerned and the panel in which they sit with regard to external factors, in particular the direct or indirect influence of the national legislature and executive and their neutrality with respect to the interests before them. Those factors are thus capable of leading to a lack of appearance of independence or impartiality on the part of those judges and that body likely to undermine the trust which justice in a democratic society governed by the rule of law must inspire in those individuals.'

C-542/18 RX – Réexamen Simpson v Council. Decision of the Court of Justice of 17 September 2018, judgment of the Court of 26 March 2020, ECLI:EU:C:2020:232.

Para. 71: 'In that regard, this Court has held that the requirements that courts be independent and impartial form part of the essence of the right to effective judicial protection… Those requirements require rules, particularly as regards the composition of the body and the appointment, length of service and grounds for abstention, rejection and dismissal of its members, in order to dispel any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality…'

QUESTION
What lessons arise from the CJEU case law for the future?[12]

What postulates and messages can we formulate for the future, which stem from experiences over the recent years of struggle for the rule of law (primarily the activity of national judges to ensure a functional interpretation of the law)?

12 Edited based on the presentation by Professor Marek Safjan at the JuS seminar in Vilnius, April 2024.

Overview

First of all, don't delay!
When there is a crisis of the rule of law, there is no room for compromise and procrastination.

Secondly, be aware of the points of connection
=> Principles and values of the EU => Effective protection of rights => Functional and activist interpretation =>

Thirdly, Civis Europea sum
We are the citizens of Europe.

Fourthly, do not be indifferent

Fifthly, wise, effective implementation of European case law

Sixthly... C-896/19 – Repubblika: Judgment of the Court of 20 April 2021, ECLI:EU:C:2021:311
Para. 63: 'It follows that compliance by a Member State with the values enshrined in Article 2 TEU is a condition for the enjoyment of all of the rights deriving from the application of the Treaties to that Member State. A Member State cannot therefore amend its legislation in such a way as to bring about a reduction in the protection of the value of the rule of law, a value which is given concrete expression by, inter alia, Article 19 TEU (see, to that effect, judgment of 2 March 2021, A.B. and Others (Appointment of judges to the Supreme Court – Actions), C 824/18, EU:C:2021:153, paragraph 108).'

Professor Maciej Taborowski (Deputy Ombudsman of the Republic of Poland 2019-2022):

CJEU shield for national courts and judges[13]

The CJEU created a kind of 'shield' for national courts on the basis of the value of the rule of law (Art. 2 TEU) as the 'very identity' of the EU legal order and which protects the independence of the judiciary on the basis of Article 19(1)(2) TEU and Article 47 CFR.

First, a significant element of this shield has been established in the judgment in C-64/16 ASJP ('Portuguese judges'). Because of Article 19 (1)(2) TEU, the Court offered protection to all national judges based on the principle of effective judicial protection 'in the fields covered by Union law'. To be protected it is sufficient for national courts (in the meaning of Article 267 TFEU) to potentially rule on questions concerning the application or interpretation of EU law. Such an interpretation of the principle of effective judicial protection adopted by the CJEU gives protection to the national court against the executive and legislative powers of the State, as well as protection to the rules and procedures applied by the national courts in areas covered by EU law.

Secondly, the interpretation of Article 19(1)(2) TEU in the C-64/16 ASJP case has brought within the scope of application of the principle of effective judicial protection a whole new range of cases concerning national judges with regard to remuneration,[14]

13 Text provided by Maciej Taborowski for publication.

14 Judgment of the Court (Grand Chamber) of 27 February 2018, C- 64/16, Associação Sindical dos Juízes Portugueses, EU:C:2018:117.

retirement,[15] rules on the extension of a judge's term of office;[16] the procedure for the nomination and appointment of judges, their independence, [17] their status as a court established by law,[18] the judicial review of the procedure for the appointment of judges,[19] participation of judicial self-government in the procedure for the appointment of judges,[20] delegation of judges by the Minister of Justice to a court of higher instance,[21] disciplinary or penal rules against judges,[22] and also the way in which the management of a national court distributes cases to judges.[23]

Such a broad scope of application of Article 19 (1)(2) TEU offers national judges complex legal protection and strengthens their position with regard to hostile interventions by other branches of the State into the independence of national courts.

Thirdly, in reaction, for instance, to the conduct of Polish authorities producing a chilling effect on national judges by initiating disciplinary and penal proceedings against them for the application of EU law, the CJEU made clear that Article 19 (1)(2) TEU and Article 47 CFR demand that such proceedings must provide the necessary guarantees in order to prevent any risk of them being used as a system of political control of the content of judicial decisions.[24]

Fourthly, the CJEU also imposed some requirements with which Member States' prosecution services must comply (on the part of prosecutors or other public officials pursuing judges) because of the need to protect judicial independence. In a Romanian judgment (joined cases C 83/19, C 127/19, C 195/19, C 291/19, C 355/19 and C 397/19 Asociaţia 'Forumul Judecătorilor din România'),[25] the Court stated that since the prospect of opening a disciplinary investigation is, as such, liable to exert pressure on those who have the task of adjudicating in a dispute, it is essential that the body competent to conduct investigations and bring disciplinary proceedings should act objectively and impartially in the performance of its duties and, to that end, be free from any external influence.

15 Judgment of the Court (Grand Chamber) of 24 June 2019, C-619/18, European Commission v Republic of Poland, ECLI:EU:C:2019:531.

16 Judgment of the Court (Grand Chamber) of 24 June 2019, C-619/18, European Commission v Republic of Poland, ECLI:EU:C:2019:531 and also judgment of the Court (Grand Chamber) of 5 November 2019 C-192/18 European Commission v Republic of Poland, ECLI:EU:C:2019:924.

17 Judgment of the Court (Grand Chamber) of 19 November 2019, Joined Cases C-585/18, C-624/18 and C-625/18, AK and Others v Sąd Najwyższy, CP v Sąd Najwyższy and DO v Sąd Najwyższy, ECLI:EU:C:2019:982.

18 Judgment of the Court (Grand Chamber) of 6 October 2021 C-487/19, Proceedings brought by W.Ż., ECLI:EU:C:2021:798 and judgment of the Court (Grand Chamber) of 22 March 2022, C-508/19 M.F. v J.M, ECLI:EU:C:2022:201.

19 Judgment of the Court (Grand Chamber) of 2 March 2021 C-824/18 AB and Others v Krajowa Rada Sądownictwa and Others, ECLI:EU:C:2020:1053.

20 Pending cases C-181/21 and C-269/21.

21 Judgment of the Court (Grand Chamber) of 16 November 2021, C-748-754/19, Criminal proceedings against WB and Others, ECLI:EU:C:2021:931.

22 Judgment of the Court (Grand Chamber) of 15 July 2021, C-791/19 European Commission v Republic of Poland, ECLI:EU:C:2021:596.

23 Order of the Court (Tenth Chamber) of 2 July 2020, C-256/19, SAD Maler und Anstreicher OG v Magistrat der Stadt Wien and Bauarbeiter Urlaubs- und Abfertigungskasse, ECLI:EU:C:2020:523.

24 Judgment of the Court (Grand Chamber) of 15 July 2021, C-791/19 European Commission v Republic of Poland, ECLI:EU:C:2021:596, para 61.

25 Judgment of the Court (Grand Chamber) of 18 May 2021, joined Cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, Asociaţia 'Forumul Judecătorilor din România' and Others v Inspecţia Judiciară and Others, ECLI:EU:C:2021:393, para 199.

Fifthly, the CJEU reinforced the protection offered to national courts by performing an in-depth test not only of isolated single legislative solutions or other Member State actions but by additionally reviewing the problem with the independence of judges in a systemic manner. The changes to the judicial system are evaluated against the general background of the legal system by checking whether a Member State amended its legislation in such a way as to bring about a reduction in the protection of the value of the rule of law. The Member States are required to ensure that, in the light of that value, any regression of their laws on the organisation of justice is prevented, by them refraining from adopting rules which would undermine the independence of the judiciary.[26]

The deterioration in the state of legislation concerning judicial independence is additionally assessed by measuring the cumulative effect of measures taken by the authorities of a Member State rather than isolated regulations that interfere with the rule of law. This allows the overall situation in the Member State to be appraised and not just individual legislative solutions.

Sixthly, the CJEU declared that Article 19 (1)(2) TEU is directly effective.[27] The same applies to Article 47 CFR.[28] This means that these provisions give national courts an independent legal basis to safeguard judicial independence with the guarantees provided by the principle of effective judicial protection. The principle of direct effect also allows the principle of the primacy of EU law to be applied. That, in turn, enables national courts to set aside any national solutions of a legislative, administrative or judicial character if they infringe upon EU law.

In this way it is possible to dismantle attempts by the national legislator to stop proceedings pending before a national court, to limit or even to exclude the possibility of judicial review of the nomination process for Supreme Court judges (normally available in the national legal system), or to seek to prevent a reference to the CJEU for a preliminary ruling under Article 267 TFEU.[29]

A particularly strong mechanism emerging from the CJEU case law allows national courts to ignore the binding force of legal opinions or judgments of other judicial authorities and courts[30] (e.g. those higher up in the hierarchy) or, very importantly in the Polish context, of a Member State's constitutional court[31], if this would force a national court to issue a decision which would infringe EU law or if the constitutional court is not an independent court established by law.[32]

26 See judgment of the Court (Grand Chamber) of 20 April 2021, C-896/19 Repubblika v Il-Prim Ministru, ECLI:EU:C:2021:311 and for the Polish Supreme Court the judgment of the Court (Grand Chamber) of 15 July 2021, C-791/19 European Commission v Republic of Poland, ECLI:EU:C:2021:596, para 51.

27 Judgment of the Court (Grand Chamber) of 2 March 2021, C-824/18, AB and Others v Krajowa Rada Sądownictwa and Others, ECLI:EU:C:2020:1053, para 142.

28 See e.g. Judgment of the Court (Grand Chamber) of 19 November 2019, Joined Cases C-585/18, C-624/18 and C-625/18, AK and Others v Sąd Najwyższy, CP v Sąd Najwyższy and DO v Sąd Najwyższy, ECLI:EU:C:2019:982, para 166.

29 Judgment of the Court (Grand Chamber) of 2 March 2021, C-824/18, AB and Others v Krajowa Rada Sądownictwa and Others, ECLI:EU:C:2020:1053.

30 Judgment of the Court (Grand Chamber), 15 January 2013, C-416/10, Jozef Križan and Others v Slovenská inšpekcia životného prostredia, ECLI:EU:C:2013:8, paras 68-69.

31 Ibidem, para 70.

32 See e.g. judgment of the Court (Grand Chamber) of 21 December 2021, joined Cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, Criminal proceedings against PM and Others, ECLI:EU:C:2021:1034, paras 242-243

In addition, in several judgments, the Court advocated for the possibility for national courts, on the basis of a combination of the principle of effective judicial protection and the principle of supremacy, to 'revive' old national legal regulations in specific cases. This is an instrument which allows national courts to fill lacunas in the system of legal protection when the disapplication of a national law would lead to a situation in which no national court would have jurisdiction to decide on a pending case.[33]

A very useful, although rarely used, instrument for national courts is the possibility to suspend a national law for the duration of legal proceedings, in particular for the period of a reference to the CJEU for a preliminary ruling under Article 267 TFEU. This possibility arises from the CJEU's rulings in Cases 213/89 Factortame[34] and C-432/05 Unibet.[35] This instrument has been used by one of the panels of the Polish Supreme Court[36] in a situation where one of the judges sitting on that panel was affected by a reduction to the retirement age of judges, contrary to EU law.[37]

ECtHR in defence of judicial independence

As in the case of the CJEU, the ECtHR has also in recent years, in response to numerous complaints from judges (though not exclusively), provided strong arguments to defend judicial independence. Unlike in the case of preliminary questions, where judges act as a court within the framework of the judicial procedure, complaints to the ECtHR are formulated by judges as individuals/citizens suing their state.[38]

Case study: Bulgaria

Resources
Source: ECtHR, Press country profile, Bulgaria (last updated April 2024).

Rulings

Pengezov v. Bulgaria (no. 66292/14), 10 October 2023
The case concerned a judge's temporary suspension from his duties on account of his indictment for irregularities allegedly committed in the performance of his former duties.

Violation of Article 6 (right to a fair hearing) as concerned the insufficient extent of the judicial review carried out by the Supreme Administrative Court. No violation of Article 6 (right to a fair hearing) as concerned the independence and impartiality of Administrative Court. Violation of Article 8 (right to respect for private life).

33 In relation to the jurisdiction of the courts see e.g. Judgment of the Court (Grand Chamber) of 19 November 2019, Joined Cases C-585/18, C-624/18 and C-625/18, AK and Others v Sąd Najwyższy, CP v Sąd Najwyższy and DO v Sąd Najwyższy, ECLI:EU:C:2019:982, para 166 or judgment of the Court (Grand Chamber) of 2 March 2021 C-824/18, AB and Others v Krajowa Rada Sądownictwa and Others, ECLI:EU:C:2020:1053, para 149.

34 Judgment of the Court of 19 June 1990, 213/89, The Queen v Secretary of State for Transport, ex parte: Factortame Ltd and others, ECLI:EU:C:1990:257.

35 Judgment of the Court (Grand Chamber) of 13 March 2007, C-432/05, Unibet (London) Ltd and Unibet (International) Ltd v Justitiekansler, ECLI:EU:C:2007:163.

36 Order of the Polish Supreme Court, 2 August 2018 in case III UZP 4/18.

37 Judgment of the Court (Grand Chamber) of 24 June 2019, C-619/18, European Commission v Republic of Poland, ECLI:EU:C:2019:531.

38 Most of the descriptions of the cases below is quoted from ECtHR documentation.

Miroslava Todorova v. Bulgaria (no. 40072/13), 19 October 2021
The case concerned two sets of disciplinary proceedings against the applicant, who had been a judge and the President of the Bulgarian Judges Association (BJA) at the relevant time. The Supreme Judicial Council (SJC) ordered a reduction of her salary, followed by her dismissal on the grounds of delays in dealing with her cases.

No violation of Article 6 (right to a fair trial). Violation of Article 10 (freedom of expression). Violation of Article 18 (limitation on use of restrictions on rights) read in conjunction with Article 10.

According to the ECtHR, in carrying out her activities within the BJA, the applicant had been exercising her right of association and freedom of expression and there had been nothing to suggest that those activities had been unlawful or incompatible with the judicial code of ethics. In particular, the critical positions expressed by the BJA were aimed at ensuring greater transparency and limiting interventions by the executive in judicial promotions, with a view to strengthening the independence of the judiciary, the importance of which the Court had frequently emphasised in its case law. In the light of those considerations, the intention to use a disciplinary procedure to retaliate against the applicant for her views seemed particularly alarming.

In the Court's view it is the duty and role of the president of the main professional organisation of judges to protect the professional interests of the members of the organisation, in particular in the public expression of opinions on the functioning of the judiciary, the need to reform it or the imperative requirement to preserve the independence of the judiciary (para. 174). As such, her freedom of expression must enjoy a high level of protection and any interference with the exercise of this freedom must be subject to strict control (para. 175).

No violation of Article 6 (right to a fair trial)
Donev v. Bulgaria (no. 72437/11), 26 October 2021

The case concerned disciplinary proceedings to dismiss the applicant, a judge and a court president. He complained, in particular, that the Supreme Judicial Council (SJC) and the Supreme Administrative Court had not satisfied the requirements of independence and impartiality set by the European Convention on Human Rights. He argued that his removal was politically motivated and lacked a fair judicial process, ultimately violating his right to a fair trial under Article 6 of the Convention.

Case study: Croatia

Resources
Source: ECtHR, Press country profile, Croatia (last updated February 2024).

Rulings
Juričić v. Croatia (no. 58222/09), 26 July 2011

Complaint brought by a candidate for judge of the Constitutional Court about the alleged unfairness of proceedings in which she had contested a decision by the Croatian Parliament to appoint another candidate and not her.

Violation of Article 6 § 1, Right to a fair trial.

Narodni List D.D. v. Croatia (no. 2782/12), 8 November 2018

The case concerned the freedom of the press to criticise judges. The applicant, the publisher of a weekly magazine, complained about a domestic court decision finding that it had defamed a county court judge and ordering it to pay over EUR 6,000 in damages. The decision referred to an article the applicant had published criticising a judge for going to a party despite a potential conflict of interest and for issuing an unjustified search warrant of its premises.

Violation of Article 10, Freedom of expression.

Case study: Hungary

Resources
Source: ECtHR, Press country profile, Hungary (last updated June 2024).

Ruling
Baka v. Hungary (no. 20261/12), 23 June 2016

The case concerned the premature termination of the mandate of András Baka, President of the Hungarian Supreme Court, following his criticism of legislative reforms and the fact that he was unable to challenge that decision before a court. His six-year term of office was brought to an end, three and a half years before its normal date of expiry, through the entry into force of the Fundamental Law (the new Constitution), which provided for the creation of the Kúria, the highest court in Hungary, to succeed and replace the Supreme Court.

Violation of Article 6 § 1 (right to a fair trial). Violation of Article 10 (freedom of expression).

Case study: Iceland

Resources
Source: ECtHR, Press country profile, Iceland (last updated July 2024).

Ruling
Guðmundur Andri Ástráðsson v. Iceland (no. 26374/18), 1 December 2020

The case concerned the applicant's allegation that the new Icelandic Court of Appeal (Landsréttur) which had upheld his conviction for road traffic offences was not 'a tribunal established by law', on account of irregularities in the appointment of one of the judges who heard his case.

Para. 289: 'In the light of the foregoing and having regard to the three-step test set out above, the Court considers that the applicant has been denied his right to a 'tribunal established by law', on account of the participation in his trial of a judge whose appointment procedure was vitiated by grave irregularities that impaired the very essence of the right at issue.'

Violation of Article 6 § 1 (right to a tribunal established by law).

Case study: Lithuania

Resources
Source: ECtHR, Press country profile, Lithuania (last updated April 2024).

Ruling
Savickas and Others v. Lithuania (nos. 66365/09, 12845/10, 29809/10, 29813/10, 30623/10, 28367/11), 15 October 2013, application declared inadmissible.

The case mainly concerned the length of court proceedings brought by Lithuanian judges whose salaries had been reduced as part of a series of austerity measures. The proceedings before the Lithuanian courts lasted between nine and ten years, respectively.

The application was declared inadmissible. The Court found in particular that, since a decision of the Lithuanian Supreme Court of 6 February 2007, the national courts had applied the criteria of European Court of Human Rights case law in determining compensation for excessively lengthy court proceedings. It concluded that an effective remedy for length-of-proceeding complaints existed in Lithuania. Since the applicants had not lodged claims for damages with the Lithuanian courts, their complaint under Article 6 § 1 (right to a fair hearing within a reasonable time) was therefore inadmissible for their failure to exhaust the domestic remedies.

The Court also pointed out that the applicants in other cases concerning the length of civil, criminal or administrative proceedings in Lithuania lodged with it after 6 August 2007 – that is, six months after the Supreme Court's decision of 6 February 2007 – should use the remedy before the Lithuanian courts.

Case study: Poland

Resources

Source: ECtHR, Press country profile, Poland (last updated June 2024).

Rulings

Wałęsa v. Poland (no. 50849/21), 23 November 2023
The case concerned proceedings in which, following an extraordinary appeal by the Prosecutor General, the Chamber of Extraordinary Review and Public Affairs (CERPA) of the Supreme Court reversed the final civil court judgment which had been given in the applicant's favour in a defamation case some ten years earlier.

In view of the systemic nature of the alleged violations of Article 6 § 1 of the Convention, the Court applied the pilot judgment procedure in this case. It found that the Chamber of Extraordinary Review and Public Affairs, which had examined the extraordinary appeal, was not an 'independent and impartial tribunal established by law' and held that the extraordinary appeal had been incompatible with the rule of law, and notably with the principles of legal certainty, res judicata and foreseeability of the law.

Identifying that these violations originated in interrelated systemic problems connected with the malfunctioning of national legislation and practice, the Court called for urgent remedial measures.

Systemic violation of Article 6 § 1 as regards Mr Wałęsa's right to an independent and impartial tribunal established by law. Systemic violation of Article 6 § 1 for breaching the principle of legal certainty. Violation of Article 8 (right to respect for private and family life).

Pająk and Others v. Poland (nos. 25226/18, 25805/18, 8378/19 and 43949/19), 24 October 2023
The case concerned four judges who complained about legislative amendments that had lowered the retirement age for judges from 67 to 60 for women and 65 for men, and had made the continuation of a judge's duties after reaching retirement age conditional upon authorisation by the Minister of Justice and by the National Council of the Judiciary (NCJ).

Violation of Article 6 § 1 in respect of all applicants. Violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private life) in respect of the three applicants who had lodged complaints under those provisions.

Tuleya v. Poland (nos. 21181/19 and 51751/20), 6 July 2023
The case originated in the new disciplinary regime for judges in Poland. The applicant Igor Tuleya, a well-known judge, complained about five sets of preliminary inquiries initiated against him in 2018 on suspicion of disciplinary misconduct.

Violation of Article 6 § 1. Violation of Article 8 (right to respect for private life). Violation of Article 10 (freedom of expression).

