900 Days and Nights of Grotesque Lawlessness:

The Olsen Gang Caught in Its Own Trap

Editors: Paweł Czubik, Konrad Wytrykowski

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Without justice, the state cannot be administered;
it is impossible to have law in a state where there is no true justice.

St. Augustine

Pope Leo XIV at the Jubilee of Justice System Employees
on September 20, 2025

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Introduction

On June 1, 2026, Poland celebrates International Children's Day, established in 1954 by the United Nations General Assembly "to be observed as a day of world-wide fraternity and understanding between children and of activity devoted to the promotion of the ideals and objectives of the Charter and the welfare of the children of the world." This year, however, June 1 also marks another significant anniversary. On that date, exactly 900 days will have passed since Donald Tusk's government took office and the December 13 Coalition assumed power. For Poles, this date carries additional symbolic significance, as it was on December 13, 1981, that Communist General Wojciech Jaruzelski, acting in the service of the Soviet Union, imposed martial law. This decision crushed the Polish people's aspirations for freedom and independence, destroyed the bonds of solidarity forged by the Solidarity movement, and sowed division throughout society. Forty-two years later, on December 13, 2023, Donald Tusk's government assumed power in the Republic of Poland. For this reason, the ruling coalition under his leadership is commonly referred to as the "December 13 Coalition." Its methods of combating civil society and the political opposition closely echo the actions of the communist authorities more than four decades ago. Indeed, these same Marxist patterns appear to have been adapted and refined. Weakening Poland's international position, acting against the interests of the Polish economy, aggravating social divisions, and above all throwing the justice system into chaos, disregarding court rulings, violating the Constitution, and weaponizing the law for political purposes – these have become the hallmarks of the current government. The full force of the Tusk government's actions, supported by politicized prosecutors and judges aligned with and dependent upon the ruling authorities, has been directed against institutions that refuse to implement its destructive policies, including primarily the President of the Republic of Poland, the Constitutional Tribunal, the Supreme Court, the National Council of the Judiciary, the National Bank of Poland, independent media, attorneys, and scholars.

On June 1, 2026, exactly 900 days will have passed since this government – so harmful to Poland – assumed office. As lawyers, we are particularly concerned with its actions affecting the legal system and the judiciary. The scope of activities carried out under the banner of "restoring the rule of law" has been extraordinarily broad: from replacing statutes with decrees and legal opinions, to manipulating the appearance of legality, to openly violating the law and forcibly entering the offices and safes of independent attorneys using crowbars. These actions should shock and disturb anyone accustomed to ordinary legal standards and to ethics rooted in Christian values and the tradition of Latin civilization. Yet we cannot avoid the conclusion that the government's conduct evokes, above all, contempt and ridicule. The authorities' actions in the legal sphere irresistibly recall the Danish Olsen Gang films,

depicting the exploits of incompetent criminals whose elaborate schemes invariably collapse and end in failure and handcuffs. The conduct of the executive branch – supported by allied associations of judges and prosecutors – no longer inspires fear. Instead, it provokes laughter and pity. The ruling class conceals one failure after another by inventing imaginary "Plan Bs," dismissing unfavorable rulings as "so-called rulings," and hastily shutting down inconvenient investigations. Their incompetence is masked by grandiosity and delusions of exceptionality. We are fully aware that this path leads nowhere, and that our homeland deserves far better governance.

As lawyers committed to the rule of law, and at the same time as citizens who love our homeland – Poland – we have a duty not only to respond to the lawlessness taking place, but also, like medieval chroniclers, to record events and document the recent history of the Republic of Poland, its institutions and society.

We deeply appreciate the efforts undertaken by our foreign friends on behalf of our association, especially Mike Calamus, who works tirelessly to disseminate our reports and information concerning the situation in Poland to U.S. policymakers and the American public. Once again, we extend to him our heartfelt gratitude on behalf of Poland.

