



Human Rights Defenders in courtrooms: The case of Poland

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Abstract: Summoning activists to courtrooms, combined with the decline of the rule of law and attacks on the independent judiciary, is a serious weapon against human rights and democracy. It is worth highlighting selected cases from Poland (2015-2023) and their implications.

The significance and status of human rights in a given political and social system are conditioned by a number of interrelated factors. These include enshrining appropriate provisions in law (including in the constitutions), the implementation of international human rights protection standards by state and private entities, as well as the involvement of human rights non-governmental organisations and individuals acting in their capacity as human rights defenders.

The last element is also crucial for a general social and public perception of the role and importance of human rights. When public authorities themselves or their allies take legal action against human rights defenders, the message sent to society is clear: human rights are irrelevant or even unwelcome, and defending them in public exposes their defenders to severe legal consequences.

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For the last several years, the standards of human rights protection in Poland have been systematically weakened. One of the most telling examples in this regard was the decision of the Polish Constitutional Tribunal in case K 3/21 of 7 October 2021 (itself acting with the breach of law), challenging the legality of the European Court of Justice judgments inconvenient to the current Polish government and thus crucial for the scope of rights and freedoms of Polish citizens who are EU citizens. As [noted](#) by the commentators:

By blocking the application by Polish courts of the case law of the European Court of Justice in the crucial area of the rule of law, it deprives citizens of the guarantee of the right to a fair trial, and therefore the right to an effective remedy and access to an impartial court, as defined in Article 47 of the Charter of Fundamental Rights.

This negative trend is closely linked to the parallel process of the constitutional breakout, rule of law dismantling and the [attack on the independent judiciary](#), which even further exacerbates the threats faced by human rights defenders in Poland today. These threats are of multiple nature, including the fear of financial consequences, criminal law sanctions and a label of 'public enemies'.

In numerous cases of summoning human rights defenders to courtrooms, there exists not only a real threat to given individuals or groups at stake but also a chilling effect that affects the entire community of those standing actively for human rights. The awareness of the imminent consequences, including criminal law sanctions, effectively discourages from getting involved. Examples of case studies are multiple and this blog post briefly presents four of them which gained public attention in Poland and internationally.

Case 1: Trial of demonstrators in Poznań Cathedral

In October 2020, a nearly total ban on abortion was introduced in Poland due to the decision of the [politicised and illegitimate](#) Constitutional Tribunal, which provoked mass protests across the country. In Poznań, one of the biggest Polish cities, just a couple of days after the decision a group of demonstrators entered the Cathedral during the Sunday service. They were shouting 'My body, my choice', 'The episcopate should stay away from politics', waved signs reading 'Abortion is not a sin' and dropped leaflets promoting women's right to decide on terminating pregnancies. 32 persons were accused of an offence of 'malicious interference with the religious act' punishable by up to two years of imprisonment.

The court of first instance acquitted them. A judge who delivered the sentence assessed that they were not motivated by malice and that due to the impact of the church on politics and abortion law in Poland, protesting in the Cathedral was justified. She [argued](#) that 'the TK's ruling in effect violated women's rights', that 'church hierarchs approved of that ruling', and that the 'constitutional separation of state and church is commonly violated'. In consequence, the smear campaign against the judge was triggered by the right-wing columnists and the judicial authorities related to the government. Almost 1800 judges and lawyers signed [the letter](#) in defence of her and the judicial independence.

Case 2: Justyna Wydrzyńska's trial

The harsh abortion law resulted also in the development of activism and self-help networks for women seeking an abortion. One of the pro-abortion activists, Justyna Wydrzyńska, has been persecuted for sending abortion pills to a 12-week pregnant woman who wanted to terminate her pregnancy (in fact the woman did not abort with the pills since her husband found them and reported the case to the police; she terminated later on by using urinary catheter). Wydrzyńska was charged with helping to terminate a pregnancy, an offence that is penalised up to three years of imprisonment. After a speedy and partially closed [trial](#), where Ordo Iuris, an ultra-conservative legal organisation was allowed to participate as a civil society representative, Wydrzyńska was found guilty and sentenced to eight months of community service. A judge who convicted her [got promoted](#) the very same day the verdict was passed.

Case 3: Rainbow Halo

In March 2021, three women – pro human rights activists – were [acquitted](#) of 'offending religious beliefs' under Article 196 of the Polish Criminal Code. The offence was identified in the fact that they publicly displayed posters depicting the Virgin Mary with a rainbow halo which is a symbol of the LGBTQ+ flag. Faced a potential two-year jail sentence each if found guilty for their peaceful activism, they were fortunately acquitted by the first instance court, but the prosecutor's appeal brought them back to court with the same accusation: apparently they 'publicly insulted an object of religious worship in the form of this image which offended the religious feelings of others'. The final judgement left no doubts as to the judicial assessment of this attempt to harass pro human rights activists: no offence has been committed.

Case 4: SLAPPs: Strategic Lawsuits Against Public Participation

Under a populist rule, strategic lawsuits against public participation (known as SLAPPs) become a crafty way of suppressing free speech and silencing the government's critics and their often powerful allies. Thus, SLAPPs contribute to the ongoing dismantling of the rule of law and the weakening of constitutional rights and freedoms, which is typical of many states in Central and Eastern Europe, including Poland.

As the [study](#) commissioned by the European Commission pointed out, also scholars may be subject to excessive strategic litigation. A notable example here is Professor Wojciech Sadurski, who has been targeted for his comments about national media captured by the ruling powers and practices of the 'Law and Justice' party. Indeed, Wojciech Sadurski's activities which resulted in multiple SLAPP litigations against him should also be qualified as interference with academic freedom in the broader sense, namely the ability to freely express views and opinions. That is why Wojciech Sadurski's case was the subject of massive academic protests involving scholars world-wide. Academics emphasised in an [open letter](#) that silencing individual scholars by lawsuits poses a threat to the whole environment of public discourse.

Looking ahead

The cases presented in this post prove one thing in particular: if it wasn't for the still independent and courageous judges, the outcomes in many of them might have been much less positive. Under political circumstances fully captured by the ideologically-driven forces attacking also the judiciary, individuals are deprived of their fundamental rights and freedoms and their only hope during the SLAPP-initiated trials is to be judged by a still independent judge.

Human rights defenders active in democratic states fulfil a different role and are usually exposed to different consequences than when they operate under dictatorships or authoritarian systems. However, the example of Poland shows that even in an EU member state they can be exposed to harassment and unlawful restrictions on their rights and freedoms. Thus, ensuring their protection is a prerequisite for the proper functioning of the whole human rights 'ecosystem' of which they remain an integral part.