Juszczyszyn v. Poland (no. 35599/20), 6 October 2022
The case concerned the Disciplinary Chamber of the Supreme Court's disciplinary measures against a judge who had issued a court order for information on appointments of judges via the controversial 'new' National Council of the Judiciary.

Unanimously, a violation of Article 6 § 1. By 5 votes to 2, a violation of Article 8 (right to respect for private and family life). By 5 votes to 2, a violation of Article 18 (limitation on use of restrictions of rights) taken in conjunction with Article 8.

Żurek v. Poland (no. 39650/18), 16 June 2022
Mr Żurek is a judge. He was also spokesperson for the National Council of the Judiciary (NCJ), the constitutional body in Poland which safeguards the independence of courts and judges. In that capacity, he has been one of the main critics of the changes to the judiciary initiated by the legislative and executive branches of the new Government which came to power in 2015.
The case concerned his removal from the NCJ before his term had ended and his complaint that there had been no legal avenue to contest the loss of his seat. It also concerned his allegation of a campaign to silence him.

Violation of Article 6 § 1. Violation of Article 10 (freedom of expression).

Grzęda v. Poland (no. 43572/18), 15 March 2022, Grand Chamber.
Reform of the judiciary in Poland as a result of which the office of a Supreme Administrative Court judge elected to the National Council of the Judiciary was terminated before the end of his four-year term.

Violation of Article 6 § 1 (right to a fair trial).

Advance Pharma sp. z o.o v. Poland (no. 1469/20), 3 February 2022
The case concerned a complaint brought by the applicant company that the Civil Chamber of the Supreme Court, which had decided on a case concerning it, had not been a 'tribunal established by law' and had lacked impartiality and independence.

Violation of Article 6 § 1.

Reczkowicz v. Poland (no. 43447/19), 22 July 2021
The case concerned complaints brought by a barrister that the Disciplinary Chamber of the Polish Supreme Court, which had decided on a case concerning

her, had not been a 'tribunal established by law' and had lacked impartiality and independence.

Violation of Article 6.

Broda and Bojara v. Poland (nos. 26691/18 and 27367/18), 29 June 2021
The case concerned the applicants' complaint that they did not have any remedy allowing them to challenge the decisions of the Minister of Justice to put a premature end to their term of office as vice presidents of the Kielce Regional Court.

Violation of Article 6 § 1.

Xero Flor w Polsce sp. z o.o. v. Poland (no. 4907/18), 7 May 2021
The case concerned attempts by the applicant company to get compensation from the State for damage to one of its products (turf) by game. In particular, it had sued in 2012 but had been awarded only 60% of what it had sought. It had been unable to get satisfaction through the domestic courts. Although it had asked on several occasions that the question of the constitutionality of the relevant law be referred to the Constitutional Court, it had been turned down by the first-instance and appellate courts. Ultimately it had lodged a constitutional complaint that the Constitutional Court had declared inadmissible in 2017. The bench that had heard that case had contained Judge M.M., who had been elected by the new Sejm despite his seat having already been filled by the old Sejm.
Violation of Article 6 § 1 as regards the right to a fair hearing. Violation of Article 6 § 1 as regards the right to a tribunal established by law.

Other Polish cases regarding judicial system

At time of writing (June 2024) there were 195 applications pending before the Court which raised issues relating to various aspects of the reform of the judicial system in Poland under laws that entered into force in 2017 and 2018.

The Court has decided that all current and future applications concerning complaints about various aspects of the reform of the judicial system in Poland should be given **priority** (Category I). In accordance with the Court's prioritisation policy, this level of priority is assigned to urgent cases.

Notification of 37 applications concerning judicial independence in Poland
25 July 2022
The majority of the cases concern judicial decisions rendered by various chambers of the Supreme Court in civil or criminal cases, following appeal with regard to an application for a vacant judicial post or regarding a disciplinary case involving a lawyer or decisions by the NCJ.

Notification of 20 applications concerning judicial independence in Poland
25 April 2022
The cases concern judicial decisions rendered by various chambers of the Supreme Court in civil cases, following appeals with regard to applications for vacant judicial posts or regarding a disciplinary case concerning a lawyer or decisions by the NCJ. It is alleged that the judicial formations dealing with the applicants' cases were not 'independent and impartial tribunals established by law' since they included judges who had been appointed by the new National Council of the Judiciary.

Synakiewicz v. Poland (no. 46453/21), **Niklas-Bibik v. Poland** (no. 8687/22), **Piekarska-Drążek v. Poland** (no. 8076/22) and **Hetnarowicz-Sikora v. Poland** (no. 9988/22)
Applications communicated to the Government in May 2022. The applicants are Polish judges actively involved in the work of judicial associations. They all risk suspension for having applied, in their judicial decisions, case law of the European Court and rulings of the Court of Justice of the European Union relating, in particular, to the Disciplinary Chamber of the Supreme Court and the NCJ (see press release regarding interim measure in these applications published on 24 March 2022).

Case study: Romania

Resources
Source: ECtHR, Press country profile, Romania (last updated July 2024).

Danileţ v. Romania (no. 16915/21), Grand Chamber, pending
The case concerns the disciplinary sanction imposed on the applicant, when he was a judge at Cluj County Court, by the National Judicial and Legal Service Commission for posting two messages on his Facebook account.

Mr Danileţ complains of a violation of his right to freedom of expression (Article 10). In its judgment of 20 February 2024, the Court (chamber) held, by a majority, that there had been a violation of Article 10 (freedom of expression). A Grand Chamber hearing took place for 18 December 2024.

Rulings
Kövesi v. Romania (no. 3594/19), 5 May 2020
The case concerned the applicant's removal as the chief prosecutor of the National Anticorruption Directorate before the end of her second term following her criticism of legislative reforms in the area of corruption. She alleged that she had also been unable to challenge that decision in court.

Violation of Article 6. Violation of Article 10.

Brisc v. Romania (no. 26238/10), 11 December 2018
The case concerned a chief prosecutor's dismissal for breaching the secrecy of a criminal investigation when he made statements to the press. He was sanctioned following a judge's complaint that his press release and interview with a television channel had allowed the media to identify her as being implicated in a money scam.

Violation of Article 10.

No violation of Article 6
Cotora v. Romania (no. 30745/18), 17 January 2023
The case concerned disciplinary proceedings against the applicant, a judge and – at the time – President of a Court of Appeal, which had resulted in a disciplinary sanction in the form of a salary reduction.

No violation of Article 10
Panioglu v. Romania (no. 33794/14), 8 December 2020
The case concerned professional penalties suffered by a judge, in particular concerning promotion, for an article she had written in the press. The article had severely criticised the President of the Court of Cassation's activities as a prosecutor under the repressive communist regime.

Applications inadmissible
Ceort v. Romania (no. 47339/20), 4 July 2024
The case concerned the criminal conviction of a public prosecutor at the High Court of Cassation and Justice for soliciting a bribe. Relying on Article 6, the applicant complained that the criminal proceedings against him had been unfair.

Application declared inadmissible.

Camelia Bogdan v. Romania (no. 32916/20), 20 October 2022
The case concerned disciplinary proceedings against a judge which had resulted in her being barred from office. Application declared inadmissible.

Corbu v. Romania (no. 52168/18), 3 February 2022
The case concerned the length of the criminal proceedings against the applicant, which had begun with an investigation in February 2012 that had led to her acquittal in a judgment delivered in May 2018 by the High Court of Cassation. At the relevant time, Ms Corbu was a judge of the High Court of Cassation. She has been President of the latter court since September 2019. Application struck off the list of the Court's cases.

Rarinca v. Romania (no. 10003/16), 4 February 2021
The case concerned the court proceedings in a trial for the blackmail of the president of highest court in Romania. Application declared inadmissible.

Dumitru and Others v. Romania (no. 9637/16), 19 September 2012
The case concerned the decision to pay allowances awarded by judicial decisions to members of the civil service (judges) in instalments.

Application declared inadmissible (paying in instalments of allowances was not unreasonable).

Case study: Russia

Resources
Source: ECtHR, Press country profile, Russia (last updated June 2024).

Rulings
Zarema Musayeva and Others v. Russia (no. 4573/22), 28 May 2024
The case concerned Zarema Musayeva, wife of a former Chechen Supreme Court judge, who was forcibly removed in January 2022 by the police from her home in the Nizhniy Novgorod region in Russia and taken 2,000 km away to Grozny in Chechnya, as well as her subsequent detention and the administrative and criminal proceedings brought against her there. It also concerned the ill-treatment that Ms Musayeva and her husband and daughter had been subjected to by the Chechen police, against the background of repeated public death threats against them by high-ranking Chechen officials, including the President Ramzan Kadyrov, who had promised to 'hunt them down' and 'cut their heads off'.

Violations of Article 2, 3 (prohibition of inhuman and degrading treatment), 5 § 1 (right to liberty and security), 6 § 1 (right to a fair trial) and 18 (limitation on use of restrictions on rights).

Kudeshkina v. Russia (no. 29492/05), 26 February 2009
Disciplinary measures imposed on a judge for having publicly criticised the judicial system.

Violation of Article 10.

Citizens: 'As representatives of civil society organisations monitoring the judiciary, but most importantly, as citizens, we understand the importance of the genuine independence and impartiality of judges. We pledge to defend them.
We expect the legislative and executive authorities to respect the judiciary and refrain from actions that threaten the independence of the courts or exert pressure on judges. From the judiciary, we expect the protection of our constitutional rights and freedoms, as well as the civil courage to administer justice in a truly impartial manner.'

From the 'Letter from Civil Society Organisations to Judges on the Occasion of the Extraordinary Congress of Polish Judges', 2 September 2016.

Part 3. Threats, stresses and pressures affecting judges' independence from society and the media

Judicial independence is crucial for a fair and functioning legal system but faces significant threats from societal expectations and media influence. Society's evolving expectations may pressure judges to deliver quick and populist verdicts, which can undermine judicial prudence and the principle of justice. The media can exacerbate this issue by sensationalising cases, which may influence public opinion and judicial decisions indirectly. However, since judges and courts exercise power it is both natural and important that this power can be scrutinised and criticised.

The key potential pressures may include:

Public expectations: Judges are increasingly expected to align their decisions with public sentiment or majoritarian views, which can conflict with the rule of law.

Media influence: Extensive and biased media coverage of high-profile cases can create a prejudiced environment, putting judges under pressure to conform to the narrative shaped by the media.

Social media campaigns: The rise of digital platforms allows for widespread dissemination of misinformation and rapid formation of biased opinions, which can influence judicial processes through public and political pressure.

Political commentary: Politicians and public figures commenting on ongoing judicial matters can undermine judicial independence by swaying public opinion and intimidating the judiciary.

Public protests: Large-scale demonstrations demanding certain outcomes in high-profile cases can put direct pressure on judges to rule in favour of public opinion rather than based on the law.

Professional isolation: Judges may experience isolation from their peers or professional backlash for unpopular decisions publicised by the media, which could deter them from making rulings based on their honest interpretation of the law.

Familial and social networks: In countries with deep-rooted traditions of clan or family influence, judicial independence faces significant risks of undue influence on the judiciary, pressuring judges to favour certain outcomes aligned with clan interests. This can undermine the fairness of trials and erode public trust in the judicial system.

Personal safety concerns: Exposure by the media can pose security risks to judges and their families, potentially influencing judicial decisions due to concerns over personal safety.

Each of these pressures underscores the need for robust protections to maintain judicial independence and ensure that judges can operate without undue influence from external forces. In addition, establishing clear guidelines for media reporting on legal matters could help mitigate undue influence on judicial proceedings.

To safeguard judicial independence, it is therefore essential to communicate with society and educate the public on the importance of an impartial and autonomous judiciary.

In part 3 of the Guide we address the following issues:
- What is the role of communication by the judiciary and judges with society and citizens in relation to judicial independence?
- Does the judiciary need a communication strategy?
- How can judges communicate directly as judges and judges' organisations and indirectly through the media (based on practical examples)?
- Should judges and courts adopt strategies to combat false information and maintain public trust?
- Do (or should) judges play a role in educating society regarding judicial independence? If so, how can judges educate the public in practice?
- Best practice and practical examples of educational efforts by judges

Before we move on to the actions of judges themselves, let us also look at the role of the media in the context of the judiciary.

Role of the media and judicial communication

The media plays a critical and at least threefold role concerning the judiciary.

First, it serves as a **key informant** about the judiciary's functions and decisions, ensuring that the public is aware of how, and how independently, justice is administered and the outcomes of significant cases.

Through reporting and analysis, the media also **educates the public** on legal principles, including judicial independence and the impact of judicial rulings, enhancing societal understanding of the law and its mechanisms.

Finally, as a **watchdog**, the media scrutinises the judiciary as a branch of government, holding it accountable to the principles of fairness and transparency. This oversight

function is vital in maintaining the integrity and independence of the courts, ensuring that the judicial system operates without undue influence or corruption and that independent media reveal miscarriages of justice.

The media perform their statutory and social duties independently. However, judges should not leave information about the judiciary and communication only to the media. An effective, modern approach to education and communication requires a **proactive attitude** on the part of the judiciary and judges. The education and communication field is changing rapidly with the development of new communication tools and the growing role of social media and modern communication platforms compared with traditional ones like newspapers, TV and radio.

The role of communication in modern society must not be underestimated. The judiciary plays multiple roles in this. For instance, communication by the judiciary with the public is important in order:

- to ensure the meaning, role and importance of judicial independence is understood;
- to build trust in the judiciary;
- to prove transparency and judicial accountability;
- to provide independent information about the situation in the judiciary in times of crisis; and
- to build alliances, support and defence (if needed) of the judiciary.

A mature and modern judiciary should have a comprehensive communication strategy that goes beyond mere PR tactics aimed at enhancing the institution's image and includes an educational component. This strategy should encompass every interaction between the judiciary's representatives and the public, recognising that each contact presents an opportunity for meaningful dialogue. Effective education and communication involves not just sending messages but engaging in **genuine conversations**, exchanging **feedback** and ensuring **transparency** within the judicial system. It should also address public requests for information promptly, making the judiciary more accessible and responsive to societal needs.

International standards

Effective communication between the judiciary and the public, including the media, is essential to maintaining transparency and trust in the independent judicial system. Organisations like the Consultative Council of European Judges (CCJE) and the European Network of Councils for the Judiciary (ENCJ) have developed standards to guide this communication. These standards emphasise:

Clarity and accessibility: Communications should be clear, accurate and accessible, avoiding legal jargon where possible to ensure understanding by the general public.

Timeliness: Information should be provided in a timely manner, especially when it concerns public interest cases or decisions that might attract media attention.

Impartiality: While engaging with the media and the public, it's crucial that the judiciary remains impartial and does not comment on ongoing proceedings in a way that could influence outcomes or public perception.

Respect for privacy: Communications must balance transparency with respect for the privacy of those involved in judicial proceedings.

Use of modern communication tools: Utilising websites, social media and press releases effectively to disseminate information and engage with the public.

Freedom of expression: Judges have the right to express their views on matters related to the law, the judiciary and the administration of justice, provided it does not compromise their impartiality or the integrity of the judiciary.

Educational role: Judges can participate in educational activities that promote public understanding of the law.

Discretion: Judges must exercise discretion in their communications, particularly avoiding any discussion that might reflect bias or prejudgment in cases they are handling or might handle.

Maintaining public confidence: Judges should communicate in ways that uphold the dignity of their office and maintain public confidence in the judiciary.

Systemic issues: When speaking on systemic issues, judges should ensure they do not undermine the perception of their independence or that of the judiciary as a whole.

These principles aim to enhance public understanding of the judiciary's role and operations while safeguarding the core values of judicial independence and impartiality.

Resources

CCJE Opinion No. 25 (2022) on freedom of expression of judges
Opinion No. 25 emphasises the importance of communication by judges, specifically focusing on their freedom of expression. It highlights the balance judges must maintain while exercising this right, ensuring that their public expressions do not compromise the impartiality and integrity of the judiciary. This opinion underscores the need for judges to engage responsibly with the public and media, promoting transparency and understanding of judicial processes without affecting their duties and the public's trust in the judicial system.

CCJE Opinion No. 23 (2020) on the role of associations of judges in supporting judicial independence
Opinion No. 23 includes a focus on the role of associations in communication. The CCJE emphasises that, 'Associations of judges are particularly well placed to play a role in informing the media and the general public about the work and priorities of the judiciary, including the duties and powers of judges, and the role of the judiciary and the other powers of state in a democratic state governed by the rule of law' (para. 44).

CCJE Opinion No. 7 (2005) on Justice and Society
Opinion No. 7 discusses the responsibilities of judges concerning their communication with the media. In this regard, the CCJE proposed that the following points which appear in the Framework Global Action Plan for Judges in Europe be considered: the educational role of the courts in a democracy; relations with the public; relations with all those involved in court proceedings; and the accessibility, simplification and clarity of the language used by the courts in proceedings and decisions. This work was carried out on the basis of the replies by delegations to a questionnaire on 'Justice and society'.

ENCJ Distillation of ENCJ Principles, Recommendations and Guidelines 2004-2017
This is 'a concise document distilling the principles established by the ENCJ, and its standards, guidelines and recommendations. The objective was to distil the wisdom of all previous ENCJ project teams and to create an approachable document that encapsulates the results of most of the pre-existing ENCJ reports and papers.'

https://www.encj.eu/node/280

Ruling

Baka v. Hungary – Grand Chamber, Application no. 20261/12, Judgment of 23 June 2016.
In **Baka v. Hungary**, the ECtHR ruled that Hungary had violated the rights of András Baka, the former President of the Hungarian Supreme Court. The Court found that the premature termination of his position due to legal reforms was both in breach of his right to access a court (Art. 6 § 1) and freedom of expression (Art. 10), particularly as it pertained to his criticisms of changes in the judiciary. This decision underscored the importance of protecting judicial independence from political interference. The ECtHR stated inter alia:

'162. While the Court has admitted that it is legitimate for a State to impose on civil servants, on account of their status, a duty of discretion, civil servants are individuals and, as such, qualify for the protection of Article 10 of the Convention…

163. Given the prominent place among State organs that the judiciary occupies in a democratic society, the Court reiterates that this approach also applies in the event of restrictions on the freedom of expression of a judge in connection with the performance of his or her functions, albeit the judiciary is not part of the ordinary civil service…

164. The Court has recognised that it can be expected of public officials serving in the judiciary that they should show restraint in exercising their freedom of expression in all cases where the authority and impartiality of the judiciary are likely to be called in question…

165. At the same time, the Court has also stressed that having regard in particular to the growing importance attached to the separation of powers and the importance of safeguarding the independence of the judiciary, **any interference with the freedom of expression of a judge in a position such as the applicant's calls for close scrutiny on the part of the Court…**

167. Finally, the Court reiterates **the 'chilling effect'** that the fear of sanction has on the exercise of freedom of expression, in particular on other judges wishing to participate in the public debate on issues related to the administration of justice and the judiciary…

168. The Court reiterates its finding… that the impugned interference was prompted by the views and criticisms that the applicant had publicly expressed in the exercise of his right to freedom of expression. It observes in this regard that the applicant expressed his views on the legislative reforms in issue in his professional capacity as President of the Supreme Court and of the National Council of Justice.

It was not only his right but also his duty as President of the National Council of Justice to express his opinion on legislative reforms affecting the judiciary, after having gathered and summarised the opinions of lower courts…' (emphasis added).

Ruling
Żurek v. Poland – Application no. 39262/17, Judgment of 16 June 2022
In **Żurek v. Poland**, the ECtHR held that Poland had violated the right to freedom of expression of Judge Waldemar Żurek by taking a set of measures against him after he criticised judicial reforms. The Court emphasised that judicial independence and freedom of expression are essential for judges, especially when contributing to public debate on the functioning of the justice system. This ruling highlights the need to protect judges from reprisals when they engage in public discourse. The ECtHR stated inter alia:

'206. The Court notes that the applicant, in his professional capacity as the NCJ's spokesperson, in the period between December 2015 and March 2018, publicly expressed his views or commented in the media on various legislative reforms affecting the Constitutional Court, the NCJ, the Supreme Court and ordinary courts. He criticised those various proposals for their incompatibility with the Constitution and pointed to threats to the rule of law and judicial independence stemming from them…

207. The applicant alleged that a set of measures taken against him by the authorities in response to his critical statements on the Government's reorganisation of the judiciary amounted to an interference with his freedom of expression…

213. In view of the above, the Court concludes that the impugned measures constituted an interference with the exercise of the applicant's right to freedom of expression, as guaranteed by Article 10 of the Convention…

222. In the present case, the Court is assessing the situation of an applicant who was not only a judge, but also a member of a judicial council and its spokesperson. However, the Court would note that a similar approach would be applicable to **any judge** who exercises his freedom of expression – in conformity with the principles referred to in paragraph 219 above – **with a view to defending the rule of law, judicial independence** or other similar values falling within the debate on issues of general interest. When a judge makes such statements not only in his or her personal capacity, but also on behalf of a judicial council, judicial association or other representative body of the judiciary, the protection afforded to that judge will be heightened. Furthermore, **the general right to freedom of expression of judges** to address matters concerning the functioning of the justice system **may be transformed into a corresponding duty to speak out in defence of the rule of law and judicial independence when those fundamental values come under threat**…' (emphasis added).