We hope that this report, like our previous publications, will receive favorable attention on both sides of the Atlantic. We present it to our readers with one final reflection: the clumsiness and immaturity displayed by the leadership of the December 13 Coalition are so striking that it can hardly be a coincidence that the anniversary of this government falls on Children's Day.

Paweł Czubik, Konrad Wytrykowski
Warsaw, June 2026

Przemysław W. Radzik
(judge of the Court of Appeal in Warsaw,
Deputy President of the Court of Appeal in Poznań,
Deputy Disciplinary Spokesman for Judges of Common Courts)

The Unlawful Search of the Office of the Disciplinary Spokesman for Judges of Common Courts on January 21, 2026

In Poland, since December 13, 2023, a segment of the prosecutorial and judicial community has engaged in a political campaign aimed at altering the constitutional order of the state and disabling or obstructing the functioning of constitutional institutions, including the Constitutional Tribunal and the Supreme Court. These efforts have also sought to prevent the continued operation and prematurely terminate the statutory terms of office of the Disciplinary Spokesman for Judges of Common Courts, Judge Piotr Schab, and the two Deputy Disciplinary Spokesmen for Judges of Common Courts, Judges Przemysław W. Radzik and Michał Lasota.

In this regard, the actions undertaken included, among other things:

- the unlawful search of the Office of the Disciplinary Spokesman for Judges of Common Courts on July 3, 2024, including the destruction of safes using crowbars and other tools, followed by the seizure of files relating to disciplinary proceedings against judges supporting the ruling political authorities, including files concerning the current Minister of Justice, Waldemar Żurek;
- attempts by the Minister of Justice, without any legal basis, to remove the Disciplinary Spokesman for Judges of Common Courts and the Deputy Disciplinary Spokesmen for Judges of Common Courts before the expiration of their statutory terms of office, undertaken in April 2025 and July 2025, followed by the Minister's unlawful appointment of judges openly aligned with the executive branch to those positions;
- an attempted break-in in August 2025 by a department director at the Ministry of Justice into the office premises of the Disciplinary Spokesman for Judges of Common Courts using unlawfully obtained magnetic access cards, together with an attempt to seize disciplinary case files concerning judges of the common courts stored on the premises.

A further series of unlawful actions directed against the Disciplinary Spokesman for Judges of Common Courts and his Deputies occurred on January 21, 2026, when two military prosecutors seconded to the Internal Affairs Office of the National Prosecutor's Office, assisted by approximately 100 police

officers, conducted another search of the offices of the Disciplinary Spokesman and his Deputies. During the search, after first damaging several safes, and without conducting the inventory and procedural review required by law, the authorities seized disciplinary case files as well as private documents belonging to Judge Przemysław W. Radzik that were entirely unrelated to the stated purpose of the search. These materials included documents concerning repressive actions taken against him by the executive branch; documents protected by attorney-client privilege relating to the harassment of other judges by representatives of the political authorities; documents concerning his family, financial, and medical circumstances; and materials protected by judicial confidentiality relating to his official judicial activities as a judge of the Warsaw Court of Appeals.

Further elaborating on the foregoing, it must be emphasized that both the prosecutor's order of January 14, 2026, directing the surrender of property and authorizing the search, as well as the manner in which that order was executed and documented, constituted a flagrant violation of the standards codified in Articles 217–231 of the Code of Criminal Procedure. These violations included, among others, breaches of the following provisions:

1. Article 217 § 1 of the Code of Criminal Procedure, through the manifestly erroneous assumption that a demand for the production of all documents relating to the activities of the Disciplinary Spokesman for Judges of Common Courts and his Deputies could constitute evidence in a criminal proceeding or be subject to seizure at the request of other unlawfully appointed disciplinary spokesmen.
2. Article 217 § 2 of the Code of Criminal Procedure, through the manifestly erroneous designation of the Head of the Secretariat of the Disciplinary Spokesman for Judges of Common Courts as the addressee of the demand for the production of disciplinary case files concerning judges of the common courts and other documents, despite the fact that, both legally and functionally, the Head of the Secretariat never possessed the materials covered by the order.
3. Article 217 § 3 of the Code of Criminal Procedure, in conjunction with Article 228 § 1 and § 3 of the Code of Criminal Procedure, by unjustifiably failing, in violation of mandatory criminal procedure, to prepare an inventory of the seized items and conduct the required procedural inspection thereof.
4. Article 217 § 5 of the Code of Criminal Procedure, in conjunction with Article 224 § 1 of the Code of Criminal Procedure, by conducting the search and seizure under circumstances in which it was factually impossible for the actual addressees of the order – the Disciplinary Spokesman for Judges of Common Courts, Judge Piotr Schab, and the Deputy Disciplinary Spokesman for Judges of Common Courts, Judge Przemysław W. Radzik – to voluntarily surrender the requested items, as both were on authorized leave at the time.

5. Article 220 § 2 of the Code of Criminal Procedure, in conjunction with Article 222 § 1 of the Code of Criminal Procedure, by initiating and conducting a search of the premises and enclosed areas of a state institution without prior notice to the head of that institution, namely the Chair of the National Council of the Judiciary, who is statutorily responsible for the administrative oversight of the Office of the Disciplinary Spokesman for Judges of Common Courts.
6. Article 225 § 1 and § 3 of the Code of Criminal Procedure, through a grossly improper and manifestly unjustified departure from the mandatory procedure requiring that seized documentation containing information protected by legally recognized professional secrecy applicable to the Disciplinary Spokesman for Judges of Common Courts and his Deputies be secured in sealed packages.
7. Article 227 of the Code of Criminal Procedure, by intentionally disregarding statutory limitations and conducting the search and seizure in a manner devoid of restraint or respect for the judicial status and official functions of the judges participating in and connected with the procedural act, while at the same time causing unnecessary damage and distress in an arbitrary and malicious manner.
8. Article 229 of the Code of Criminal Procedure, by failing to provide authorized and directly interested persons with access to the record documenting the search and seizure, thereby preventing them from exercising procedural rights arising from detailed knowledge of the type, quantity, and identifying characteristics of the seized materials.
9. The foregoing violations of criminal procedure must also be considered in light of Article 231 of the Criminal Code, which criminalizes abuse of authority by a public official. This applies to the prosecutors who ordered and participated in the search and seizure while fully aware of the unlawful nature of their actions, as confirmed by the Supreme Court's ruling of December 8, 2025, case no. II ZOW 80/22, which held that the Minister of Justice's decision removing Judges Piotr Schab, Przemysław W. Radzik, and Michał Lasota from their positions as the Disciplinary Spokesman for Judges of Common Courts and his Deputies was legally ineffective.

It should further be emphasized that the provisions set forth in Articles 217–236 of the Code of Criminal Procedure are intended to safeguard both the rights of participants in criminal proceedings and the ability of prosecuting authorities to effectively achieve the lawful objectives of such proceedings. Compliance with these provisions is designed to maintain an appropriate balance between the effective prosecution of criminal offenses and the protection of the rights of citizens and institutions that may participate in criminal proceedings or whose rights may be affected.

Taking the position that the issue of the unlawfulness of the Minister of Justice's removal of the Disciplinary Spokesman for Judges of Common

Courts, Piotr Schab, and his Deputies, Przemysław W. Radzik and Michał Lasota, during their statutorily defined terms of office, was conclusively resolved by the aforementioned Supreme Court ruling of December 8, 2025, it must also be noted that the reasoning of that ruling necessarily implied the illegality of the Minister of Justice's subsequent appointment of other judges designated to perform the functions previously held by the aforementioned officials.