Judicial communication strategy

Below, I propose a thematic look at communication between courts, judges and society and provide specific examples of communication and educational activities. We often witness communication conducted intuitively, ad hoc or in a crisis context. However, I

would encourage bodies such as courts, judicial councils and judges' organisations, in particular, to take a strategic, long-term view of communication. In addition to defining communication goals, it is worth considering: **who should communicate** on behalf of judges and the judiciary, **what should be communicated**, what are the most important issues, and **who is the target** of communication (various groups).

First, I propose to differentiate **three levels of communication** – the systemic, the collegial/community and the individual.

Secondly, I propose a division of the subject matter of communication into **four separate topics:** the independence, competence, accountability and effectiveness of the judiciary.

Thirdly, I classify communication strategies according to **five groups of recipients:** the general public, the media, civil society organisations (CSOs), other authorities, and the legal profession.

I believe that these proposed classifications help to take a holistic view of the issue of communication and to better design a communication strategy.

Levels of judicial communication – actors

The above-mentioned recommendations from international organisations and judgments from international courts show that the traditional approach to 'who speaks on behalf of the judiciary' has clearly changed in the last few decades. In the past, it was primarily official bodies, today we expect this from individual courts (activity reports) as well as from individual judges. To the judge's right to freedom of speech to speak on legal or judicial issues we have even added **the obligation to do so in specific cases** – including in case of threats to judicial independence.

QUESTION
Who should communicate on behalf of judges and the judiciary? Should it be only the relevant responsible bodies, speakers etc. (the traditional approach) or all willing judges, individually and collectively (the increasingly frequent contemporary approach)?

The issue of communication by the judiciary with society can be dealt with on different levels – **systemic level** (role of state judiciary organs), **community level** (role of judicial associations, assemblies/gatherings of judges) and the level of **individual courts and judges**.

Systemic level

The subject matter of independent courts as one of the three constitutional powers should have its place in general education curricula for which the relevant institutions (such as ministries of education) are responsible. In my opinion, the offices of presidents/heads of state and ministries of justice should also take the courts into account in their educational activities. However, our focus in this Guide is on the role of the judges themselves.

From the institutions working at the systemic, state level, including judicial councils, the judicial court administration, national judicial colleges, the highest courts and tribunals, one may expect appropriate preparation and a level of professionalism.

These bodies usually have the necessary human and financial resources. They can disseminate (first translating, if necessary) and implement international standards on judicial independence. They can develop information and educational materials, support educational initiatives and create platforms for sharing them. They can undertake or commission surveys and research on the subject and they can conduct training on communication for judges, including judges' spokespersons. On the systemic level it is also worth creating opportunities for the exchange of experiences between individual courts and judges from different regions of the country.

Because the different national bodies are independent they should also realise and make a clear distinction on the national level between what aspects are shared, where everyone agrees to communicate a single mission and vision of the judiciary (one voice), and what can be approached separately, even if different bodies do so in parallel.

Best practice: Little Red Riding Hood in the Polish Supreme Court
One method of communication and education involves various types of mock trials and trial simulations, including for children. In the context of 'serious' fun, these initiatives allow them to learn about the role of the court, the participants in the process and the procedure. One example of such events was a hearing for children based on the fairy tale Little Red Riding Hood, held at the Supreme Court of Poland (2018) and widely covered by the media. Similar events take place in various countries.

Community level

At this level, judges' associations are natural partners for interactions with citizens, CSOs and the legal profession.

They are very well placed and should engage actively in the communication field. What is important in their case is to preserve institutional memory and seek to turn a one-off project approach or individual initiatives into the sustainable promotion of solutions for good communication by the judiciary. It is also worthwhile to organise regular discussions (perhaps once a year) in a variety of forums, focusing on relations between citizens and the courts, in order to analyse feedback from the public and to plan further communication strategy.

However, in modern communication, it is not only important to provide 'dry' information about the activities of the justice system. It is also essential to maintain social contact in relation to court events (such as 'Justice Day' which is held once a year in several countries, when judges invite pupils from schools and local communities to court buildings), as well as on various other occasions.

During the 2015-2023 crisis Polish judges engaged in a number of unconventional activities. These included:
- participating in events that bring young people together, such as music festivals, and holding debates or trial simulations during them;
- organising so-called Legal Cafés and inviting citizens to talk;
- judges celebrating the 100th anniversary of Poland regaining independence in various ways: in Kraków this included blood donations by judges for hospitals;
- joining educational initiatives run by other actors and supporting them with the presence and expertise of judges.

This approach has also continued since the political changes. In September 2024, judges became involved in providing material assistance to those affected by the floods in southern Poland. Funds collected by the judges were donated to flood victims in need.

Best practice: A greetings card from judges to the citizens
To mark the 100th anniversary of Polish Independence Day (November 11, 2018), judges from the Poznań region created a commemorative greeting card for citizens. The

card features over 150 judges standing on the steps of the courthouse, holding several Polish flags and wearing shirts emblazoned with the word 'Constitution'. These shirts had become a powerful symbol of their commitment to constitutional values, including the rule of law, the separation of powers, and judicial independence. Similar initiatives took place in other regions as well. The judges from Poznań also shared a two-minute video documenting the event.

The level of individual courts and judges

This level has a more local focus. For instance, an excellent idea introduced in Ukraine was an obligation for each particular court to develop an **annual communication action plan** at a court level. Reflection on this subject by all the judges of a given court (not just the president, chief of staff, judge spokesperson or communications officer) and planning specific actions according to the developed guidelines may result in greater involvement by the court and particular judges in contact with the local community and in information and educational activities. Indeed, as desired by some people, the court could play a role in shaping the culture of the local community.

The strategies developed by the courts for interaction with people in the local area, through a wealth and diversity of activities, are very beneficial. Regardless of the promotion of already tried and tested best practice, individual courts are a place where new solutions are implemented which have a chance to become future best practice for others. Cooperation with the local community, local CSOs and the local media creates an opportunity to develop innovative solutions. It is worth identifying such practices and judges who work well in communication and can serve as role models.

When it comes to communication **in the courtroom**, it is very important that judges understand that this is also a place (maybe even the main one) where they have the opportunity to shape **the image of the judiciary and build respect for its independence.** In the absence of other means, sometimes due to their young age and lack of adequate life experience, judges may build their 'authority' by emphasising elements of power, formalism and dryness. Sometimes they may raise their voices or behave impolitely.

It is probably a matter of a lack of appropriate training, but also of the knowledge that **respect for the dignity** of every human being is crucial to ensure that people in court understand what is happening around them. A number of studies have shown that the stereotypical belief that at least 50% of people (those who lose their cases) leave the court dissatisfied is not entirely true. A more important factor is often **how people were treated** by the court, whether they were listened to, and whether the reasons for the court's decision were explained to them in an understandable and convincing way (see, for example, studies on this subject by Professor Tom R. Tyler, author of important publications on social justice).[39]

Best practice: Through the eyes of a judge

Judge Piotr Gąciarek runs an **internet blog** 'Through the eyes of a judge. The voice of a representative of the Third Power, a practising judge with several years of experience', through which he comments on developments in the judiciary.

Best practice: Blind Eye of Themis

Judge Arkadiusz Krupa is a **columnist** in the law journal *In Gremio* but is also well known for his **satirical drawings** commenting on matters such as developments in the judiciary and presented under the title 'Blind Eye of Themis' (followed by around 30,000 people).

39 See: https://law.yale.edu/tom-r-tyler. n.

Best practice: Tedx talks
Jarosław Gwizdak, Unikaj sądów! [Avoid the courts!], TEDx Katowice (in Polish).

What to communicate about – substance

A 'model court' or a 'good court' is characterised in the literature in different ways. For communication reasons, I find the previously mentioned concept developed within the 'EU Accession Monitoring Programme' particularly useful. This was produced for the accession to the European Union of 10 candidate states from Central and Eastern Europe. In the report *Monitoring the EU Accession process: judicial capacity* (2002), the authors pointed out that a model court is one that has four basic features:

- Independence and impartiality;
- Professional competence;
- Accountability;
- Organisational efficiency.

These elements together form judicial capacity. They are closely related and must occur together and complement each other.

Our focus in this Guide is on the independence of the judiciary and stresses related to it. However, it is important to pay due attention to all four features mentioned above. Do we need an independent court that is incompetent? And vice versa, is it worth having a competent court if it is not independent? Will a speedy and effective court meet our needs if it is not independent?

We might add that each of these features is closely related to the issue of transparency and the need for communication. In order for courts to have social legitimacy and to enjoy public trust which can help to secure their independence, citizens need to be convinced (with up-to-date knowledge) that the court has these 'features of a good court'.

When we think strategically about judicial communication, it is thus worth referring to all these thematic areas, to see them separately as elements of communication, but which together create one big picture. Of course, it is possible to expand the issues within each of these features and to devote separate detailed deliberations and studies to them. Below, we will outline just the basic framework.

QUESTION
What should be the content of judges' communication and education efforts to support their independence and accountability?

Independence and impartiality in communication

It is very important to provide communication about the courts in terms of their role in the political system, about the court as an authority, and about judges as representatives of the third branch of government. The role of the systemic independence of the courts and the independence of individual judges, is a subject that the public must be informed about in order to be aware of the role of independence and its guarantees. This is a very complex issue and many factors that are not obvious to the public have an impact on independence.

Communication about independence helps people to see the pressures and potential threats to the judiciary. Judges should therefore convey this information to the public and not assume that the concept of independence is obvious and that everyone understands (or should understand) it.

On the other hand, citizens (including CSOs, the media and academics) should provide feedback to judges on how their independence is perceived, what makes them believe a judge is independent and what makes them unsure about it. Such an exchange of views helps to identify topics that need to be clarified or solutions that need to be found.

In communicating on independence, the role of the constitutional bodies such as judicial councils is crucial, as it is their role under the Constitution to protect the independence of the judiciary. When such bodies see a systemic threat to independence, they should communicate with the public and explain the reasons for it in a transparent and accessible manner.

Accountability in communication

Accountability encompasses the duty to explain actions to the public, other state branches and within the judiciary itself, in order to maintain public trust. It is the duty of the judiciary as a whole to account for itself to the public (but also to other branches of the state and within the judicial branch itself) for its systemic role. Similarly, individual courts and judges have a duty of accountability. Without accountability the judiciary will fail to secure public trust. In a narrower sense, accountability also means the existence of complaint procedures and disciplinary liability for breaches of ethical obligations or, in extreme cases, criminal liability.

For accountability, the most important thing is transparency and a well-established culture of reporting to the public on actions taken. However, detailed reports on the activities of each individual court are still rare (except for supreme courts). In addition, their accessibility is questionable and they tend to be quite esoteric. It is worth looking at the reports of the European Courts in Strasbourg and Luxembourg and following the example of those good practices.

It is symptomatic that, at a time of information revolution, in some countries citizens still know little about the courts and their activities. This means that it is easy for various accusations (including manipulated ones) to be formulated against courts and judges – there is nowhere to access basic data, presented in a clear, understandable way that can be easily verified.

Professional competence in communication

Professional competence involves the criteria and processes associated with becoming a judge, including selection, promotion and ongoing training. For public confidence, it's essential that judges are seen as educated and competent, chosen and promoted through merit-based, transparent procedures. Competence includes not only legal knowledge but also experience, ethical conduct and soft skills such as communication skills. Transparency in these areas is crucial and the judiciary should openly share information about competences and be receptive to public feedback, even if it's critical, as this can serve as a catalyst for improvements.

Organisational efficiency in communication

Organisational efficiency is often reduced to the efficiency (speed) of court proceedings. It is, however, a much broader issue, including the administration of the judiciary, management methods, funding and financial efficiency.

From the point of view of the courts, it is worth communicating what the efficiency of proceedings depends on, especially as judges may be held responsible for delays and the lengthiness of court proceedings, even when they do not have any influence on the legal framework that often underpins these processes.

QUESTION
How can judges defend against or combat false information about them in order to maintain public trust?

Disinformation is false or misleading information that can undermine the independence of a single judge or the entire judiciary. Judges must understand the sources and methods of disinformation to effectively counter it. To combat false information and maintain public trust, judges and courts can adopt strategies that consider the following issues:

- **Establish clear communication channels:** Courts should maintain official websites and social media accounts to disseminate accurate information.
- **Regular updates:** Provide timely updates on court proceedings, rulings and other relevant information to preempt disinformation.
- **Engage with the public:** Use social media to engage with the public and address their concerns directly.
- **Media training:** Organise proper training for judges and court staff on how to handle media interviews effectively.
- **Monitor online platforms:** Regularly monitor social media and other online platforms for disinformation related to the judiciary.
- **Rapid response team:** Establish a team to quickly address and correct false information.
- **Awareness campaigns:** Launch public awareness campaigns to educate the public about the dangers of disinformation and how to identify it.
- **Workshops and seminars:** Consider organising workshops and seminars for legal professionals on the impact of disinformation and ways to combat it.
- **Support networks:** Establish support networks for judges targeted by disinformation campaigns.
- **Judicial code of conduct:** Deliberate on updating the judicial code of conduct to include guidelines on responding to disinformation.
- **Legal framework:** Collaborate with legislators to develop laws that address the spread of disinformation without infringing freedom of speech.

Resources
Annual reports of the European Court of Human Rights

Annual reports of the Court of Justice of the European Union, including Management report.

Does the message change depending on the target audience?

From the point of view of the audience, I distinguish between five separate target groups for which the responsible institutions, as well as the judicial community, should develop a communication strategy (further such groups can be identified, but they will fit into one of those proposed here). These groups are: the general public, the media, representatives of other powers, civil society organisations and the legal professions (the activities concerning these groups will partly overlap). This division helps to identify the wide range of activities that are needed and allows for separate detailed analysis and proposals for solutions for each of the groups.

The starting point for building a communication strategy should be an analysis of the status quo. What do the relevant institutions and judges find satisfactory or

unsatisfactory in their relations with particular target groups? What issues are worth considering in communication with each of these groups? What is missing? How can feedback be solicited and received? What methods and means should be used to formulate and provide feedback? A strategy based on an analysis of the status quo should provide answers, as concretely as possible, to the questions: who can or should communicate what, when and how? Should this happen at the systemic level, at the level of collegial bodies, or at the level of courts or a judge? What resources are necessary for this? What training needs must be met?

QUESTION
What are the target groups for judicial communication regarding judicial independence? Should communication differ depending on the target audience?

Communication by courts and judges with the general public

Effective communication between courts, judges and the general public is crucial for maintaining the judiciary's independence and building trust in its authority. Unlike other government branches that secure legitimacy through elections, judges must foster this through transparent and effective communication. This is particularly vital in situations where the judiciary faces threats from other government branches, as seen in recent years for instance in Hungary, Israel and Poland.

The prevailing style of work, communication and self-perception of the judiciary traditionally emphasised the role of authority, exercising power and administering justice. An approach that focuses on the service nature of the court's role, comparing the administration of justice to other public services, still raises doubts and even accusations of misunderstanding of the role of the judiciary.

However, direct and media-mediated (see below) communication not only informs and educates the public about judicial roles and functions, including independence, but also promotes the judiciary as a service-oriented institution. This approach aims to enhance public understanding, and communication by the court encompasses providing information through the court's website, including jurisprudence, legal document templates and information brochures. From the systemic angle it also includes administrative and financial details about the judiciary. It is crucial to examine how these resources shape the public's perception of the judiciary and their potential in enhancing communication.

Best practice: Legal cafés
'Legal café' – meetings organised locally by judges which can be attended by anyone interested in discussing the role of the courts and judges.

Communication by courts and judges with the media

The media perform several important functions. They provide information about the activities of the courts. Through this they also educate the public about the law and about the consequences of our actions (in this way they act as an intermediary between the court and the citizen). Finally, they perform a social monitoring and control role over the judiciary.

In this respect, much has changed in the 21st century, with the judiciary increasingly understanding and using the role of the media in society. Good communication requires the creation of appropriate institutional solutions and procedures. The range of possibilities is wide: press spokespersons or officers for the judiciary as a whole and for individual courts, press offices to support the spokespersons and develop communication policy, websites and bulletins with information specifically for the

media, and regular press conferences devoted not only to specific cases but to the activities of the court or courts as a whole.

In many countries, the traditional profession of 'court reporter', a journalist who specialises in court cases, is disappearing and is being replaced by visits to courts by journalists who deal with a wider range of topics on a daily basis (and unfortunately often run to the court for a moment between reporting on a road accident and a sports match....).

This is why it is important to maintain contacts with journalists, to help them do their job and enter into dialogue with them, not from a position of power and authority but as partners. Journalists who understand the role of independent courts are an important ally of judges and can also provide valuable feedback.

Judges and journalists must cooperate in the public interest as society expects reliable information about the activities of the judiciary. The needs and expectations of the two groups often clash: judges desire extensive and accurate media coverage of court trials, while journalists strive to produce concise reports. Judges expect precise use of language, whereas journalists must communicate in clear, understandable terms. Journalists seek unrestricted access to information, but judges, aware of procedural constraints, must limit this access. Judges prefer undisturbed and solemn trials, while journalists often wish to film and record without restrictions.

These diverging expectations frequently lead to misunderstandings and conflict. Improved mutual understanding and closer acquaintance through regular interactions could enhance their relationship.

Best practice: 'Journalist in Court'
The project, a collaboration between the Helsinki Foundation for Human Rights, the Stefan Batory Foundation and the Iustitia Association of Polish Judges, featured regional seminars for judges and journalists to foster mutual understanding. It highlighted the differing needs of both groups: judges prioritising precise and extensive coverage and journalists needing clarity and access.

Each two-day event was split into two parts. The first day involved discussing the challenges to cooperation faced to date and mutual expectations. Participants aired grievances and shared good and bad practices in relationships between journalists and judges, drawing on experiences from other regions to find ways to improve the situation.

The second day featured a simulated court hearing based on an authentic criminal case of exceeding the limits of necessary self-defence—a topic which is always attractive to the media. Participants, typically about 15 judges and 15 journalists, assumed various roles: journalists played judges, defendants, prosecutors, attorneys, witnesses, experts, an auxiliary prosecutor, and a social representative, while judges took on media roles, preparing press coverage and broadcasts. This role reversal facilitated a deeper understanding and appreciation of each other's professional challenges and led on to discussions to evaluate the simulation and the prepared media reports.

This unique exchange proved invaluable, fostering better cooperation and understanding between the judiciary and the media. The experience allowed participants to appreciate the complexities of each other's roles, which should aid smoother interactions in the future.

Journalists – quotes from evaluation questionnaires :
'It's not easy to be a judge, I have learnt that to my cost!'
'I will never laugh at the prosecutor again.'
'I really felt the burden of deciding on the judgment. I also felt how much any noise interferes with the hearing, how difficult it is to focus and maintain discipline if there are a lot of people in the courtroom.'

Judges – quotes from evaluation questionnaires:
'I have become acquainted with journalists. It was a nice surprise indeed.'
'I understood that our complaints against journalists should be directed to publishers and media owners. They often decide about sensational titles of publications or shortening of texts that distort the meaning.'
'It is not easy to present a verdict in a difficult case if you only have one or two minutes for a radio report.'

The programme brought numerous practical changes at the local level.

Communication by courts and judges with other authorities

Judges are sometimes seen by other powers and politicians as a group with a sense of entitlement, advocating for their privileges, and their representatives are often viewed merely as union-like figures (which in fact is sometimes the case). This perception, combined with inadequate communication channels, leads to primarily defensive and critical responses from the judiciary, overshadowing any constructive proposals. The resultant stalemate in communication fosters mutual distrust and hinders cooperation, with each side blaming the other for misunderstandings and unmet expectations. Important decisions affecting the judiciary are often made without sufficient dialogue or consultation, typically at stages too late for meaningful discussion.

To improve the situation, an expert and reflective approach is needed, without the day-to-day emotional biases. This approach should involve a critical self-examination by the judiciary and insights from external experts, aiming to enhance communication strategies within the judicial community and between the judiciary and other government branches.

This reflective process should focus on understanding and addressing the mutual expectations and developing a systematic approach to strategic communication that could help bridge the gap between different branches of government.

There are many questions that need to be answered. Judges have a natural restraint about contact with politicians; this is reasonable, because it emphasises their independence. But at the systemic level, looking at the state as a common good requires shared reflection. Communication of expectations with respect to the judiciary is important, but so is dialogue about creating conditions so that the judiciary can meet those expectations. For this purpose, a formula for functional cooperation needs to be developed.

The lack of established channels of communication for strategic reflection leaves judges isolated (in part, they isolate themselves) and they simply become the target of expectations and criticism, to which, often due to their lack of representation at the national level, they are not really able to respond.

Communication by courts and judges with civil society organisations

For judges and their communication with the public, civil society organisations are very important. They are natural intermediaries, helping in this communication. However, there is often a certain amount of suspicion on the part of the judiciary about civil society organisations. There is no tradition of openness to outputs from these organisations or to the feedback they provide.

The process of familiarising judges with organisations takes years and must be a continuous effort. On the one hand, this is related to the diversity of the organisations themselves. They include those that work for the common good, such as strengthening the rule of law and judicial independence, but also those that represent specific interest groups. A certain caution on the part of judges is therefore understandable – hence we sometimes talk about cooperation and sometimes only about interaction or communication between the judiciary and CSOs. It is important that organisations that want to cooperate with the courts themselves be apolitical, impartial, professional and transparent.

On the other hand, it is very important to develop a culture of giving and receiving feedback in both directions. Judges should analyse the outputs of organisations and draw conclusions from them and organisations should be able to communicate their findings in a professional, balanced (showing the pros and cons), non-combative but constructive manner.

Experience of cooperation between judges' associations and civil society organisations, building mutual trust, seems to be paying off in difficult times. In Poland, for instance, many organisations have devoted a significant part of their activities to defending the rule of law and judicial independence (see below).

Communication between courts and judges and the legal professions

Similar problems with communication exist between judges and other legal professions. This reflects a lack of cooperative spirit and understanding that all legal professionals collectively ensure legal protection and the administration of justice. Unlike the Anglo-Saxon system where the legal profession is unified, the Continental system separates the roles distinctly. Historically, in Poland and the wider region, judges emphasised their distinctiveness and this often overshadowed any sense of community with other legal roles.

Improved relations could be fostered through regular, constructive interactions and feedback among legal professionals. This is crucial for maintaining judicial independence, as evidenced during 2015-2023 when the bar associations of advocates and legal advisers as well as legal academics courageously stood up against attacks on judicial independence and the rule of law.

Yet another aspect, the role of intra-judicial dialogue, of communication between judges themselves, is emphasised by Ewa Łętowska, who refers to the sometimes formulated division into judges of lower and higher courts – 'frontline judges and palace judges': 'The courts among themselves, and particularly 'the palace judges', do not communicate very well… There are a lot of issues here, resentments and an inability to cooperate and accusations (against palace judges) of a disappointing strategy of pulling the ladder up behind them and looking after their own sanity. In a situation where divisions and bickering between groups is a popular strategy of the current executive and politicians in general, the unity of the judicial community, achieved through honest dialogue, is a very valuable asset.'[40]

Polish lesson – In Poland, before 2015, there was little or no tradition of independent communication between the judiciary and the public apart from the traditional forms of announcing judgments and the provision of limited information by judges' spokespersons. Various systemic attempts were debated and initiated, but these tended to be experiments and activities resulting from personal convictions about the role of communication by some judges and other actors. During the rule of law crisis of 2015-

40 Ewa Łętowska, Jakiego dialogu potrzeba do przywrócenia państwa prawa? [What dialogue is needed to restore the rule of law?], 7 February 2019, http://monitorkonstytucyjny.eu/archiwa/7973.

2023, judges, when brutally attacked by politicians, became aware of the huge role played by communication and the need for dialogue with society.

The Polish example is a good one in that it allows us to draw conclusions and avoid similar mistakes. Before the crisis, the vast majority of judges were not aware of the role of education and communication in relation to the justice system, the role of judges, their independence and their situation. There was a belief that judges should limit themselves to adjudicating and communicating through their judgments.

Polish judges in their masses only came to appreciate the role of communication and education in times of serious crisis, when the judiciary was attacked by politicians who wanted to limit judicial independence and influence the justice system.

Meanwhile, we should all realise that thoughtful and strategic communication must take place continuously, not only in times of crisis. There is some truth in the saying ‘better late than never’, but it would probably be smarter and less risky to take a different approach: ‘better before the attack than after…’.

'Above all, non-governmental organisations exhibit greater sensitivity to respecting fundamental human rights and freedoms compared to professional lawyers (including judges), who often think and act routinely. It turns out that this sensitivity plays a significant role in shaping the legal system.'

Katarzyna Gonera, a Supreme Court judge and author of publications on the role of CSOs in judicial proceedings.[41]

Part 4. Judges' allies – the role of the legal complex and civil society

If they are to administer justice fairly, courts and judges must be independent. When this independence is attacked, destroyed, restricted or taken away, judges do not have their own army or police force to defend their independence. When another branch of government wants to subjugate them, the situation is even more difficult. Behind other branches of power stands a coercive apparatus, behind judges only their authority. However, judges are not powerless, as we have shown in the previous sections of this Guide. Furthermore, judges can also count on the support of various different communities. We will mention several of these here, but will focus on two of them.

During the Polish crisis, and indeed afterwards, judges declared both publicly and privately that all the support they received was crucial.

This included support from the public, as well as support from specialists – legal authorities in Poland and abroad, such as legal academics and fellow judges.

Events such as the protests by Polish citizens from late 2015 and culminating in July 2017, the Extraordinary Congress of Judges in September 2016 or the 'March of a Thousand Gowns' in January 2020 with the participation of many foreign guests, played a formative role in the lives of many judges I have come into contact with. These events, and the people participating in them, gave judges spirit and courage and helped them through difficult times.

The support from abroad is very important. Every judgment from an international court was (and is) keenly awaited with the hope of concrete legal resolutions, as well as positions and interpretations that could be read as 'words of support'.

This encouragement in the form of positions, reports and evaluations by various institutions and organisations, as well as in the form of judgments by the ECtHR and the

41 See: Katarzyna Gonera, 'Udział organizacji społecznych w postępowaniu sądowym jako gwarancja prawa do rzetelnego procesu' [The role of civil society organisations in judicial proceedings as a guarantee of the right to a fair trial], in Ł. Bojarski (ed.) Sprawny sąd. Zbiór dobrych praktyk [The efficient court: A selection of best practice], C.H. Beck, Warsaw 2008, p. 169.

CJEU, convinced Polish judges that they were right in their assessment of the situation and gave them the strength to continue their resistance. However, this support made some people also understand that internal problems must be solved by Polish judges and courts and that no-one can substitute for them (something which was sometimes expected).

In Part 3 of this Guide, we focused on communication and education conducted and supported by judges. These communication and education activities help judges find the allies that are so necessary to protect their independence. Two communities played a particular role in this regard: civil society and the legal community.

In Part 4 we will address the following issues:
- What is the 'legal complex' and can this concept be useful to support judges defending the independence of the courts in the face of threats?
- How can the creation of a 'legal complex' be supported in stable times so that, if necessary, it can act in solidarity to defend the rule of law and the independence of the judiciary?
- Can citizens and civil society defend independent courts?
- What role do civil society organisations play in mobilising citizens?
- How should the relationship and cooperation between courts, judges, their organisations and CSOs be structured?

Judges' allies

In the case of the Polish crisis (2015-2023) the following key institutions and groups supported activities or cooperated with the Polish judges in resistance:

International organisations and institutions: the European Union and its institutions; the Council of Europe and its institutions, such as the Venice Commission; the United Nations and its institutions, such as the UN Special Rapporteur on the Independence of Judges and Lawyers; international organisations such as the European Network of Councils of the Judiciary; global and European associations of lawyers and judges, such as the International Association of Judges / European Association of Judges, Magistrats Européens pour la Démocratie et les Libertés (MEDEL) and many more.

The world of academia, legal scholars shaping legal doctrine and teachers of law. Many academics, both locally and internationally, supported Polish judges. They provided support not just through their objective academic interest and publications but also in more direct, active ways. The case of 'rule of law backsliding in Poland' has committed academic spokespersons. To name just a few of these (the group is much bigger): Professors Ewa Łętowska, Marcin Matczak and Fryderyk Zoll from Poland and Professors Laurent Pech, Wojciech Sadurski, Leah Wortham and Kim Lane Scheppele from abroad.

The media, which in some cases suffered financial consequences for their involvement in the issue of the independent judiciary (e.g. public advertising was withdrawn from them to support pro-government media advertising campaigns). This also includes the new 'watch dog' media established as a response to the crisis in order to monitor the government and defend democracy. See here for an example.

In the political sphere – **government opposition**, political parties both inside and outside of the Parliament.

Legal profession/s, including advocates, legal advisors, prosecutors and their professional organisations.

Third-sector organisations – civil society organisations (CSOs).

Last but not least, **the citizens**, as a whole. Of course, not all citizens supported the judges, but there were many who did. This support was not a one-off action, limited to participation in one or two demonstrations; instead, it was expressed over the years in various ways. These civic actions were largely initiated or supported by the aforementioned CSOs, but not always.

It is also worth mentioning the support shown to judges by **diverse communities**. Among the resolutions expressing criticism against the authorities attacking judges, and in solidarity with judges, there were statements from various associations and occupational groups, from psychologists and therapists, to teachers and doctors and scientific communities. Messages also came from numerous artists, celebrities and public figures. Each instance of support has symbolic significance but also creates an overall climate that influences the attitudes of judges.

When one studies the resistance of Polish judges there are several features that in my opinion make this resistance so significant: the scale and longevity of it, the strategic approach, the broad range of methods of resistance, the involvement of judges from all instances, and last but not least the cooperation with the legal complex and especially cooperation and joint initiatives with CSOs and wider public support.

Below, I present examples of support for judges and cooperation between judges and the legal profession and civil society in Poland, in the face of the serious rule of law crisis during 2015-2023. The process of restoring the rule of law began in early 2024, although it has since encountered numerous difficulties and is still ongoing as of early 2025.

In Poland, there has been considerable success in countering threats to the rule of law during the period mentioned. Meanwhile, when comparing Poland and Hungary, for instance, we see significant differences in the engagement of judges themselves and the support they receive. Although many CSOs in Hungary support the rule of law, their collaboration with judges is limited. Similarly, the legal profession there is only minimally engaged in the fight for independent courts.

QUESTION
Does judicial independence imply passivity in interactions with other social groups or should it involve active engagement?

It seems that in the face of growing threats to liberal democracy, built on the foundations of freedom, democracy and the rule of law, we should not wait for crises but rather take preventative action. This includes building coalitions of forces that support the rule of law and judicial independence, establishing contacts, creating communication channels, and fostering cooperation between communities, including judges, the legal profession, and civil society representatives.

If such contact is established and potential responses to a crisis are discussed in advance, it will be much easier to cooperate in the event of an attack on the rule of law and judicial independence. Poland is an excellent example of how such cooperation can play a significant role in defending democratic values.

QUESTION
Should we expect judges to actively defend the independence of other social groups?

In this guide, we focus on the independence of the judiciary and ways other sectors can support judges. However, it is crucial to remember that citizens defend judicial independence not just as an abstract ideal but for practical reasons. Independent courts protect citizens from the overreach of authoritarian power, safeguarding their freedoms and their right to fair, impartial justice.

Judges, therefore, should not only expect support for their independence but also actively defend the independence of others. Authoritarian powers often restrict the independence of the legal profession, including lawyers and civil society organisations perceived as threats. Such regimes frequently use the 'salami method', eroding the rule of law incrementally rather than attacking it all at once.

This underscores the importance of reciprocity among groups supporting the rule of law. Judges must remain vigilant to threats against other social groups to prevent scenarios like those described in Pastor Martin Niemöller's famous poem 'First they came', where the targeted groups could easily be replaced by legal institutions or professionals essential to upholding justice.

Judicial independence is primarily about delivering impartial judgments. However, in extraordinary circumstances, such as those marked by authoritarian tendencies, judges may be called upon to act beyond their traditional roles. Many such actions are outlined in this Guide.

First they came
First they came for the Communists
And I did not speak out
Because I was not a Communist
Then they came for the Socialists
And I did not speak out
Because I was not a Socialist
Then they came for the trade unionists
And I did not speak out
Because I was not a trade unionist
Then they came for the Jews
And I did not speak out
Because I was not a Jew
Then they came for me
And there was no one left
To speak out for me.

Martin Niemöller

For more about Pastor Martin Niemöller, see here.

The legal complex

Definition

The concept of the 'legal complex' follows Halliday and Karpik's definition:
The legal complex denotes lawyers from different legal occupations which mobilise on a given issue at a given historical moment, usually through collective action that is enabled through discernible structures of ties. It is a cluster of actors who relate to each other through common interests and a multitude of different processes.

Lucien Karpik & Terence C. Halliday, 'The legal complex', 7 Ann. Rev. L. & Soc. Sci. 217 (2011).

As underlined by Hans Petter Graver,[42] the *legal complex* is a concept that seeks to explain the dynamics of legal mobilisation across occupational boundaries. Different interests, connections and actions unite members of the legal profession. The nexus between judges and lawyers is central, but the legal complex also includes academics, civil servants and prosecutors.

In my opinion this concept is beneficial to demonstrate and prove the significance of both the legal profession and the role of CSOs. I do use this concept but I am also of the opinion that it could be more theoretically developed when it comes to the role of CSOs. I have already expressed this and my thoughts were welcomed by co-author of the concept Terence C. Halliday.

Academic sources

Łukasz Bojarski, 'Civil society organisations for and with the courts and judges—Struggle for the rule of law and judicial independence: The case of Poland 1976–2020', *German Law Journal*, 22(7), 1344-1384 (2021).

Traditionally, the Polish legal profession, and this also pertains to the entire region, was not unified as in the Anglo-Saxon model. There exists a strict division of individuals with law degrees into several specific legal occupations – judges, prosecutors, advocates, legal advisors and notaries, among others – with limited practical movement between these roles. Historically, the relationships between these professions were often marked by a lack of mutual sympathy. However, political attacks on the judiciary have significantly altered these dynamics.

The Polish legal complex in action – examples

From the outset, lawyers rallied to the cause. Despite the presence of opposition and arguments that could be heard sporadically (such as 'Let's not die for the judges, would they die for us?'), the ultimate commitment of lawyers to defend the courts was unequivocal, evident both in the resolutions of the national bar associations and the actions of individual lawyers.

Hundreds of lawyers nationwide provided pro bono legal assistance to judges as well as citizens prosecuted for participating in protests. A large group of lawyers, including those affiliated with CSOs and academia, engaged in a variety of strategic activities, particularly impact litigation. Numerous prominent legal figures actively participated in the public debate, highlighting the values that the judges were defending.

42 Presentation at the conference 'Judges under Stress', in Vilnius, Lithuania, April 2024.

Free courts

In response to the July 2017 protests, the Free Courts (Wolne Sądy) initiative was established by four lawyers (three advocates and a CSO activist). Initially aimed at raising public awareness about the role of the courts through short films featuring celebrities, it evolved into a significant legal enterprise, operating as the Free Courts Foundation (Fundacja Wolne Sądy).

Lawyers from Free Courts (often under the auspices of KOS) represented repressed judges and prosecutors before national and European courts. The Foundation dealt with over one hundred cases. Lawyers from Free Courts obtained several landmark decisions (mentioned in this Guide), which affect the functioning of the legal system as a whole.

Justice Defence Committee (KOS)

The enactment of Parliamentary bills that curtailed judicial independence (Acts on the Supreme Court, the National Council of the Judiciary, and Ordinary Courts) sparked the creation of the Justice Defence Committee (Komitet Obrony Sprawiedliwości – KOS). Established on 4 June 2018 by eight organisations (Amnesty International in Poland, Helsinki Foundation for Human Rights, Institute for Law & Society INPRIS, Professor Zbigniew Holda Association, Iustitia and Themis Judges' Associations, Lex Super Omnia Association of Prosecutors, and the Professor Osiatyński Archive), KOS later expanded as five more organisations joined.

KOS contended that the laws passed threatened the independence not only of judges but also of other legal professionals, such as advocates, legal advisors and prosecutors. Since its inception, KOS has served as a central platform for cooperation among CSOs and judicial associations, dedicating itself to defending judicial independence and supporting those under pressure.

KOS enabled the synchronisation of numerous efforts, promoting collaboration rather than duplication. Through immediate assistance, individuals under attack were reassured that they were not alone and could rely on support (although not everyone opted to use this support). This approach significantly mitigated the risks of the so-called 'chilling effect', which the many actions by the authorities and their agents were clearly intended to create.

Among the initiatives launched or supported by KOS were key activities critical to the resistance in Poland and the legal standing of protesting judges. These included strategic litigation before Polish and international courts which resulted in numerous historically significant rulings. Interestingly, the methods of strategic litigation had been developed over the years by CSOs. Judges received training and materials provided by these organisations which explained these methods, disseminated knowledge on submitting preliminary questions, and promoted the use of EU instruments such as the Charter of Fundamental Rights.

While various organisations had their own individual plans, platforms like KOS enabled a common strategy to be established. The entire legal complex – including judges, prosecutors, lawyers and CSOs – regularly met to discuss and decide on strategies. Moreover, thanks to modern technologies and social media, they maintained continuous contact. So, although the state authorities possessed substantially greater human, organisational and financial resources, the more constrained social resources, when collaboratively managed, allowed for efficient task sharing, ongoing information exchange, mutual assistance and coordinated activities.

The primary activities of KOS involved ongoing, detailed monitoring of the national situation concerning courts, judges, prosecutors, and occasionally lawyers, facilitated by its network of members and partners. The focus was particularly on identifying any instances of judicial independence being restricted, as well as harassment and attacks on judges. This monitoring aimed to map the current situation and needs in real time, enabling immediate responses to emerging issues.

KOS collaborated with dozens of lawyers from across the country who provided pro bono representation for harassed judges and prosecutors in hundreds of cases, including disciplinary, civil, labour and criminal proceedings, as well as cases before international courts. In addition, KOS organised specialised support for victims of harassment in collaboration with the psychological and psychiatric communities (for more detail, see Part 2 above).

Congress of Polish Lawyers

Since 2015, various initiatives have sought to connect the legal communities, with significant contributions from the Iustitia and Themis Judges' Associations and the Lex Super Omnia Association of Prosecutors. These groups collaborate with national and local bars of advocates and legal advisers. Their efforts include numerous petitions, appeals and protests. They also engaged in initiatives such as the Congress of Polish Lawyers (three such congresses took place), local joint conferences and collaborative efforts to propose changes to the law.

Prosecutors from the Lex Super Omnia association also joined forces with judges for various initiatives, both to defend the judiciary and to advocate for a politically independent prosecution service. This required significant courage, as prosecutors, unlike judges, are not afforded legal protections. Many of them faced harassment as a result of their activism.

In general, all traditional legal professions, except for notaries, participated in joint efforts to defend the judiciary. Furthermore, many representatives of legal academia devoted considerable time and effort to this cause, along with lawyers from civil society organisations. Together, as a legal community, they undertook actions to defend the rule of law and supported judges engaged in protests.

Legal academia

It is worth noting that in recent years it has become common within Polish legal academia for many scholars to be actively engaged in public affairs, including ongoing – and at times irreverent – criticism of those in power and their attacks on the judiciary. This applies both to collective bodies (such as assemblies of law faculties and committees of the Polish Academy of Sciences) and numerous individual academics who have publicly spoken out.

For some, this engagement, both within academia and beyond, has become one of their primary areas of activity. Law professors such as Ewa Łętowska, Mirosław Wyrzykowski, Marcin Matczak and Fryderyk Zoll, have regularly commented on legal and political developments through academic publications, media appearances, educational projects and other public initiatives.

Professor Jerzy Zajadło has published dozens of opinion pieces in the media, later compiled into published volumes. Meanwhile, Professor Wojciech Sadurski is known not only for his academic analyses, such as *Poland's constitutional breakdown* (Oxford University Press, 2019), but also for his strong public statements – most notably in a tweet in which he referred to the ruling Law and Justice (PiS) party as an 'organised crime group'.

Resources
Jerzy Zajadło, & Tomasz Tadeusz Koncewicz, 'Hostile constitutional interpretation: Sending a warning in rebuilding the Polish Constitutional Court', verfassungsbog.de, 6 January 2023.

Ewa Łętowska, 'Defending the judiciary: Strategies of resistance in Poland's judiciary', verfassungsbog.de, 27 September 2022.

Mirosław Wyrzykowski, 'The ghost of an authoritarian state stands at the door of your home', verfassungsbog.de, 26 February 2020.

Wojciech Sadurski, 'I criticized Poland's government. Now it's trying to ruin me', The Washington Post, 21 May 2019.

The international legal complex

The Polish rule of law crisis demonstrated the crucial role that international cooperation and support can play when judges face threats to their independence. The engagement and support from members of the legal complex in other countries played a significant role in aiding Polish judges and defenders of the rule of law. This support was not only symbolic or moral, though these aspects were considered highly significant by Polish judges. The defence of values such as democracy and the rule of law in society is always shaped by multiple factors. It is difficult to precisely measure the impact of each, but the broad engagement of international communities ensured that the Polish crisis remained a prominent issue on the agendas of numerous organisations and institutions.

This international attention was particularly impactful because Poland, as a member of international communities like the European Union and the Council of Europe, drew constant scrutiny. The crisis was not merely framed as a domestic issue affecting Poland's judiciary and rule of law. It was also presented as a broader threat of populism and authoritarianism and an attack on the liberal values embraced by many societies.

Thus, the Polish case became, to some extent, a laboratory for initiating debate and testing countermeasures. The solidarity demonstrated by the international legal complex during the Polish crisis highlighted potential pathways for future responses to similar threats in other countries.

Traditionally, when judges are under threat, international judicial organisations have stepped up by raising awareness, adopting resolutions and appeals and publishing reports documenting attacks on courts in various countries. Below, we provide examples of such positions taken by international judges' and lawyers' organisations.

Resources
International Association of Judges (IAJ)
European Association of Judges (EAJ) Regional Group of the IAJ
The IAJ and EAJ have released numerous resolutions on Poland and other countries in the region, expressing concern about judicial reforms and their impact on judicial independence. They have also shown support for Polish judges facing repercussions due to these reforms. For examples of IAJ and EAJ activities relating to Poland, see here.

Rechters voor Rechters/ Judges for Judges
Judges for Judges is an independent and non-political Dutch foundation set up by judges to support fellow judges abroad who are experiencing problems whilst

executing their professional duties. For example, if their independence is being threatened or they are being put under pressure.