Reference to these circumstances is necessary in order to demonstrate the unlawful nature of the actions undertaken by the prosecutors assigned to the Internal Affairs Division of the National Prosecutor's Office in ordering and conducting the search on January 21, 2026. The reasoning set forth in both the search warrant and the demand for the surrender of items expressly indicated that the purpose of the search was to execute requests submitted by individuals unlawfully claiming the authority of the Disciplinary Spokesman for Judges of Common Courts and his Deputies "to secure documents in the form of disciplinary case files and recording devices." This demonstrates that the purpose of the search was not to carry out the statutory objectives of criminal proceedings, namely the collection, preservation, and securing of evidence for the court to the extent necessary under Article 297 § 1(4) of the Code of Criminal Procedure, but rather to facilitate the transfer of files to persons lacking any lawful entitlement to possess them.

Furthermore, given that the properly secured documentation relating to disciplinary proceedings involving judges of the common courts was maintained in the single location designated by law for that purpose – namely, at the headquarters of the National Council of the Judiciary, within the premises occupied by the Office of the Disciplinary Spokesman for Judges of Common Courts and his Deputies – it is evident that the true purpose of the prosecutors' actions was not to secure evidence potentially relevant to criminal proceedings, but rather to assume and carry out the role of an authority enforcing the political interests of the executive branch through coercive means.

The manner in which the search and seizure were conducted – marked by unprecedented disregard, insolence, and arrogance – is illustrated by the objections raised by representatives of the Chair of the National Council of the Judiciary who were present during the search. They stated, among other things, that:

- the execution of the procedural acts covered by the order demanding the surrender of items and authorizing the search undermined the independence of the National Council of the Judiciary as a constitutional body, as well as the independence and impartiality of judges of the common courts;
- the order failed to identify with precision the documents to be seized, instead encompassing an overly broad and undefined category of materials;

– the order was addressed to the Head of the Secretariat of the Disciplinary Spokesman for Judges of Common Courts, who was their legal custodian;
– the order was not served on the persons whose premises were searched. It was served only on the Head of the Secretariat of the Disciplinary Spokesman for Judges of Common Courts, and not on Judges Piotr Schab, who was absent during the procedural acts; Przemysław W. Radzik, who was also absent; or Michał Lasota, who was present during the search;
– police officers prevented persons participating in the procedural acts, including judges and the Head of the Secretariat of the Disciplinary Spokesman for Judges of Common Courts, from moving freely within the building of the National Council of the Judiciary, including by obstructing access to restrooms and the parking lot;
– the prosecutors pressured the Head of the Secretariat of the Disciplinary Spokesman for Judges of Common Courts to hand over, without any legal basis, the keys to the offices of the Disciplinary Spokesman and the Deputy Spokesmen in order to enable the prosecutors – unauthorized persons – to enter premises over which he had no control and to access documents located there that were protected by the confidentiality of proceedings;
– the prosecutors were not continuously present during the document-securing acts carried out by police officers. While the documents were being secured, the prosecutors were walking through the hallway, engaged in conversations with one another or by telephone;
– not all persons identified as witnesses to the search, including members of Parliament, were admitted to the procedural acts;
– the prosecutor prohibited attorneys, persons called in to be present during the search, and other participants in the procedural acts, including judges, from recording the proceedings. When asked to identify the legal basis for that prohibition, he refused to answer or remained silent;
– the prosecutors failed to answer questions from representatives of the Chair of the National Council of the Judiciary regarding the procedural acts. Their questions were met either with silence or with the prosecutors leaving for other locations;
– Judge Przemysław W. Radzik informed the prosecutors, by telephone and through Judge Michał Lasota, that private documents were located in the safe in his office and that he did not consent to the search of the safe or the seizure of those documents. Despite this, police officers, acting on the prosecutor's orders, forcibly opened the safe and proceeded to examine its contents. The documents were not marked or identified in any way;
– the prosecutor's office and the police conducted parallel procedural acts in different rooms, thereby preventing representatives of the Chair

of the National Council of the Judiciary from being present during those acts;
- police officers, acting on the prosecutors' orders, drilled out or dismantled locks to rooms under the control of the Disciplinary Spokesman for Judges of Common Courts and the Deputy Disciplinary Spokesmen for Judges of Common Courts, as well as locks to safes located in those rooms;
- the seized files were packed into cardboard boxes that were not secured in a manner preventing them from being opened.