For examples of Judges for Judges activities, see below:
Bulgaria – new law restriction for judges and their organisations? (26 July 2017)
Disciplinary proceedings against Bulgarian judge Miroslava Todorova: implications for judicial independence (24 July 2017)

Association of European Administrative Judges (AEAJ)
The AEAJ has issued several statements addressing the situation in Bulgaria and Poland. These include open letters and resolutions highlighting threats to judicial independence and expressing solidarity with judges facing disciplinary actions.

For examples of AEAJ activities, see:
On Bulgaria: 'Open letter on the situation of the judiciary'.
On Poland: 'Situation in Poland'

MEDEL (Magistrats Européens pour la Démocratie et les Libertés)
MEDEL was founded in June 1985 in Strasbourg by professional organisations of judges and prosecutors from France, Belgium, Italy, Spain, Portugal and Germany. After the fall of the Berlin Wall, MEDEL was strongly committed to supporting the establishment of independent judicial institutions that respect the rule of law in the former Eastern Bloc countries. The association gradually expanded, welcoming new organisations of judges and prosecutors from Poland, Romania, Moldova, Czechia, Serbia, Bulgaria, Montenegro, Greece, Cyprus and Turkey. MEDEL currently brings together 23 judges' and prosecutors' organisations from 16 European countries.

For examples of MEDEL activities, see:
'Solidarity with Hungarian Judges' (12 December 2024)
'Statement on the recent attacks on the Italian judiciary' (24 October 2024)
'MEDEL statement on Romanian judiciary' (11 March 2021)

International Commission of Jurists (ICJ)
The International Commission of Jurists is a non-governmental organisation of leading judges and lawyers from all legal traditions, working to build a world based on human rights standards and the rule of law.

Examples of ICJ activities. In January 2025, the ICJ together with Human Rights in Practice published an important report: Helen Duffy, Elina Hammarström and Karolína Babická, Justice under pressure: Strategic litigation of judicial independence in Europe.

It 'provides a comprehensive overview of standards and practices on strategic litigation to defend judicial independence and accountability in Europe. It highlights the many forms of attacks on judicial independence across the EU, and the essential role that strategic litigation, including at international level, plays in countering rule of law backsliding. Drawing on the growing body of practice in the recent years, the report reflects on lessons learned, obstacles encountered, and good practices for future litigation efforts.'

Poland: judges and lawyers from around the world condemn rapidly escalating rule of law crisis (5 February 2020)

The International Commission of Jurists, its Centre for the Independence of Judges and Lawyers (CIJL), along with 44 of its Commissioners and Honorary Members, condemned the escalating rule of law crisis in Poland after a new law was passed that would result in harassment of judges upholding the independence of the judiciary. Judges, lawyers and legal scholars from around the world said in their statement: 'it is clear that the separation of powers, the independence of the judiciary, and the capacity of Polish judges to uphold the rule of law are now severely compromised. Judges' freedom of expression, association and assembly are under immediate threat'.

What is new, however, and demonstrates the evolution and changing approach of the international legal complex, is that during the Polish rule of law crisis (2015–2023), the international legal complex went beyond its traditional forms of action (such as statements, calls, reports and occasional missions to specific countries) with some measures being unprecedented. This included the involvement not only of judges but also of representatives from other legal professions, such as scholars and lawyers. Besides the actions of individual organisations, joint initiatives undertaken by multiple organisations are particularly interesting. Below, we present selected examples of actions involving the international legal complex.

International legal complex in action – examples

Impact litigation

Precedent-setting strategic litigation was undertaken jointly by four organisations: AEAJ, EAJ, Judges for Judges and MEDEL. They filed a lawsuit before the Court of Justice of the European Union against the EU Council over its decision to unblock the Recovery and Resilience funds for Poland. The launch of this initiative and the arguments presented clearly demonstrate the connection between attacks on judicial independence in one country and the broader situation across the European Union.

'...The EU Council decided to unblock EU funds for Poland once three 'milestones' are met: (1) the Disciplinary 'Chamber of the Supreme Court will have to be disbanded and replaced with an independent court; (2) the disciplinary regime must be reformed; (3) judges who have been affected by the decisions taken by the Disciplinary Chamber will have the right to have their cases reviewed by the new chamber.

The four European organisations of judges argue that these milestones fall short of what is required to ensure effective protection of the independence of judges and the judiciary and disregard the judgments of the CJEU on the matter.

The decision of the EU Council harms the position of the suspended judges in Poland: for example, the CJEU has ruled that the Polish judges affected by unlawful disciplinary procedures should be reinstated at once, without delay or a procedure, while the third milestone would introduce a procedure of more than a year with an uncertain outcome.

This decision also harms the European judiciary as a whole and the position of every single European judge.' All judges of every single Member State are also European judges, having to apply EU Law, in a system based on mutual trust. If the judiciary of one or more Member States no longer offers guarantees of independence and respect for the basic principles of the Rule of Law, the entire European judiciary is undeniably affected (so called 'spillover effect')...'

March of a Thousand Gowns – support from foreign judges and academics

A highpoint in the support of judges from different countries for their Polish peers was the participation of judicial delegations from more than 20 countries in the previously mentioned 'March of a Thousand Gowns'. The march was a unique and unprecedented

demonstration of judicial solidarity, as judges and lawyers from across Europe marched in defence of judicial independence, marking one of the largest pro-judiciary protests in EU history.

What set this march apart was not only its scale but also the participation of international legal professionals, highlighting the transnational impact of Poland's rule of law crisis and the growing recognition that threats to judicial independence in one country endanger the entire European legal order. Judges from the following countries participated in the March: Austria, Belgium, Bulgaria, Croatia, Czechia, Denmark, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Netherlands, Norway, Portugal, Romania, Slovakia, Slovenia, Spain and Turkey.

The march featured in a documentary (see below). According to the filmmakers, '*A Thousand Robes* is a story about mutual gratitude. On the one hand of citizens who are moved by how judges stand in their defence. On the other, of lawyers who have felt the solidarity of ordinary people and European judges. A Thousand Robes is a poster-movie. It is meant as a warning against what dismantling the democratic mechanisms of the state leads to'.

The success and significance of the march led, among other things, to an initiative presented by the International Association of Judges in 2023 at the United Nations, proposing the proclamation of 11 January as the '**International Day of Judicial Independence – March of 1000 Gowns.**'

Nevertheless, the involvement of judges in protests is sometimes also seen as controversial and crossing a line, as expressed by the view of the Irish Times on Irish judges protesting in Poland under the headline: 'Judiciary's move to join demonstration over foreign government's policies is problematic'. However, the publication provoked further reactions defending the judges' decision to join the protest.

Resources
A Thousand Robes (2020). Documentary, 12 minutes, directed by Kacper Lisowski, produced by Iwona Harris.

On 11 January 2025, the UN Special Rapporteur on the Independence of Judges and Lawyers, Professor Margaret Satterthwaite, addressed a special message to judges worldwide, to celebrate the 5th anniversary of the March of a Thousand Gowns in Warsaw. In her message she expressed the need to commemorate this day as the 'International Day of Judicial Independence'.

The Irish Times, Editorial (8 January 2020).

Expressions of support
We have talked already about numerous acts of support and solidarity expressed by Polish judges towards their persecuted colleagues. However, expressions of such support by foreign judges were a new development. Another example was when a group of around 50 Dutch judges photographed themselves wearing judicial gowns with a banner that read, 'We support independent judges in Poland'.

International academia on behalf of judges
Statements condemning the Polish government's actions against the judiciary and voices defending critics of the regime – many of whom faced persecution in Poland – regularly appeared on the international stage, including within the academic community.

Hundreds of scholars from around the world addressed European leaders regarding the situation in Poland or expressed their support for Professor Wojciech Sadurski, who was targeted by Polish authorities due to his critical commentary on the country's political developments. An open letter in his defence was signed by nearly 800 academics worldwide.

The constitutional law blog, Verfassungsblog, became one of the key platforms for exchanging views on these issues. According to its Chief Editor, Maximilian Steinbeis, in a statement from 18 January 2021, the blog published approximately 270 posts on the rule of law crisis in Poland over a span of five years (2015–2020). In the following years, the number of these publications continued to increase.

The involvement of scholars in protests, resistance and advocacy at different levels of politics (national and international) is an interesting topic, and one that has already been critically addressed by academics.

Jan Komárek, 'Freedom and power of European constitutional scholarship', *European Constitutional Law Review,* 17(3), 422-441 (2021).

Resources

Laurent Pech, Kim Lane Scheppele and Wojciech Sadurski, 'Before it's too late: Open letter to the President of the European Commission regarding the rule of law breakdown in Poland', verfassungsblog.de, 28 September 2020.

Laurent Pech, Wojciech Sadurski and Kim Lane Scheppele, 'Open letter to the President of the European Commission regarding Poland's 'Muzzle Law', verfassungsblog.de, 9 March 2020.

Laurent Pech, Kim Lane Scheppele and Wojciech Sadurski, 'Open letter to the President of the European Commission', verfassungsblog.de, 11 December 2019.

Gráinne de Búrca, John Morijn, and Maximilian Steinbeis, 'Stand with Wojciech Sadurski: his freedom of expression is (y)ours', verfassungsblog.de, 18 November 2019.

Gráinne de Búrca and John Morijn, 'Open letter in support of Professor Wojciech Sadurski', verfassungsblog.de, 6 May 2019.

'Debate – The Polish constitutional crisis and institutional self-defense', verfassungsblog.de, 3-4 June 2017.

Anne Sanders and Luc von Danwitz, 'Defamation of justice – Propositions on how to evaluate public attacks against the Judiciary, verfassungsblog.de, 31 October 2017.

Good Lobby Professors

'The Good Lobby Profs is an initiative gathering 60+ academics coming from over 30 countries that constantly monitors the respect of the rule of law by holding the EU and national institutions and leaders accountable.

It acts as a rapid response mechanism to uphold the rule of law across the continent by provide pro bono expert analysis, support as well as advocacy with the view of promoting, defending and strengthening respect for democracy, the rule of law and human rights.

Since 2020, it has devised litigation strategies before national and EU Courts, lodged administrative complaints and published major research and advocacy reports and studies including the set up of the EU ethics body. This work has been covered by mainstream media such as the Financial Times, Le Monde, Politico Europe.'

The Good Lobby Profs Impact in 2024.

Civil society organisations

Definition

The term 'civil society organisation' (CSO) describes what many authors call non-governmental organisations (NGOs). I am defining CSOs as groups of citizens who come together for a chosen purpose in the form of associations, foundations or less formal initiatives. Other possible terms include third sector organisations, non-profit organisations, and the voluntary sector. However, 'CSO' emphasises civil society and citizens as actors, while 'NGO' defines organisations just in opposition to governmental structures.

I don't include in this group political parties, unions of workers or employers, churches or religious groups.

During the Polish crisis, CSOs played a significant role on many levels, including developing resistance strategies, undertaking various legal actions and other activities, and creating a support system for judges. But why is this the case? Why is there such a close working relationship between judges and activists or experts from outside the judiciary? Why is there such a strong foundation of trust? I argue that this stems primarily from years of collaboration on joint projects, fostering mutual understanding and building trust between judges, activists and experts long before the crisis emerged.

Resources

Łukasz Bojarski, 'Civil society organizations for and with the courts and judges—Struggle for the rule of law and judicial independence: The case of Poland 1976–2020', German Law Journal, 22(7), p. 1344 (2021).

Collaboration between CSOs and judges – significance and risks

Collaboration between judges and CSOs can be highly effective, but it obviously requires a delicate balance to ensure that judicial independence is not compromised.

QUESTION

What is the role and significance of judges' collaboration with CSOs?

Possible aspects of the role of CSOs in relation to the judiciary:

Raising public awareness: CSOs may act as intermediaries between society and the judiciary, facilitating communication and explaining the functioning of the courts to the public.

Legal education: CSOs can support judges or work together with judges on educational initiatives, promoting legal awareness and the principles of the rule of law and judicial independence.

Addressing systemic issues: CSOs/think tanks can provide valuable data, analyses and perspectives on systemic problems, such as access to justice, which can be instrumental in reform initiatives.

Fulfilling auxiliary functions: many specialised CSOs have unique expertise on specific problems or social groups they work with daily, such as children, people with disabilities or victims of violence. These organisations can provide courts with essential knowledge, assist in understanding specific issues and suggest or conduct relevant training.

Monitoring power and providing feedback: CSOs also perform social oversight of the judiciary and monitoring or observations conducted by CSOs can provide the judiciary with valuable feedback.

Building public trust: collaboration with CSOs can enhance the transparency of the court administration and operations, fostering greater public trust in the judiciary.

QUESTION
Can collaboration between courts, judges and CSOs pose a threat to judicial independence?

In many countries there is no tradition of the judiciary being open to the outputs of organisations or the feedback they provide. There are organisations that through many years of interaction with the judiciary or cooperation with judicial associations have made a name for themselves in the community and are appreciated by judges. But there is still a certain amount of suspicion about civil society organisations in general.

The collaboration between judges and CSOs can be beneficial for both the judiciary and society, provided it is conducted transparently and adheres to the principle of judicial independence. It is worth paying attention to the following issues:

Defining mutual relationships: when analysing the relationships between judges and CSOs, we use various terms such as ‘interaction’ or ‘communication’, recognising that not every relationship can or should be described as ‘cooperation’.

Political neutrality: CSOs often engage in politically oriented activities, which can pose a risk to the politically neutral nature of the judicial role.

Disruption of neutrality and impartiality: judges must avoid situations where their decisions could appear influenced by external organisations.

Perception of bias: close collaboration with certain organisations may create an impression that judges are aligned with specific interests or ideologies.

Balanced engagement: collaboration should be broad and inclusive, involving diverse organisations to avoid accusations of favouritism.

Transparency of collaboration: clearly defining the goals and boundaries of the collaboration helps to ensure judges do not overstep their impartial role.

Training and guidelines: developing standards for judicial cooperation with CSOs may help to minimise the risk of undermining independence.

The collaboration between judges and CSOs is highly significant in several key areas. However, its nature must be carefully considered to avoid any potential compromise of judicial independence. Judges should primarily remain open to the outcomes of the work of organisations that are relevant to the judiciary.

QUESTION
How can we get to know one another better and promote the work of CSOs that's relevant to the judiciary?

Just as in other areas of life, our concerns about mutual relationships often stem from a lack of familiarity or understanding. For this reason, the judiciary should find ways to learn about the motivations, goals, methods and outcomes of work of CSOs. This can be achieved through various means, such as:

Inviting individual organisations to present their activities and achievements at forums hosted by judicial councils, judicial associations or individual courts.

Providing space in legal journals or other publications accessible to judges for CSOs to share their work and findings.

Discussing specific projects and reports prepared by CSOs during **meetings of judges** at a particular court.

Accepting invitations from CSOs to attend events they organise, such as conferences, seminars or presentations of their work outcomes.

Organising a dedicated conference for judges and CSOs where different CSOs can showcase their work and its results and both groups can exchange feedback (see below).

These approaches foster mutual understanding and open channels for constructive collaboration.

Best practice: 'Together or apart? Cooperation, interaction, communication between the judiciary and NGOs'
Just before the Polish crisis, in 2014-2015, the Institute for Law and Society (INPRIS), in cooperation with the National School of the Judiciary and Public Prosecution, implemented the project 'Together or Apart? Cooperation, Interaction, Communication between the Judiciary and NGOs'. The project explored numerous interrelated topics and culminated in a conference. During that event, several thematic panels featured opening remarks from two judges and two representatives of CSOs working in the field of justice, followed by collaborative discussions on the relationship between the judiciary and NGOs.

Examples of panel subjects included:
CSO monitoring of the judiciary (access to courts, court operations, communication with citizens and judicial appointments).

CSO trial observation and court-watch projects.

CSO strategic litigation management (precedent cases, test cases and impact litigation programmes).

CSO involvement in court proceedings (e.g. amicus curiae brief opinions).

CSO involvement in judicial training (proposing topics for curricula and/or conducting training/seminars for judges).

CSOs specialising in issues of transparency and access to information on the judiciary and judges.

CSOs educating the public about the judiciary.

CSO cooperation with judges' associations.

Throughout the thematic sessions, participants engaged in open discussions to address problems and identify solutions. A range of recommendations was developed for both the judicial community and organisations (see below).

Best practice
Since around 2010, the Polish judicial quarterly National Council of the Judiciary, published by the National Council of the Judiciary in collaboration with Wolters Kluwer Polska, has been open to publications by representatives of CSOs. When the author, as a member of the NCJ, was elected to the editorial board of the quarterly, he made a proposal and obtained the board's approval to commission articles presenting the organisation's activities and research findings. These appeared in almost every issue of the journal from then and until the political takeover of the NCJ in 2017. Some of these articles are mentioned and/or referenced in this Guide.

Best practice: Mutual appreciation
In Poland a certain re-evaluation began to take place in the NCJ's approach regarding recognition of the role of CSOs, especially from the end of 2015 due to the political situation and threats to the judiciary. Organisations started to be seen as natural allies in efforts to preserve the independence of the courts. This was expressed, among other things, by resolutions of the NCJ to honour certain representatives of the civil society sector with the highest distinctions awarded by the Council: the **'Meritorious for the Judiciary – Bene Merentibus Iustitiae'** medal. This had never happened before.

The activities of some judges were also rewarded, for instance through the contest organised by the Court Watch Polska Foundation, entitled 'Citizens' Judge of the Year', which was awarded several times.

Best practice: Good examples of mutual recognition and interaction between judges and citizens in Bulgaria
One notable active civil society organisation supporting the independence of the judiciary is the Justice for All initiative. Established in 2015, this organisation presents concrete legislative proposals aimed at aligning the structure of the judiciary with international standards. It actively monitors the election procedures in courts and the prosecution service, poses questions to candidates and expresses opinions. In 2020, it participated actively for several months in civil protests against government corruption and the then Prosecutor General.

In terms of judges communicating with citizens, two examples are noteworthy:
- In 2015, the Bulgarian Judges Association published an open letter addressed to the citizens, marking its first direct communication: 'Dear Bulgarian Citizens! The Bulgarian Judges Association is addressing you directly for the first time…' In this letter, judges attempted to explain the importance of rejecting the proposed Constitutional reform.
- In another instance from 2019, more than 300 Bulgarian judges informed the public about the negative impact of a media smear campaign against three members of a Sofia Appellate Court panel, which had released a convicted person on parole.

Recommendations from judges and CSOs

The following key recommendations were formulated during discussions at the conference 'Together or Apart? Cooperation, Interaction, Communication between the Judiciary and NGOs'. They reflect the views of participants, both judges and representatives of CSOs.

Translated from: Łukasz Bojarski, Grzegorz Wiaderek, *Razem czy osobno? Współpraca, interakcja, komunikacja wymiaru sprawiedliwości i organizacji pozarządowych*, Institute for Law and Society (INPRIS) (2014).

See also: Łukasz Bojarski, 'Razem czy osobno? Współpraca, interakcja, komunikacja wymiaru sprawiedliwości i organizacji pozarządowych' [Together or apart? Cooperation, interaction, communication of the judiciary and non-governmental organisations], *Kwartalnik Krajowa Rada Sądownictwa* 2014/4, p. 20 (in Polish).

General and systemic recommendations

Communication of justice: it is vital for courts not only to demonstrate that justice is being administered but also to show, in permissible and practical ways, that justice is being served. Courts should learn to communicate effectively with society.

Improving communication: judges, courts, judicial organisations, and CSOs should continue efforts to establish effective communication methods. This will help judges better understand the goals of CSOs and enable CSOs to appreciate the positions and opinions of judges.

Building coalition: judges, judicial organisations and CSOs should form coalitions to improve adjudication and promote fair trials. Efforts should focus on improving the decision-making process, enhancing the clarity of judgments, reducing excessive legalistic language and using value-driven communication.

Dedicated research funding: the Ministry of Justice and other institutions managing research funds should establish dedicated funding streams for justice-related research. Open and transparent grant processes should allow academic institutions and CSOs to apply for funds to conduct empirical studies on various aspects of the judiciary.

Access to data: public institutions holding data on the judiciary (e.g. statistical data, analyses, research results and reports) should make this information freely and regularly available to all interested parties.

Simplifying statistics: existing official sources of information about the judiciary require improvement. Currently, statistics are presented in a complicated and hard-to-analyse manner. The Ministry of Justice should simplify and better describe this data.

Promoting court reports: reports from administrative courts are valuable and worth reading but insufficiently publicised. Courts should promote their reports more effectively.

Collaboration mechanisms: the Ministry of Justice should establish mechanisms for collaboration with CSOs.

Joint task forces: consideration should be given to creating a joint task force, a team affiliated with the Ministry of Justice or the National School of the Judiciary and Public Prosecution, to facilitate information exchange and dialogue between the judiciary and CSOs. Alternatively, CSOs could form such a task force independently.

Utilising expertise: the Ministry of Justice, in cooperation with the judiciary and CSOs, should explore legal and organisational solutions to make greater use of CSO expertise as a specialised resource for the judiciary (e.g. using CSO data and knowledge as evidence or incorporating opinions from specialised organisations in specific fields).

Addressing legal barriers: the Ministry of Justice should work with the judiciary and CSOs to propose legal solutions that eliminate unjustified barriers for CSOs participating in legal procedures.

Recommendations for the judicial community

Openness to engagement: judges should be open to collaboration and building relationships with CSOs. Such engagement serves as a direct communication channel with society and should be utilised to foster trust and understanding.

Local partnerships: courts should collaborate not only with CSOs but also with representatives of local communities, such as schools, universities, legal professional associations and other social partners.

Regular meetings: courts at the local and regional levels should organise regular meetings, debates or seminars with CSOs, legal professional associations and other relevant institutions to discuss various aspects of court operations and propose improvements.

Identifying research needs: judicial organisations and institutions representing judges should develop methods to identify and communicate research needs to academic institutions and universities, ensuring that studies address real-world issues and produce practical outcomes for the judiciary.

Educational programmes: institutions such as the National School of the Judiciary and Public Prosecution should develop materials and training programmes to raise judges' awareness of the roles and rights of CSOs in legal procedures and their specific contributions to the judiciary.

Discussing research findings: research reports and observations should be discussed among judges during general assemblies, department meetings or informal gatherings organised by court presidents. These discussions should encourage reflection and constructive dialogue.

Implementation of recommendations: courts should focus on implementing practical recommendations rather than conducting excessive research. For instance, promoting 'basic human kindness' does not require numerous reports but can be achieved through judges' meetings and discussions leading to tangible changes.

Detailed court schedules: judges should pay more attention to the level of detail in court schedules, which could provide more comprehensive information.

Recommendations for collaboration on educational projects

Organise regular meetings between the National School of the Judiciary and Public Prosecution and CSOs to exchange information and experiences.

Create opportunities for CSOs to propose training topics and provide feedback on the School's training plans.

Establish a dedicated section on the School's website for submitting training ideas, allowing for a transparent communication process with society and CSOs.

Form thematic working groups involving social partners to develop educational programmes on topics such as children's rights and anti-discrimination issues.

Recommendations for civil society organisations

Impartiality and public benefit: CSOs should ensure that their research and monitoring activities adhere to the principle of impartiality, as this is essential from the perspective of the judiciary. They should clearly demonstrate how their work benefits the public good.

Thoughtful communication: CSOs should carefully and skilfully communicate their research findings and analyses to courts and judges. They should not focus solely on problems and areas needing improvement but also highlight good practices, positive examples and successes worth emulating. For example, CSOs could draw attention to challenges judges face, such as the sheer volume of case files on their desks, to foster greater understanding.

Organised advocacy: CSOs should consider organising themselves to present their achievements to government authorities collectively. Joint efforts may have greater impact and complement the work of individual organisations.

Coalition building: CSOs can benefit from forming federations or even informal coalitions with other organisations operating in similar fields. Joint action, like the Coalition for Child-Friendly Interrogations or the Coalition for Equal Opportunities, can amplify their voices.

Presentation of research findings: CSOs should present their research findings to judges in the form of topics for discussions or working meetings, rather than as 'directives to implement'.

In-depth, multi-source analysis: when describing or assessing the judiciary, CSOs should use thorough, multi-source analyses wherever possible. Simple observations are insufficient; all information gathered through observations should be corroborated with additional evidence.

Training for observers: judges recommend that CSOs adequately train their observers and staff conducting monitoring projects in courts to ensure they have a deeper understanding of judicial realities.

Methodology transparency: judges expect CSOs to provide detailed information about the methodologies they use in their research reports. Clear presentation of methodologies makes findings more accessible and enables judges to analyse and engage with the reports effectively.

Inclusion of judges: CSOs should follow the principle of 'nothing about us without us' and invite judges to comment on research findings related to the judiciary. Consulting judges on ideas, studies and conclusions strengthens the relevance and credibility of CSO work.

Ethical considerations: CSOs should internally discuss ethical issues related to their activities in legal procedures, including protocols for handling potential conflicts of interest (e.g. between the interests of clients and the organisation's mission).

Utilisation of electronic court protocols: CSOs should develop methods for using electronic court protocols as monitoring tools. These protocols contain detailed data and information that can help verify the actions of judges, prosecutors, parties and legal representatives.

Careful use of public information requests: CSOs should thoughtfully consider whether the information they request under public access laws is genuinely necessary. Excessive requests can burden courts, leading to a perception that the right to public information is being misused.

Influencing judicial education: CSOs can contribute to the educational offerings of the National School of the Judiciary and Public Prosecution by proposing training topics. This could involve presenting issues, explaining their nature and suggesting solutions, including examples of international best practice, relevant experts and materials.

Collaboration on EU-funded projects: CSOs are encouraged to collaborate on developing project outlines for EU-funded initiatives focused on education in the judiciary sector.

Resources

The experiences from the Polish project described above were also utilised in an international initiative. A publication was prepared as part of the project, led by the Institute for Law and Society (INPRIS) **(Poland)** in collaboration with five partner organisations from five countries: **Albania** (Albanian Helsinki Committee), **Czechia** (CEELI Institute), **Macedonia** (All for Fair Trials coalition), **Serbia** (Lawyers' Committee for Human Rights – YUCOM) and **Slovakia** (VIA IURIS).

Łukasz Bojarski, Ewelina Tylec (eds.), NGOs and the judiciary – watchdog activities, interactions, collaboration, communication (Warsaw May 2016).

As noted by the editors: 'For all six countries one of the main concerns remains the issue of building mutual trust between civil society and judiciary. It is an important and difficult endeavour that requires hard work and time, as well as adequate resources. This publication strives to turn this challenging venture into 'Mission Possible'. In its Part I it formulates a number of recommendations of a general (systemic) character, as well as specific ones addressed to the judiciary and to NGOs. Every recommendation is followed by a number of best practice examples that can be a source of inspiration for improving legal framework and building better relationship between NGOs and the judiciary. Part II gathers excerpts from country reports drafted by all partner organisations. Finally, Part III includes annexes with the recommendations translated into Albanian, Macedonian and Serbian.'

CSO involvement during crises – crash test

Experience of cooperation between judges' associations and civil society organisations, building mutual trust, seemed to pay off in difficult times of crisis around the rule of law. Many organisations devoted a significant proportion of their activities to defending the rule of law and judicial independence. Sometimes these were not easy choices. INPRIS (together with partners from other countries) illustrated this with a dilemma, *Expert v. Freedom Fighter*, as part of the international project 'Legal Think Tanks and Government – Capacity Building' (Czechia, Hungary, Moldova, Poland, Slovakia and Ukraine).

How to solve the dilemma? Expert v. Freedom Fighter

'It is one thing for a legal think tank to research the optimum number of assistants per judge, but it is quite another thing to discuss the government's proposal to fire all the Supreme Court Justices overnight. Both problems require competent, objective analysis. The latter issue is so important, and the solution is so controversial, that the staff of the think tank feels a professional and moral duty to go further than research – experts become 'freedom fighters'.'

Resources
How legal think tanks provide, or fail to provide, knowledge to governments in Central and Eastern Europe, Policy Paper (September 2017).

Łukasz Bojarski, Filip Wejman (eds.), Legal think tanks and governments. Capacity building. Report (Warsaw 2017).

QUESTION
How can civil society engage in the defence of judicial independence? Examples from Poland.

Various social groups, organisations and citizens quickly mobilised to defend the judiciary under attack. Over the course of eight years, different communities undertook numerous actions. Some of these have been documented by those directly involved, others by researchers and more still await analysis. I will highlight a few that, in my opinion, played a significant role in the context of this issue.

Resources
Chronology of Civil Society Resistance (2015–2017), compiled by Rafał Zakrzewski [Kalendarium oporu społeczeństwa obywatelskiego (2015-2017)].

'A country that punishes. Pressure and repression of Polish judges and prosecutors (KOS report)', Komitet Obrony Sprawiedliwości KOS (Warsaw, November 2021).

'Kings of Life' in Polish prosecutor's office – a report by the LSO Prosecutors' Association' [Królowie życia w prokuraturze 'dobrej zmiany' Raport Stowarzyszenia Prokuratorów 'Lex Super Omnia'] (Warsaw, 6 August 2019).

'3000 Days of Lawlessness', #FreeCourts Report (Warsaw, October 2023).

Barbara Grabowska-Moroz and Olga Śniadach, 'The role of civil society in protecting judicial independence in times of rule of law backsliding in Poland', *Utrecht Law Review*, Vol. 17, Nr. 2 (2021).

With regard to research conducted by civil society organisations, the extensive work of the Helsinki Foundation for Human Rights is particularly noteworthy.

Citizens first to react

The above-mentioned relationships, built up over many years between judges' associations and CSOs, allowed for immediate contact, both private and, eventually, institutional when the judiciary came under sudden political attack in 2015. These connections were characterised by trust, which was crucial given the sensitive nature of the issue and the potential professional repercussions for those involved in joint efforts.

Judges, civil society representatives and cooperating lawyers vouched for new individuals who had not previously engaged in such collaboration. An additional asset was the implicit or explicit endorsement of respected legal authorities, including eminent law professors and judges. Some of these figures, such as Professor Mirosław Wyrzykowski and Professor Ewa Łętowska, had themselves worked within these organisations, helping to establish the foundations of cooperation between judges and civil society.

As trust grew, initial personal connections expanded into a broader network of collaboration. The first experiences of working together in increasingly larger circles fostered credibility and strengthened solidarity. Moreover, the shared experience of voluntary, additional work in difficult conditions, amidst a perceived political assault on the judiciary and concerns over the erosion of systemic legal safeguards painstakingly built up over the years, deepened the commitment of those involved, uniting them in a common cause.

Hands off the Tribunal

It can be said that the formal beginning of the attack on the Polish judiciary was the resolutions passed by the Sejm (lower house of Parliament) during the night of 25 November 2015 concerning the Constitutional Tribunal. These resolutions were accompanied by the first spontaneous demonstrations by citizens, as people began gathering after 9 pm and, a few hours later, directed chants of 'Hands off the Tribunal!' ('Ręce precz od Trybunału!') at the Members of Parliament leaving the Sejm.

'We are watching you'

Attempts to defend the Constitutional Tribunal continued in the following weeks, with demonstrations held under the slogan 'We are watching you'. Civil society organisations launched a street Constitutional University, where volunteers explained to citizens the role of the Constitutional Tribunal and the significance of its rulings. The emerging Committee for the Defence of Democracy (KOD), a large social movement founded on 18 November 2015, also joined the efforts to protect the Tribunal.

Citizens replacing the Prime Minister

A particularly symbolic protest was organised by activists from the Razem party. In response to Prime Minister Beata Szydło's refusal to publish the ruling of 9 March 2016 of the Constitutional Tribunal concerning the December 2015 amendment to the Tribunal Act (despite publication being a condition for the validity of the ruling), activists undertook a citizen-led publication by projecting the text of the ruling on to the wall of the Prime Minister's Office.

Meanwhile, a KOD protest outside the Prime Minister's Office continued until the ruling was officially published. For months, passersby could see a public display showing the number of days that had passed since the ruling was issued and since the unlawful refusal to publish it.

Calling on the Venice Commission

Another action was a letter sent on 2 December 2015 by eight civil society organisations, together with the Supreme Bar Council, to the Venice Commission. These organisations were the first to request the Commission's attention to the situation in Poland.

Although the authors lacked the formal authority to officially invite the Commission, the letter served as a source of information and a symbolic appeal, providing a detailed account of the legal and factual circumstances. The initiative sparked a debate that ultimately led to the Minister of Foreign Affairs formally requesting an opinion from the Venice Commission on 23 December 2015 regarding the amendments to the Constitutional Tribunal Act.

Resources

Joint Letter from the Helsinki Foundation for Human Rights, Polish Bar Council, Institute for Law and Society (INPRIS), Center for Citizenship Education, Institute of Public Affairs, Panoptykon Foundation, Stefan Batory Foundation, Civil Development Forum, and Citizens Network Watchdog Poland to the Venice Commission (2 December 2015).

European Commission for Democracy through Law (Venice Commission), Opinion on amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland.

The July 2017 protests: A turning point in the global spotlight

The events of July 2017 reverberated across the world. Caught off guard during the holiday season, citizens mobilised to defend the Supreme Court and to fight for a veto of three bills that threatened judicial independence. Among them was a bill that de facto dismantled the Supreme Court through the dismissal of all of its judges, a draft that had neither been previously disclosed nor consulted on. It suddenly appeared on the Sejm's website at 11.30 pm at night on 12 July 2017, was rushed through the Sejm in just three days and was ultimately approved by the Senate on 22 July at 2 am.

The July protests took many forms, from mass demonstrations to concerts outside the Presidential Palace. One of the most powerful symbols of the resistance was a photograph of 87-year-old Professor Adam Strzembosz sitting in a chair at one of the protests, a defining image of the movement. Adam Strzembosz was the first President of the Supreme Court after the collapse of communism (1989). He was seen protesting in the rain together with citizens in front of the presidential palace (2017).

This was also the time of demonstrations outside the Supreme Court (as mentioned above), which were organised by judges from Iustitia and citizens from Akcja Demokracja. Judges introduced the Chain of Lights format, while citizens projected the message 'This is our Court' on to the wall of the Supreme Court. The protest quickly spread nationwide, with thousands gathering in front of local courts in 200 towns and cities over the following days (in some places this involved just a few people standing in front of their local court).

Labelled 'strollers' (spacerowicze) and dismissed as 'street and foreign agents' (ulica i zagranica) by the government and state-controlled media, citizens persisted in public demonstrations and international advocacy. Under the name Chain of Lights, demonstrations in defence of the judiciary took place in various locations across Poland over the following years.

In addition, over the course of eight years of judicial resistance, numerous activists and organisations conducted sustained information campaigns and legal advocacy within various international institutions, ensuring the crisis in Poland remained a global issue.

'Stay'

As a result of mass protests, the Supreme Court bill was vetoed, but the government sought another way to remove judges – by forcibly retiring them. In response, citizens immediately mobilised to defend the Supreme Court and its judges under the slogan 'Stay' ('Zostańcie'). Various groups joined the effort, with the organisation Citizens of Poland (Obywatele RP) playing a symbolic role, standing outside the Supreme Court building for weeks, holding a banner with the same message and greeting judges as they arrived for work. The Iustitia Judges' Association also passed a resolution calling on judges to remain in office.

The 'Stay' campaign became a powerful expression of public support for judges facing unconstitutional legal changes aimed at forcing their premature retirement or shortening the terms of those in leadership positions. However, the slogan also took on symbolic significance, as some Supreme Court judges chose to resign on their own, while others – including those in the highest positions – initially announced their departure but later retracted their decisions in response to public criticism and appeals.

From the public perspective, judges had a duty to 'stay in the fight' to defend the rule of law and protect citizens' rights. Every resignation, they argued, weakened the court and made it easier for the government to politicise the judiciary.

There is not enough space here to provide a detailed account of all the actions taken – there were far more than have been described. They included expert initiatives, such as the legal analyses conducted by the Team of Legal Experts at the Stefan Batory Foundation. Akcja Demokracja also ran campaigns, including a call to boycott the politicised elections to the National Council of the Judiciary: 'Don't Run!' – Appeal to Judges' (Nie Kandydujcie! Apel do Sędziów).

Numerous local protests took place, with various professional groups and associations – many of them unrelated to law or the judiciary – issuing appeals and organising demonstrations. Lawyers also played a significant role in these efforts.

Collaboration as a way to success

All the efforts listed above (and others) led to the development of a unique cooperation between lawyers and experts working with CSOs and judges. Not all the information about this cooperation, especially regarding deliberations or strategy building, is public. However, some developments were documented, for instance by the lawyers who represented judges on behalf of social initiatives in cases that resulted in preliminary references. As they reported in a paper, the Committee for the Defence of Justice (KOS) engaged in, 'the defence of judges of the Supreme Court and the Supreme Administrative Court who have reached the age of 65. Defence against their unlawful retirement, i.e. removal from adjudication in these courts'.

Resources

Sylwia Gregorczyk-Abram & Michał Wawrykiewicz, 'Terra incognita: postępowania indywidualne w obronie sędziów Sądu Najwyższego i Naczelnego Sądu Administracyjnego: tematyka pytań prejudycjalnych' [Terra incognita: Individual proceedings in defence of judges of the Supreme Court and the Supreme Administrative Court: The subject of preliminary rulings], in *Konstytucja, praworządność, władza sądownicza: aktualne problemy trzeciej władzy w Polsce* [Constitution, rule of law, judiciary: Current challenges of the third branch of power in Poland] (Warsaw, Wolters Kluwer Polska, 2019).

QUESTION

How did civil society protests in Poland differ from those in other countries?

An interesting question is how civil society protests in Poland differed from similar situations in other countries in the region, where judicial independence was also under attack. For example, Hungarian civil society organisations have retrospectively identified their lack of past engagement with judges as a missed opportunity. Even in Slovakia, where, amid political turmoil, judges from the Za Otvorenú Justíciu association cooperated with civil society organisations, this collaboration remained largely elitist and did not evolve into mass protests involving both judges and citizens on a national scale.

Globally, we can find various examples of judicial resistance – some lasting for years (Egypt), some mobilising thousands of judges (Romania) and some involving cooperation with civil society organisations (Slovakia). However, what sets the Polish experience apart is the combination of all these elements.

It is true that the Egyptian judges' 'rebellion' lasted significantly longer, but despite its name, it was largely limited to periodic advocacy for legislative guarantees of judicial independence.

It is also true that in Romania thousands of judges protested together and that Romanian judges followed the Polish judges' example by submitting preliminary questions to the Court of Justice of the European Union. However, their engagement in other forms of resistance, such as cooperation with the public, cannot be compared to what took place in Poland.

Finally, it is also true that in Slovakia judges created an initiative that worked closely with civil society organisations, but the scale of their resistance against political corruption in the judiciary was significantly smaller.

In addition, Polish citizens did not defend judges merely out of sympathy or just because of their belief in judicial independence. The public had their own expectations of judges as shown above. What they wanted, or sometimes even demanded, was active judicial resistance, particularly in the defence of the rule of law, judicial independence and human rights.

Thus, while other countries have seen notable forms of judicial resistance, the unique convergence of sustained protests, mass mobilisation, civic engagement and legal advocacy in Poland distinguishes it from the rest of the region. This case is therefore worth analysing, with potential lessons to be drawn regarding collaboration between judges, judicial associations, civil society organisations and legal organisations in other countries.

Barbara Grabowska-Moroz and Olga Śniadach provided an insightful summary of the role and significance of CSO activities during the Polish crisis in their article, 'The role of civil society in protecting judicial independence in times of rule of law backsliding in Poland', published by Utrecht Law Review (2021).

They underline the role of civil society in putting the Polish crisis on the international agenda: 'Civil society tried to limit the harm resulting from the judicial reforms by inter alia involving international actors in opposing the destruction of the rule of law in Poland. The actions of the CSOs led to the 'Europeanisation' of the issue and resulted in not only political procedures being instituted against Poland (the Rule of law framework, Article 7 TEU procedure, and debates and reports adopted by the European Parliament), but also, and most importantly, in intervention in litigation before the Court of Justice. The attack on constitutional judicial review in Poland was the impetus for civil society actors to become active at the supranational level. By initiating formal proceedings at the domestic level, civil society actors managed to 'receive' a binding rule of law standard 'from above' – from the Court of Justice and perhaps also the ECHR. Moreover, informational activities have had enormous added value, not only in raising Polish people's awareness of their civil rights and responsibilities, but also by creating a civil society that understands the rule of law and is ready to build a common future on its foundation.'

Resources

Meeting with the leader of the Hungarian Helsinki Committee, Márta Pardavi, How Hungary's democratic decline challenges Europe: A civil society perspective, Norwegian Institute of International Affairs (NUPI) (23 April 2024).

Łukasz Bojarski and Werner Stemker Köster, 'The Slovak judiciary: Its current state and challenges' (Bratislava 2012).

Interview – Dragos Calin, the judge who created the referrals to the CJEU in the cases in Romania regarding the rule of law: 'We need a majority political will for urgent legislative measures', 30 September 2020.

Dragos Calin, 'Self-governance of the judiciary system in Romania: Dependent judges in an independent judiciary', *JUSTIN WP Series & Commentaries*, no. 1/2022.

Samuel Spáč, Katarina Šipulová and Marina Urbániková, 'Capturing the judiciary from inside: The story of judicial self-governance in Slovakia', *German Law Journal*, 19(7) 2018, pp. 1741-1768, doi:10.1017/S2071832200023221

Peter Čuroš, 'Panopticon of the Slovak judiciary – Continuity of power centers and mental dependence', *German Law Journal*, 22(7) 2021, pp. 1247-1281, doi:10.1017/glj.2021.62.

Nathalie Bernard-Maugiron (ed.), *Judges and political reform in Egypt* (2015).

The importance of mutual recognition

Finally, it is worth highlighting another important, this time psychological, aspect of this collaboration: the value of mutual appreciation. It is essential not only to recognise and acknowledge the efforts within our own community but also – perhaps even more importantly – to appreciate and publicly express gratitude for the engagement of others.

It goes without saying that people who take on difficult challenges value it when their efforts are noticed and not dismissed. This is true on a personal level and it turns out to be just as important in public life and international relations. Recognising efforts and appreciating commitment strengthens, motivates and empowers those involved.