The prosecutors' failure to comply with their obligation to prepare a detailed and complete inventory of the case files and other documents they received constituted not only a flagrant violation of the provisions of criminal procedure identified above, but also created a deliberate situation in which the Disciplinary Spokesman for Judges of Common Courts and his Deputies were unable to conduct disciplinary proceedings, including with respect to further substantive rulings. It also deprived the parties to those proceedings of the ability to exercise their procedural guarantees.

The foregoing procedural acts were challenged in a complaint filed by the Disciplinary Spokesman for Judges of Common Courts. In addition, complaints concerning acts violating their rights were filed by the Deputy Disciplinary Spokesman for Judges of Common Courts and by the Head of the Secretariat of the Disciplinary Spokesman for Judges of Common Courts. Despite the passage of nearly five months since those complaints were filed, none has been considered by the competent authority.

Moreover, the government-controlled prosecutor's office has failed to compensate for the damage caused by the destruction of equipment in the premises occupied by the Disciplinary Spokesman for Judges of Common Courts, has not disclosed the location or purpose of the secured documents, and has not returned the secured documents.

Paweł Czubik
(Professor of Law, judge of the Supreme Court)

Propaganda Against Attorneys Defending Victims of Fabricated Political Trials: Government's False Claims About Attorney Lewandowski's Alleged Russian Contacts

In February 2026, Waldemar Żurek, the Minister of Justice in Donald Tusk's government, accused attorney Bartosz Lewandowski – a lawyer who had successfully defended victims of the Tusk regime in fabricated political trials – of cooperating with the Embassy of the Russian Federation. This narrative was then aggressively repeated by several politicians from Poland's ruling camp. The public accusations were intended to seriously discredit a highly competent defense attorney involved in representing victims of the Tusk regime in politically motivated show trials, and to divert public attention from matters plainly damaging to the government's image toward an artificial and, in reality, marginal issue. To that end, the fact that the contact information for attorney Lewandowski's law firm had appeared on the website of the Embassy of the Russian Federation in Warsaw was used. The firm was listed among entities able to provide legal assistance and information to Russian citizens in the Russian language. This became the basis for making paradoxical accusations against Lewandowski. In reality, however, inclusion on a foreign embassy's list of entities potentially able to provide assistance to citizens of that foreign state does not imply cooperation with the diplomatic mission or with the foreign state itself. Rather, it reflects the effectiveness, expertise, and capacity of the law firm or its attorneys to provide appropriate assistance, including fluency in the foreign language and knowledge of foreign law. Moreover, attorney Lewandowski had no influence – and in principle could not have had any influence – over the inclusion of this information on the Embassy's list. He likely became aware of it only when the media smear campaign initiated by a representative of the Polish government began. From a legal standpoint, the inclusion of information concerning specific law firms from the receiving state on the websites of diplomatic missions and consular offices of sending states is standard practice. This follows directly from the provisions of consular law.

It should be noted that, under the rules of consular law, consular sections of diplomatic missions, as well as consular offices, perform a range of consular legal acts for their country's citizens. Consular functions consist of

providing assistance or protection; they are either protective in nature (*jus protectionis*) or involve legal acts connected with the performance of certain functions of the sending state's administrative authorities (*jus advocandi*). In general, the scope of these functions is regulated in a similar manner by rules of international law, most comprehensively in bilateral consular conventions. In addition, the scope of such functions and the manner of their performance are often specified by the domestic statutory law of the sending state. The absence of specific treaty provisions between states that have established consular relations does not preclude the performance of these functions, since customary international law provides the basis for their exercise. In the case under discussion, Polish-Russian relations are based primarily on a specific source of law, namely the bilateral consular convention executed in Moscow on May 22, 1992. Assistance provided to citizens of the sending state in the receiving state is also reflected in the constitutional provisions of the states that concluded the convention itself (see Article 36 of the Constitution of the Republic of Poland and Articles 61(2) and 69(3) of the Constitution of the Russian Federation). Accordingly, the text of the convention expressly provides for protective mechanisms known to the legal systems of both contracting states. Several provisions of the Polish-Russian consular convention expressly provide for actions of a *juris protectionis* nature for citizens of the sending state. Beginning with the preamble, which emphasizes that mutual relations are to be based on "the principles of the greatest possible facilitation in providing assistance to protect the rights and interests of their citizens," and continuing through Article 31, which authorizes the consul to "defend the interests of the sending State and its citizens," the convention establishes a clear protective framework. Article 43 is particularly significant, as it provides for advice and all necessary assistance to the citizen and, where necessary, for steps to ensure legal assistance. This is further linked to the receiving state's obligation not to restrict such contact or the citizen's access to the consul. Article 38 of the convention also concerns legal acts related to guardianship of minors. The most significant provisions, however, are those defining the consul's activities as legal representation. This concerns the consul's representation of citizens before the judicial and administrative authorities of the receiving state. The convention regulates this issue generally in Article 42 and, with respect to inheritance matters, in Article 40(3). Importantly, both provisions provide for the termination of consular action where representation of the citizen is assumed by a professional attorney from the receiving state.

The convention in question, like other instruments of consular law binding Poland with other states, therefore confirms the need for attorneys from the receiving state to provide this form of assistance. Given the significant movement of persons across borders, it is important that such contact be established as quickly as possible, as this relieves the consul of the obligation to handle the matter directly. Accordingly, it is common practice for states to inform their citizens about attorneys and other local legal professionals

who are able to provide professional assistance, understand the scope of the treaty obligations binding the sending and receiving states, and communicate with the citizen in the language of the sending state. Consular lists therefore include reputable members of the legal profession who possess the requisite language skills and legal expertise.

Of course, such a list is informational only. It is not a form of advertising by the consular office on behalf of any attorney. Based on the consular officers' own knowledge – most often derived from citizens of the sending state who provide positive feedback regarding particular attorneys – the consulate compiles such lists for the benefit of its citizens. In most cases, a given law firm is unaware that it has been included on such a list. Consular law imposes no obligation on a consular office to contact a particular attorney or to coordinate the matter with that attorney. This is the practice in most countries around the world. It is also the practice of Polish diplomatic missions abroad, which maintain lists of attorneys and notaries in a given consular district who speak Polish and are willing to assist Polish citizens. The standard of consular assistance provided by the Russian Federation does not differ from the general standard in this respect.

As noted above, since the convention expressly provides for the possibility of the involvement of local attorneys and other legal representatives acting on behalf of citizens, the practice of listing law firms from the receiving state that can provide assistance to citizens of the sending state in the language of that state constitutes a facilitation of such assistance. The practice of the consular section of the Embassy of the Russian Federation is therefore a direct implementation of Article 42, sentence 2, and Article 40(3) of the bilateral Polish-Russian consular convention.

Accordingly, attacks on the attorney and the dissemination of false information on this matter by those in power should also be assessed through the lens of international law. The actions of a minister in Donald Tusk's government, aimed at discrediting the attorney in question and, in practice, also involving pressure on the consular office to give the list a particular form or to attribute to it content it did not contain – namely, the names of individuals allegedly cooperating with the Russian Federation – should be regarded as a violation by Poland of the provisions of the consular convention requiring that assistance to citizens of the sending state not be impeded.

Those in power, of course, must have possessed the necessary knowledge of the relevant legal practice and applicable law. The effort to damage attorney Lewandowki's reputation and public image was therefore undertaken to cover up the government's own actions, which bear the hallmarks of a coup d'état against Poland's constitutional order. This is an especially crude act, as it constitutes an attack on a highly educated lawyer whose knowledge and linguistic competence far exceed those of his attackers. It clearly demonstrates how far the Polish government is willing to go to discredit those it finds inconvenient. Moreover, this is not an attack on a political opponent, but on an effective at-

torney – a person whom everyone has the right to retain as defense counsel in a trial, in accordance with human rights standards. Nor is this the only action of its kind. Persecution by an extremely politicized prosecutor's office, led by individuals unlawfully appointed to their positions, has affected other lawyers involved in defending persons persecuted in political trials, such as Krzysztof Wąsowski and Michał Skwarzyński. The last time in Polish history that such actions were directed against lawyers defending the political opposition was during the communist terror 50 years ago.