This is something worth remembering. It is also a skill worth cultivating – the art of public acknowledgment and gratitude. Below are a few examples that illustrate how different communities have shown appreciation for one another's contributions.

Citizens recognise judges

The following excerpt is from a letter written by the ObyPomoc initiative, run by the Citizens of Poland Foundation (Obywatele RP), addressed to the Minister of Justice. The letter adopts a tone of irony, as it points out that the Foundation is providing the Minister with the information he requested from the courts – information which the courts were given an unreasonably short deadline to deliver.

'Specifically, the data we collected between 11 April 2017 and 31 December 2020 shows that 917 people who participated in peaceful assemblies and were subsequently accused of misdemeanours by the police, were found not guilty or proceedings were discontinued. More than half of these rulings are now final. Only 41 people were found guilty of misdemeanours by the courts, of which 8 cases are final.'

The ObyPomoc initiative coordinated legal assistance for activists and protesters while also collecting statistics on cases brought by the police against participants in assemblies. Their data indicate that approximately 94% of such cases resulted in acquittals or the discontinuation of proceedings.
Obywatele RP is one of the organisations that has repeatedly and publicly emphasised the contributions of defenders of the rule of law, judges and lawyers. During a meeting at the Bar Council, its leader Paweł Kasprzak stated, among other things:

‘Your achievements go far beyond winning court cases and effectively defending specific individuals. During these challenging years, the judiciary unexpectedly demonstrated independence on an unprecedented scale – something we had never seen in the history of the Third Republic of Poland. This is your great accomplishment. This is your achievement. We were the ‘cannon fodder’ in this ‘war’. It was you who won the battles and it is you who have won the entire war.’

Judges recognise citizens

Polish judges expressed their appreciation towards Polish citizens on various occasions, but the two examples below are especially significant.

Resolution of Iustitia, 6 April 2024.

‘Our deepest gratitude goes to the citizens who stood in defence of free courts and did not allow them to be taken over by politicians. When our hope for victory dimmed, we could always count on them. This is a great obligation for us moving forward. We will not forget this and will persist in our efforts to create a modern, efficient and independent judiciary that Polish women and men deserve.’

The second example is particularly powerful as it conveys a dual message.
On the one hand, it is a letter to the citizens of Israel, who were protesting against proposed reforms aimed at significantly undermining the independence of the Israeli courts. On the other hand, it demonstrates that Polish judges recognise and appreciate the support they received from Polish citizens during the rule of law crisis, which was still unfolding at the time this letter was written.

‘We, Polish judges, feel obliged to warn you that one of the most insidious methods of rulers taking on the guise of democrats is to deprive citizens of freedom in small steps, bit by bit. For many days, we have been observing with admiration the great attachment of Israeli society to the tripartite division of power. We are reminded of the protests that swept through Poland in 2017, known as ‘Chains of Light’, in defence of the independence of our courts. Because of those protests, we managed to secure the President’s veto on two laws aimed at destroying the independence of the judiciary. Unfortunately, half a year later, very similar laws were passed. Nevertheless, we did not give up. We fought and continue to fight, on legal grounds, for the right of citizens to independent courts.’

Letter from Iustitia Judges’ Association to the protesters defending free courts in Israel (April 2023).

'Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organised crime, terrorism and other threats to human security to flourish.'

Kofi Annan, former UN Secretary-General, foreword to the United Nations Convention Against Corruption, 2003.

'Corruption is like a cancer. If left to run rampant, it will suffocate our democratic society and destroy its institutions. Like with the cancer treatment, we need to improve prevention. We also need to have strong instruments of repression and penalties against corruption, not only at national level, but also at European level.'

Věra Jourová, EU Commission Vice President for Values and Transparency, on the occasion of presenting the EU anti-corruption proposals in 2023.

Part 5. Threats, stress and pressures from case parties – the affect of corruption on judicial independence

There are many opinions about the negative impact of corrupt practices on societies and democracies, often comparing corruption, as in the above quotes, to a plague or cancer. Numerous measures have been taken to counteract corruption, including international efforts, accompanied by even more declarations. Yet corruption persists. Unlike cancer, which in many cases can now be overcome in developed societies thanks to medical advances, can we claim the same success against corruption?

Corruption within the judiciary is particularly painful because the justice system exists, among other reasons, to combat corruption. A corrupt judiciary negates the very values it is supposed to uphold, such as the right to access courts, equality before the law and fair trial standards.

Experts believe that judicial corruption exists everywhere, varying in scale from rare exceptions to routine practices and in methods from direct bribery to more 'subtle' means. No country is free from it, much like human nature is not free from corrupt tendencies.

The problem with corruption is also that it's hard to study. While diagnostic tools and treatment methods for cancer are continually evolving, thoroughly investigating corruption is extremely challenging, if not impossible. Often, we rely on opinions, impressions and hearsay. This lack of 'hard data' makes it easier to trivialise the threats than to confront them.

Regardless of a country's rule of law level or the trust in its courts, we should not become complacent or deny both theoretical corruption risks and specific suspicions of corruption. It is the duty of those involved in the judiciary to confront corruption. How to do this will be discussed in this part of the Guide.

In Part 5 we address the following issues:
- How can we define corruption in the judicial context?
- What are the possible manifestations of corruption in the judiciary?
- How can corruption in the judiciary be combated at the systemic level?
- What role do judges themselves have to play in this regard?

Corruption in the judiciary – definition, reasons and manifestations

There are a number of definitions of corruption as a phenomenon but let us focus on corruption in the judiciary. In the penal law of most European countries judicial corruption is **a criminal offence** and falls under the general definitions of corruption by other public officials. However, according to one of the key documents (CCJE Opinion No. 21, II-A-9) judicial corruption should be seen in a broader sense:

Judicial corruption comprises dishonest, fraudulent or unethical conduct by a judge in order to acquire personal benefit or benefit for third parties.

Resources
CCJE Opinion No. 21 (2018) on preventing corruption among judges

See also:
CCJE Opinion No. 3 (2002) on the ethics and liability of judges
CCJE Opinion No. 17 (2014) on the evaluation of judges' work
All CCJE Opinions available here.

Factors leading to corruption among judges

According to the Opinion No. 21 (II.B.11-17) 'reasons for actual corruption inside the judiciary are manifold. They range from undue influence from outside the judicial branch to factors within the court system, and can be grouped into several categories: **structural**, **economic**, **social** and **personal**.'

Structural factors

- **Imbalance of power** – Weak separation of powers and ineffective checks and balances threaten judicial independence.
- **Lack of transparency** – Restricting access to judicial information enables corrupt practices.
- **Lack of regulations** – Lack of ethical guidance, lack of general awareness of the dangers of corruption and guidance from court management fosters indifference toward corruption.

Economic factors
- **Poor working conditions** – Low salaries, insufficient benefits, inadequate infrastructure and understaffed courts increase susceptibility to corruption.
- **Personal financial interests** – Judges handling cases in which they have a direct or indirect financial stake can compromise impartiality.

Social and cultural factors
- **Tolerance of corruption in society** – A broader culture of corruption weakens judicial integrity.
- **Judicial climate** – A judiciary that tolerates unethical behaviour encourages individual misconduct.
- **Peer and institutional pressure** – Judges may face undue influence from colleagues or influential groups within the judiciary.

Personal factors
- **Career ambitions and promotion** – Judges prioritising personal advancement may become indifferent to ethical risks.
- **Fear of retaliation** – The unique role of judges makes them vulnerable to coercion, reducing their ability to resist external pressures.

These factors, often interconnected, pose a serious threat to judicial independence and integrity, ultimately undermining public trust in the judiciary.

Manifestations of judicial corruption
But how does judicial corruption manifest itself (regardless of whether the act qualifies as a crime or not)? The subject is broad and particular manifestations can be grouped in different ways. In addition, the evidence varies, ranging from hard data to hearsay. Regardless of the risk posed by particular phenomena or the frequency of their occurrence, the following is a list of possible manifestations of judicial corruption. They cover both **internal corruption**, when judges themselves unduly influence their peers and facilitate external corruption, and **external corruption**, understood as interaction between court officials and external parties, lawyers etc. to manipulate judicial decisions.

Abuse of power and judicial misconduct
- **Bribery** – Judges receive money, gifts or favours in exchange for favourable rulings.
- **Extortion** – Judges use their position to obtain money or favours under threat of negative judicial outcomes.
- **Influence peddling** – Judicial decisions swayed by undue influence from politicians, businesses or other external parties.
- **Case fixing** – Manipulating case assignments to ensure a specific judicial outcome.
- **Obstruction of justice** – Judges actively hinder investigations or trials to protect certain individuals.
- **Interference in judicial independence** – External or internal pressure compromising judicial impartiality.
- **Selective enforcement of laws** – Unequal application of the law to benefit certain individuals or groups.
- **Pre-trial detentions for bribes** – Holding suspects in detention longer to extort bribes for their release.

Financial misconduct and embezzlement
- **Misuse of court fees** – Diverting or manipulating the collection and use of court fees for personal gain.
- **Embezzlement** – Misappropriation of funds allocated to the judiciary for personal use.

Nepotism, patronage and clientelism

- **Nepotism** – Favouring relatives or friends in judicial decisions or hiring within the judiciary.
- **Clientelism and patronage** – Favouring certain individuals, lawyers or businesses in exchange for long-term loyalty or benefits.
- **Warm relationships between judges and lawyers, entrepreneurs** – Close ties that compromise judicial impartiality.
- **Documented ex-parte meetings and communications** – Unauthorised private discussions influencing case outcomes.
- **Traditions of small favours** – Culture of informal exchanges of benefits that lead to systemic corruption.

Manipulation of legal proceedings

- **Fraud** – Deliberate misrepresentation or concealment of information to benefit somebody.
- **Delays and procedural abuse** – Intentional delays in case processing to extract bribes or manipulate outcomes.
- **Unequal sentencing practices** – Disproportionate or biased rulings based on external influences rather than legal principles.

This list provides a more less holistic view of judicial corruption, covering financial, procedural and systemic issues. Each of these corruption practices undermines the integrity, effectiveness and impartiality of the judiciary, eroding public trust in the judicial system.

Corruption in practice – examples

What does corruption look like in practice? Let's take a look at a specific case we had the chance to witness in Slovakia. It shows the dishonesty of judges but also the role of so-called fixers – important figures in corruption.

Case study – Slovakia

Based on: Ján Mazúr, 'Judges under corruption stress. Lessons from leaked files about corruption in Slovakia', presentation during the conference, 'Judges under Stress' in Vilnius, Lithuania, April 19 2024.

Ján Mazúr, 'Judicial corruption in Slovakia: Causes, lawyers and remedies', Masters Thesis, Hertie School of Governance (2018).

See also: Ján Mazúr 'Judges under corruption stress: Lessons from leaked files about corruption in Slovakia', *Oñati Socio-Legal Series* (2024).

Lucia Berdisová, Zuzana Dlugošová and Ján Mazúr, 'Coping with Threema: How do lawyers perceive their biggest corruption scandal?' *Právny obzor*, 103, special issue, pp. 63-86 (2020.

Łukasz Bojarski, Werner Stemker Köster, 'The Slovak judiciary: its current state and challenges (Aktualny Stav Slovenskeho Sudnictva a jeho vyzvy)', Open Society Foundation, Bratislava 2012 [in English and Slovak].

Pre-2018: A judiciary under suspicion

Before 2018, Slovakia's judiciary was plagued by persistent but largely anecdotal evidence of corruption. Documented ex-parte meetings, close relationships between judges and influential lawyers or business figures and traditions of nepotism and

clientelism created an environment where judicial independence was compromised. While the judiciary as an institution maintained a strong degree of independence, individual judges often lacked personal autonomy, making them susceptible to external pressures. The judicial system suffered from long procedures, outdated structures and inconsistent sentencing, further eroding public trust. These inefficiencies, combined with informal networks of influence, laid the groundwork for systemic corruption.

The 2018 assassination and its aftermath

The turning point came in 2018 with the assassination of investigative journalist Ján Kuciak and his fiancée, Martina Kušnírová. The killings triggered mass protests and political upheaval, leading to the downfall of several high-ranking officials, including the Prime Minister and the Interior Minister. Public outrage fuelled efforts to uncover corruption networks and in 2020 leaked messages from the main suspect in the assassination case (on the Threema messaging app) provided explosive evidence. These messages (and further leaks, including from law enforcement) implicated numerous judges, politicians and lawyers, exposing a deeply entrenched system of judicial corruption.

The blunt nature of judicial corruption

The 2020–2022 leaks exposed a corruption of the judicial system in Slovakia that was strikingly unsophisticated and blatant, with a primary reliance on direct cash exchanges. Unlike in more complex corruption schemes involving offshore accounts or advisory firms, Slovak judges and their intermediaries – known as fixers – operated through straightforward cash bribes, direct bank transfers and long-term financial arrangements. Judges received flat-rate payments or periodic 'Christmas bonuses' from these fixers, who acted as trust brokers managing 'deposit' systems for corrupt judicial decisions. Bribes were worth tens of thousands of euros and, in some cases, payments exceeded EUR 100,000, despite judges already earning well above the national average (between EUR 4,000 and EUR 7,000 per month).

The leaked communications, particularly from Threema, provided irrefutable evidence of these exchanges, implicating numerous high-ranking judges, lawyers and political figures. The revelations confirmed that judicial corruption was not only systemic but also deeply embedded within the legal profession itself, facilitated by trusted networks rather than sophisticated laundering schemes.

The role of fixers and corrupt networks

At the centre of the corruption were fixers – lawyers who acted as intermediaries, connecting businesses, politicians and criminals with judges willing to manipulate judicial outcomes. These fixers not only brokered bribery deals but also played an active role in shaping judicial structures, influencing which judges were assigned to specific cases and ensuring that favourable rulings could be secured.

Beyond financial incentives, fixers helped corrupt judges secure legal protection when investigations began. Some of the key figures involved in judicial corruption provided legal representation for each other, probably using attorney-client privilege to shield sensitive communications from law enforcement. The overlap between prominent politicians, lawyers and judges created a complex web of corruption, making it difficult to dismantle the system.

Objectives of judicial corruption

The leaked evidence revealed that judicial corruption served a variety of purposes, including:

- Manipulating high-stakes business cases – securing undue financial benefits in cases worth millions of euros (e.g. Markíza promissory notes and Unipharma disputes).

- Influencing criminal trials – ensuring lighter sentencing or dismissals for connected individuals.
- Delaying or accelerating proceedings – adjusting procedural timelines in ways that benefited specific parties.

The system was particularly dependent on long-term personal relationships, rather than one-off transactions, making corruption both predictable and resistant to external scrutiny.

Criminal prosecutions and their limitations

The revelations led to a wave of criminal investigations, codenamed Tempest, Gale, Purgatory, Judas, Mills of God, Weeds, Gopher, Cattleman and Toll Collector. Over 30 high-profile figures, including the former General Prosecutor, Special Prosecutor, a Deputy Chair of the Supreme Court and senior judges, were arrested and charged, primarily with corruption-related crimes. While some judges cooperated and accepted plea deals, their sentences were remarkably lenient, often consisting of conditional prison terms and financial penalties.

Despite these legal actions, the broader damage to the Slovak judicial system was severe. A 2020 survey (Coping with Threema…) showed that the public's trust in the judiciary plummeted, with widespread scepticism about whether legal and institutional reforms could bring meaningful change. Many observers argued that the moral integrity of the legal profession needed to be strengthened, beyond just legal reforms.

Backlash and political reversals since 2023

The judicial corruption crisis took a dramatic political turn in October 2023, when a new government, led by figures accused of corruption during the 2020–2022 investigations, took office. This administration quickly began to dismantle key anti-corruption mechanisms:

- The Ministry of Justice published a report questioning the legality of criminal prosecutions from 2020 to 2023, raising concerns about political retribution against prosecutors.
- Some rulings by the European Court of Human Rights and Slovakia's Constitutional Court identified procedural flaws in past corruption trials, leading to debates about whether prosecutors had overstepped their authority.
- A Criminal Code reform aimed at reducing penalties for corruption-related offences was proposed and with some minor exceptions passed the Constitutional Court review.

In March 2024, the government abolished the Special Prosecution Office, which had led the judicial corruption investigations, arguing that it suffered from 'systemic bias'.

At the same time, Prime Minister Robert Fico and other senior officials engaged in verbal attacks against judges and courts, particularly the Supreme Court and Constitutional Court, undermining judicial independence. This fuelled concerns that the government was deliberately rolling back anti-corruption efforts in an attempt to shield political allies from prosecution.

To sum up, although the sense of untouchability among corrupt actors has diminished, the judiciary remains highly politicised. Judges, once seen as passive enforcers of external corruption, have emerged as an independent interest group, sometimes resisting government pressure and sometimes colluding with political elites. One thing is clear: the story is far from over.

Case study – Bulgaria

Based on: MEDEL, EAJ, Judges for Judges and AEAJ, 'Joint letter to Council of Europe Commissioner for Human Rights and EU Commissioner for Justice on the situation of the judiciary in Bulgaria' (20 March 2024).

Kaloyan Vassev, 'Judge Vladislava Tsarigradska to Supreme Judicial Council: 'Judges Are in Helpless Situation', Bulgarian News Agency (15 October 2024). A quote from judge Tsarigradska: 'I have been threatened, and I believe there are people and networks behind the Red Pirate who are threatening a number of judges. We may suspect that these networks are trying to influence judges.'

This case highlights the combination of tactics used to attack judges, including criminal intimidation, media defamation and pressure from lawsuit parties, coupled with inadequate institutional responses. At the end of 2019, Judge Vladislava Tsarigradska faced defamatory media attacks. Soon after, during a civil case she was presiding over, she found out from a relative that the party involved offered to withdraw these defamations in exchange for her recusal. The plaintiff even threatened 'unpleasant consequences' during an open court session in early January 2020 and abruptly left the courtroom.

This plaintiff had previously threatened Judge Tzvetko Lazarov of the Sofia Court of Appeals under similar circumstances (during a property case) several years earlier.

In February 2020, during an open session of the Judicial Collegium of the Supreme Judicial Council, Judges Tsarigradska and Lazarov reported these threats. The Collegium issued a declaration of 'institutional support' for the judges, but other institutions remained largely unresponsive.

In June 2021, the NGO Anti-Corruption Fund identified the individual behind these threats as Martin 'The Notary', the leader of a group allegedly facilitating favourable court outcomes in return for bribes. Despite raising these issues with relevant institutions, no substantial actions followed. Early in 2022, Judge Tsarigradska reached out directly by letter to the Ministers of Justice and the Interior.

Only in June 2022 did the General Directorate for Combating Organised Crime initiate an inquiry, forwarding their findings to the Sofia City Prosecutor's Office in December 2022. An investigation began in May 2023 but was still ongoing in January 2024 when Martin 'The Notary' was shot and killed outside his home. After his death, the Deputy City Prosecutor of Sofia announced to the media that the investigation against the 'Notary' group had advanced and before the murder the leader had been about to be charged.

The case garnered extensive media attention and Judge Tsarigradska gave several interviews on the matter. Meanwhile, she received threats against her and her family in an email to her court. The police arrested a mentally unwell man linked to the threats, who claimed to have found the mobile phones used to send these emails. He is currently undergoing psychiatric treatment.
But Judge Tsarigradska claims that the link between the threats and the members of Martin's group 'The Notary', is not being investigated.

Amidst these developments, ad hoc committees from the High Judicial Council and the National Assembly explored potential connections between Martin's group and judges and prosecutors. The Acting Prosecutor General reported possible ties between the Notary group and senior prosecutorial officials, including the previous Prosecutor General.

The Bulgarian Judges Association communicated these developments to international judicial organisations. In March 2024, EAJ, MEDEL, Judges for Judges and the AEAJ appealed to the Council of Europe Commissioner for Human Rights, Dunja Mijatović, and the EU Commissioner for Justice, Didier Reynders, expressing their concerns about the state of the judiciary in Bulgaria and the troubling situation surrounding Judge Vladislava Tsarigradska. As of February 2025, no members of the Notary group have been formally charged.

Perceived v. actual corruption

A particularly interesting issue is the relationship between **actual corruption** and **perceived corruption** in the judiciary. The CCJE highlights this distinction in its Opinion No. 21:

'A non-negligible number of member States have reported in their replies to the questionnaire preparing this Opinion the phenomenon – at first sight quite odd – that the public perception of corruption inside the judiciary is considerably higher than the actual amount of cases against corrupt judges would suggest. Even though only a very small percentage of interviewees could report on personal negative experiences with corrupt judges, a very significant share of the same polled group was of the view that the judiciary was among the most corrupt institutions in the country.' (IV.54).

According to collected data and research presented by the European Commission, the **European Union is one of the least corrupt regions in the world**. However, none of the EU countries is fully free of corruption. Although its nature and scope may differ from one EU country to another, corruption harms the EU as a whole:

- Corruption is estimated to cost the European Union between EUR 179 billion and EUR 990 billion per year, amounting to up to 6% of its GDP.
- **70% of Europeans believe that corruption is widespread** in their countries - an increase of 2 points compared to 2022 (2023 Corruption Eurobarometer Survey).
- **35% of EU businesses consider corruption to be a problem** in doing business (2023 Eurobarometer survey: Businesses' attitudes towards corruption).
- **59% of EU business agree** with the statement that bribery and the use of connections is often the easiest way to obtain certain public services (2023 Eurobarometer survey: Businesses' attitudes towards corruption).

Source: EU anti-corruption website.

Since corruption is notoriously difficult to document through **empirical research, perception surveys** are often used as **indirect indicators** of corruption levels. Of course, this method carries a risk of error. However, rather than delving into methodological debates, let us focus on **anecdotal evidence**.

While I am not a specialist in corruption studies, my decades-long engagement with judicial systems in various countries has provided me with **first-hand encounters** with different manifestations of possible corruption.

Countries with institutionalised corruption: snapshots

There are jurisdictions where judicial corruption is an institutionalised phenomenon, making it almost impossible for judges to avoid engaging in corrupt practices. Judges in such systems privately admit that corruption is not merely an individual choice but an expectation imposed by the system itself.

For example, some 20 years ago, a judge from **Central Asia** explained to me the 'Christmas Tree Rule' – a hierarchical corruption scheme where a first-instance judge must accept bribes because they are expected to pass a portion of the money to the higher courts. Each level of the judiciary takes a cut, ensuring that corruption

extends throughout the system. A judge who refuses to participate would need to have independent wealth or a financially strong spouse to cover these unofficial 'costs' without taking bribes.

Another example, from a country in the **Caucasus**, involved a lawyer complaining that corruption had become so pervasive that judges sometimes accepted bribes from both parties in a dispute. While this may, ironically, seem fair – as the judge, in theory, remains impartial – it nonetheless undermines the integrity of justice.

Countries with instances of corruption: snapshots

In some countries, corruption is not institutionalised but remains a significant, more or less frequent issue.

The case of **Slovakia**, detailed earlier, illustrates this problem (of course, one may still argue about how much systemic corruption there was). Slovakia is a member of the European Union and the Council of Europe, adhering to institutional and individual judicial independence standards and respecting fair trial principles. Despite this, the extent of corruption uncovered by the recent judicial corruption scandal surprised even experienced observers. As Ján Mazúr emphasised, the scandal was shocking not only because of its scale but also due to its banality and primitiveness. The fact that those involved operated so openly suggests that they did not feel at risk of being caught.

Another example is **Romania**, whose judiciary has been struggling with corruption-related issues for years. A recommended read on this topic is a book on corruption in the justice system (see below) written by the well-known Romanian judge Cristi Danileţ (now retired). In the introduction he writes, '…in this study we have analysed judicial integrity and how it may be impaired by corruption. The aim of this undertaking is to achieve a faithful measurement of corruption in the Romanian justice system…'.

Case study – Romania

Based on: Cristi Danileţ, 'Corruption and anti-corruption in the justice system' (Bucharest, 2009).

Below is a summary of selected key findings related to confirmed judicial corruption, along with references to specific sections of the book.

Public confidence and perceptions of judicial corruption

- Surveys indicate low public trust in the Romanian judiciary, with many believing corruption is widespread among judges (Part II, Section 1).
- Opinion polls suggest a gap between perceived and actual corruption, but confirm that multiple cases of judicial misconduct have been prosecuted (Part II, Section 2).

Documented cases of judicial corruption

- Official investigations and prosecutions reveal multiple cases of bribery, favouritism and abuse of office involving judges at different levels (Part II, Section 3).
- Some judges were caught accepting financial or material benefits in exchange for favourable rulings, delaying cases or influencing judicial appointments.
- Reports from the National Anti-Corruption Directorate document specific cases where judges were involved in selling verdicts or engaging in nepotistic practices.

Structural weaknesses enabling corruption

- The judiciary suffers from insufficient oversight and ineffective disciplinary measures, allowing corrupt judges to operate with minimal consequences (Part II, Sections 4.2, 4.3).
- Judicial independence is sometimes undermined by political and economic pressure, leading to biased rulings in cases involving influential figures.

Methods of corruption in the judiciary

- Bribes and favouritism: Judges accept money, gifts or promotions in exchange for favourable rulings (Part II, Section 5.2).
- Manipulation of case assignments: Some judicial officials ensure that specific cases are assigned to compliant judges willing to rule in a certain way (Part II, Section 5.3).
- Deliberate procedural delays: Corrupt judges postpone cases to pressure litigants into offering bribes for expedited rulings (Part II, Section 5.4).

The impact of judicial corruption

- Judicial corruption undermines the rule of law, leading to public distrust and reduced confidence in legal institutions (Part II, Section 5.6).
- Businesses factor corruption risks into their operations, increasing legal uncertainty and economic inefficiencies.
- The Romanian justice system struggles with enforcing ethical standards, despite legal frameworks aimed at preventing corruption.

Anti-corruption measures and challenges

- Romania has implemented multiple reforms to combat corruption, including specialised anti-corruption courts and stricter asset declaration rules for judges (Part IV, Sections 3-5).
- However, institutional resistance and lack of enforcement limit the effectiveness of these measures.

The cases of Slovakia and Romania may seem extreme in the European context. However, we must acknowledge that, even if not on the same scale, judicial corruption most likely exists in the majority of other countries. It is essential to speak openly about these risks. Writing about Romania, Cristi Danileț notes that corruption 'is also sensitive because the staff in the justice system finds it difficult to talk about corruption, since the system has not yet developed a strong anti-corruption attitude'. This kind of reluctance or denial must be addressed. Bold steps should be taken in the name of accountability and transparency to confront the issue.

Countries with a strong belief in judicial integrity: snapshots

There are also jurisdictions where judges genuinely believe that judicial corruption is non-existent or limited to very isolated cases. In these countries there are no publicly known corruption cases in the judiciary and there is no strong evidence of corruption. Any allegations are viewed as extremely rare exceptions that actually prove the effectiveness of self-purification mechanisms. However, when citizens express concerns about corruption, these are often dismissed as a result of:

- ignorance: people assume corruption exists simply because 'it is commonly talked about';
- manipulation by dishonest politicians who attack the judiciary to serve their own interests;
- exploitation by unethical lawyers who fabricate corruption stories to extract more money from clients;
- sensation-seeking media coverage which fuels public distrust by exaggerating minor issues.

And what is the reality? Even in countries where there is a general belief that the judiciary is free from corruption, certain situations, encounters and conversations at the very least raise questions. Here are a few examples from my personal experience.

While in Kazakhstan I met with some high-level businesspeople from the financial sector and talked about judicial corruption in Central Asia. Among us was a British barrister who was convinced of the absolute integrity of the courts in his country. However, the local businesspeople argued that corruption exists in the UK as well – it just takes a different form. Instead of handing a judge a direct bribe, they claimed, significant

financial contributions might be made to a golf club, a gentleman's club or another institution favoured by those in the legal profession. Is this true? That remains an open question.

Another case involved a Polish judge who, as part of a research project, analysed case files and other judges' rulings in high-profile criminal cases dealing with organised crime. This judge, who was also experienced in cases of this type, argued that a trained professional, such as another judge, can identify patterns suggestive of corruption. While direct evidence may be lacking, the analysis of procedural decisions and final rulings sometimes reveals inconsistencies that cannot be logically explained based on the case materials. This suggests that external factors, rather than legal reasoning, may have influenced the outcome.

These examples illustrate that even in countries with strong institutions and a reputation for clean governance, different, both simple and sophisticated, forms of corruption may still exist – often operating in ways that are difficult to detect and even harder to prove.

The above stories, and especially the Slovak case, illustrate how formidable an opponent judicial corruption is, how difficult it is to eradicate and how closely it is tied to the overall state of the country and its politics. So, how can it be countered?

Tackling corruption

The key question is: how should judicial systems respond to corruption? First, let us list and categorise different preventive measures and then comment from this perspective on the three snapshots/scenarios outlined above.

The 2018 CCJE Opinion No. 21 mentioned above focuses on preventing corruption among judges. This comprehensive document outlines various measures to uphold judicial integrity that can be categorised into **systemic measures** and **individual duties of judges**.

The CCJE emphasises that corruption among judges poses a significant threat to society and the functioning of democratic states. It undermines judicial integrity, which is fundamental to the rule of law and a core value of the Council of Europe. Judicial integrity is closely linked to judicial independence; the latter enables integrity and integrity reinforces independence.

The Opinion highlights that preventing judicial corruption requires a **multifaceted approach**, addressing both systemic vulnerabilities and individual behaviours. It acknowledges that while the majority of judges adhere to high ethical standards, even isolated instances of corruption can significantly damage public trust in the judiciary.

Systemic measures to prevent corruption

According to CCJE Opinion No. 21 (II.B.13), 'there is clear evidence that a judicial system with a (traditionally) high degree of transparency and integrity presents the best safeguard against corruption'.

When it comes to the 'effective prevention of corruption in the judicial system… [it] depends to an important extent on the **political will** in the respective country to truly and sincerely provide the **institutional, infrastructural** and other **organisational safeguards** for an independent, transparent, and impartial judiciary' (emphasis added). According to Opinion No. 21 (III.A.18):

- Each member State should implement the **necessary legislative and regulatory framework** to prevent corruption within the justice system.

- They should also take all necessary steps to guarantee and foster **a culture of judicial integrity, a culture of zero tolerance** towards corruption concerning all levels of the court system, court staff included, and at the same time a culture of respect for the specific role of the judiciary.

Let us list some important systemic measures.

Ensuring judicial independence

- **Institutional independence:** establishing independent, non-political bodies responsible for the selection, appointment, evaluation, promotion, training and discipline of judges to prevent undue influence from other branches of government.
- **Financial autonomy:** allocating sufficient resources to the judiciary to reduce financial pressures that may lead to corrupt practices.

Transparent procedures

- **Appointment and promotion:** implementing clear and objective criteria for judicial appointments and promotions to ensure merit-based selections (including legal and extra-legal skills). The general public should have a general insight into these procedures.
- **Systemic solutions on recusals and against conflict of interest:** in order to avoid a judge presiding over a case in which they have a direct or indirect personal interest.
- **Case allocation:** developing transparent systems for assigning cases to judges to prevent manipulation for corrupt purposes.
- **Pro-active communication policy:** informing the public through the media about the functioning of the justice system and pending cases (court presidents, press spokespersons and media officers).

Adequate working conditions

- **Remuneration:** providing judges with salaries (retirement pensions and social benefits) commensurate with their responsibilities to deter financial inducements.
- **Resources:** ensuring that judges have access to necessary legal materials, administrative support and secure working environments.

Ethical frameworks

- **Codes of conduct:** establishing and promoting (by the judiciary itself) comprehensive ethical rules and guidelines that define acceptable behaviour for judges when faced with specific ethical dilemmas.
- **Establishing a system of guidance:** providing judges with proper guidance on ethical conduct, illustrated by practical examples, including on the local level via individual ethical advice, ethics officers or an ethics commission, and on the level of central judicial authorities via confidential ethical advice.
- **Training programmes:** offering continuing education on ethical standards and the risks of corruption to maintain high levels of integrity.

Accountability mechanisms

- **Penalties and sanctions as deterrent and prevention:** ensuring adequate criminal, administrative or disciplinary penalties for a judge's corrupt behaviour and severe actual sanctions pronounced against corrupt judges.
- **Disciplinary procedures:** creating fair and transparent processes to investigate and address allegations of judicial misconduct.
- **Asset declarations/ disclosure of activities:** requiring judges to declare their assets and disclosure of activities outside court to avoid conflicts of interest, promote transparency and facilitate the detection of illicit enrichment (in line with the principle of proportionality).

- **Special bodies:** establishing, if necessary, specialised investigative bodies and specialised prosecutors (in exceptional cases also specialised courts) to fight corruption among judges, as well as a central impartial anti-corruption authority at the national level.
- **Openness to guidance:** using mechanisms and instruments of international cooperation in the prevention of corruption; openness to feedback and guidance/recommendations from evaluation reports of institutions such as the Council of Europe's Venice Commission and the Group of States against Corruption (GRECO), as well as the United Nations Convention against Corruption (UNCAC), the OSCE, the OECD, the UN Global Judicial Integrity Network and similar.

Duties of individual judges

According to Opinion No. 21 (Introduction, I.3), 'judges share responsibility for identifying and responding to corruption and for oversight of judicial conduct'.

As important as a comprehensive framework and ethical guidelines are, their effectiveness depends on **the willingness of each judge to apply them in their everyday work.** Each judge carries a **personal responsibility**, not only for their **own conduct** but also for that of the **judiciary as a whole** (III.B.d.45).

Personal integrity

- **Impartiality:** making decisions based solely on the law and facts, without personal bias or external influence, showing discretion and reserve. Avoiding conflicts of interest: self-recusing themselves from cases where personal interests could affect their judgment.
- **Refraining from political activity:** avoiding activities that could compromise independence or jeopardise the appearance of impartiality.

Professional duties and conduct

- **Reporting:** judges, as holders of public office, having an obligation to report offences they discover in the performance of their duties, in particular, acts of corruption committed by colleagues.
- **Transparency and public confidence:** maintaining openness in judicial activities to build and sustain public trust as well as use by judges of accessible, simple and clear language in the proceedings and in their judgments.
- **Confidentiality:** protecting sensitive information obtained through their position to uphold the integrity of the judicial process.

Continuous self-education

- **Staying informed:** keeping abreast of developments in the law and ethical standards to ensure conduct remains beyond reproach. Regularly undergoing training on ethical conduct.

Role of judicial councils and associations

Promoting integrity and preventing corruption

These bodies should actively participate in **developing ethical standards**, **providing training** and **overseeing disciplinary procedures** to maintain public confidence in the judiciary.

International collaboration

These bodies should encourage the sharing of **best practice** and adherence to **international** anti-corruption instruments, which enhances the effectiveness of national measures and contributes to the global effort against corruption.

By implementing these systemic measures and adhering to individual duties, the CCJE aims to foster a judicial environment resistant to corruption, thereby maintaining public confidence in the legal system.

Let us now briefly examine how these assumptions apply to the three groups of countries previously discussed: those with **institutionalised**, **systemic corruption**, those with **instances of corruption** and those where there is a **strong belief in judicial integrity**.

Fixing a systemically corrupt judiciary is extremely difficult and requires fundamental institutional and social reform. In such cases, rebuilding institutions and procedures from the ground up is often necessary. Fortunately, in Europe, cases of fully systemic judicial corruption appear to be rare.

The two other groups of countries which don't have an institutionalised corruption problem but which have varying degrees of corruption and a lack of adequate mechanisms for its detection and prevention seem to require a **realistic**, **practical approach**.

This should be focused on **investigations**, strict **prosecution** and **sanctions**, on the one hand, and on judicial **whistleblowing** and internal **accountability** on the other hand.

Special investigative mechanisms should therefore be established to uncover judicial corruption; judges involved in corruption should face **immediate removal** from office (and lawyers should be removed from the Bar) and corruption cases that can be proven should result in **severe and exemplary punishment**.

Regarding judges themselves, they should have **ethical obligations** and **institutional mechanisms** to **report suspicions of corruption**. Such reports should trigger independent investigations conducted by specialised anti-corruption bodies. Judges should also feel protected from retaliation when exposing corruption within their profession.

Finally, as already mentioned, we should also focus on **strengthening preventive mechanisms**. Even in relatively clean judicial systems, corruption can be prevented more effectively by enhancing judicial **independence** (ensuring courts are free from political and economic pressures), increasing **transparency** (judicial decisions, case assignments and court procedures should be fully transparent to prevent hidden manipulations), and clear **communication** of judges with the parties and the public. As the CCJE highlights (and this is confirmed by scientific research): 'A judge who explains his/her decisions – and in given cases the pathway to find the solution – in an understandable way will, as a rule, generate a feeling of fair treatment even on the part of the party which ultimately loses the case' (Opinion, IV.62).

The measures undertaken in Romania's judiciary

In Cristi Danileţ's book on the situation in Romania, *Corruption and anti-corruption in the justice system*, the author outlines several key anti-corruption measures undertaken in Romania's judiciary. Below is a summary of the most significant actions.

Institutional reforms and legal frameworks

- **Creation of specialised anti-corruption bodies:**
  The **National Anti-Corruption Directorate** (DNA) was established to investigate and prosecute corruption in the judiciary (Part IV, Section 3).
  The **Superior Council of Magistracy** (SCM) was tasked with overseeing judicial integrity and ethics enforcement (Part IV, Section 4).

- **Strengthening asset declarations and financial transparency:**
  Judges and prosecutors were required to **declare their assets** and financial interests, allowing for better detection of illicit gains (Part IV, Section 5.1).
  Enhanced **monitoring of financial transactions** to identify suspicious behaviour linked to corruption.

Strengthening judicial accountability

- **Disciplinary proceedings against corrupt judges:**
  Introduction of **more rigorous disciplinary mechanisms**, allowing for quicker investigations and penalties for judicial misconduct (Part IV, Section 5.2).
  Cases of corruption among judges were **publicised**, increasing public scrutiny and deterring unethical behaviour.
- **Whistleblower protections:**
  Implementation of **legal protections** for whistleblowers within the judiciary, encouraging judges and court staff to report corruption (Part IV, Section 5.4).
- **Confidential reporting mechanisms** to safeguard informants from retaliation.

Procedural and operational changes

- **Randomised case assignment:**
  The introduction of an automated case distribution system to prevent the manipulation of judicial assignments (Part IV, Section 5.3).
  This measure aimed to eliminate preferential case assignments benefiting corrupt judges or litigants.
- **Stronger ethics training and anti-corruption awareness:**
  Regular judicial ethics **training programmes** were implemented for judges and court personnel (Part IV, Section 6).
  Collaboration with **international organisations** (EU, GRECO and the Council of Europe) to promote best practice in combating corruption.

Challenges and remaining issues

- **Resistance from within the judiciary:**
  Some judicial bodies resisted anti-corruption reforms, arguing that increased oversight threatened judicial independence (Part IV, Section 7).
- **Political interference:**
  Concerns were raised about the use of anti-corruption investigations as a political tool, with accusations of selective enforcement (Part IV, Section 8).

Stronger rules to fight corruption in the EU

The European Commission's proposed Directive on combating corruption, presented in May 2023, aims to establish comprehensive measures to prevent and address corruption across various sectors, including the judiciary. The proposal seeks to harmonise definitions and penalties for corruption offences, ensuring high-standard criminal law tools are in place to combat the full range of corruption activities.

What are the key proposed provisions that potentially address judicial corruption?

- **Comprehensive definition of corruption offences:**
  The directive encompasses a broad spectrum of corruption-related offences, such as bribery, misappropriation, trading in influence, abuse of functions, obstruction of justice and illicit enrichment. By defining these offences comprehensively, the directive ensures that acts of corruption within the judiciary are clearly identified and subject to appropriate sanctions.
- **Establishment of independent specialised bodies:**
  Member States are required by the directive to establish independent specialised bodies responsible for preventing and combating corruption. These bodies are tasked with implementing anti-corruption policies, raising awareness and ensuring the integrity of public institutions, including the judiciary. Such institutions play a crucial role in maintaining judicial independence and accountability.

- **Preventive measures and integrity systems:**
  The directive emphasises the importance of preventive measures, including the development of effective integrity systems within public institutions. This includes promoting awareness-raising campaigns, research and education programmes to mitigate incentives for corruption. By fostering a culture of integrity, the directive aims to reduce the risk of corruption within the judiciary.
- **Harmonisation of penalties and sanctions:**
  To ensure consistency across Member States, the directive proposes harmonised penalties for corruption offences. This includes establishing consistent penalty levels for natural persons and setting standards for the liability of and sanctions for legal persons. Such harmonisation ensures that judicial corruption is met with uniform consequences throughout the EU.
- **Enhanced investigation and prosecution tools:**
  The directive seeks to facilitate effective investigation and prosecution of corruption cases by ensuring sufficient resources, including dedicated investigative tools and adequately staffed bodies. This provision is crucial for addressing complex corruption cases within the judiciary, ensuring that such offences are thoroughly investigated and prosecuted.

By implementing these measures, the proposed directive aims to strengthen the integrity of the judiciary across the European Union, ensuring that acts of corruption are effectively prevented, detected and sanctioned.

To sum up, corruption in the judiciary is a complex and multi-dimensional issue, often more difficult to measure than corruption in other sectors. The contrast between actual corruption levels and perceived corruption complicates reform efforts. Nevertheless, effective solutions require a combination of strict law enforcement, cultural change within the judiciary and systemic transparency. The Slovak and Romanian cases serve as a warning that corruption can persist even in institutionally developed legal systems and no country is immune to its risks.

The **United Nations** also appreciates the importance of counteracting judicial corruption. Article 11 of the **UN Convention against Corruption** (**Measures relating to the judiciary and prosecution services**) provides: 'Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary…'

Resources

The European Union's dedicated anti-corruption website.

'Anti-corruption: Stronger rules to fight corruption in the EU and worldwide', European Commission (3 May 2023).

'Proposal for a Directive of the European Parliament and of the Council on combating corruption', replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council; COM/2023/234 final.

'Questions and Answers: Stronger rules to fight corruption in the EU and worldwide', European Commission (3 May 2023).

‘Strengthening EU action to fight corruption’, factsheet, European Commission (3 May 2023).

Francesco Clementucci, Adrianna Miekina, ‘The Commission proposal for a directive on combating corruption’, eucrim (2023).

United Nations Convention Against Corruption (2004).

GRECO, Fourth Evaluation Round Report, ‘Prevention of corruption in respect of members of parliament, judges and prosecutors’.

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