Michał Lasota
(judge of the Court of Appeal in Warsaw,
Deputy Disciplinary Spokesman for Judges of Common Courts)

Oath-Taking in a Sejm Corridor: An Analysis of the Conduct of Persons Elected as Constitutional Tribunal Judges

I. By resolutions adopted on March 13, 2026, the Sejm of the Republic of Poland elected Magdalena Bentkowska, Anna Korwin-Piotrowska, Marcin Dziurda, Krystian Markiewicz, Dariusz Szostek, and Maciej Taborowski to serve as judges of the Constitutional Tribunal.

The election itself, as well as the activities of the Sejm that preceded it, gave rise to at least serious doubts as to their legality, particularly with respect to the timing of the election and the procedures followed. These defects may have affected the validity of the election itself.

On April 1, 2026, however, Magdalena Bentkowska and Dariusz Szostek, having been elected by the Sejm of the Republic of Poland to serve as Constitutional Tribunal judges, took the oath of office before the President of the Republic of Poland, in his presence, thereby establishing their employment relationship as judges of the Constitutional Tribunal.

Subsequently, on April 9, 2026, Constitutional Tribunal judges Magdalena Bentkowska and Dariusz Szostek, together with the other individuals elected by the Sejm of the Republic of Poland by resolutions dated March 13, 2026, to serve as judges of the Constitutional Tribunal – namely Anna Korwin-Piotrowska, Marcin Dziurda, Krystian Markiewicz, and Maciej Taborowski – appeared at the Sejm building.

There, they received from Marshal of the Sejm Włodzimierz Czarzasty the Sejm resolutions concerning their election to the office of Constitutional Tribunal judges.

Both the appointed judges of the Constitutional Tribunal and the individuals who had been elected to the office of judge of the Constitutional Tribunal then took an oath in the Sejm building, using wording identical to the oath previously taken before the President of the Republic of Poland, which is necessary to establish the employment relationship as Constitutional Tribunal judges.

The President of the Republic of Poland was not present when this oath was taken. Instead, the oath was taken before a notary, who then prepared a notarial deed, which was subsequently filed with the Office of the President of the Republic of Poland.

Anna Korwin-Piotrowska, Marcin Dziurda, Krystian Markiewicz, and Maciej Taborowski claimed, and continue to claim, that despite having taken the oath in the Sejm in the absence of the President of the Republic of Poland, they nevertheless took the oath before the President.

As a result, they maintain that they have established the employment relationship as Constitutional Tribunal judges. Accordingly, they have appeared, and continue to appear, before the Constitutional Tribunal, demanding that the President of the Tribunal enable them to assume their duties – that is, assign them cases and create the conditions necessary for them to perform the duties of Constitutional Tribunal judges.

The President of the Constitutional Tribunal, Bogdan Święczkowski, maintains that Anna Korwin-Piotrowska, Marcin Dziurda, Krystian Markiewicz, and Maciej Taborowski, although elected by the Sejm to serve as judges of the Constitutional Tribunal, have not taken the oath of office before the President of the Republic of Poland. Consequently, no official relationship has been established with them as Constitutional Tribunal judges.

Accordingly, because no official employment relationship has been established, the President of the Constitutional Tribunal has not taken the legal steps necessary for those individuals to assume the duties of Constitutional Tribunal judges. In his view, they remain persons elected by the Sejm to the office of judge of the Constitutional Tribunal who have not taken the oath before, and thus in the presence of, the President of the Republic of Poland.

II. The Constitutional Tribunal in Poland, within the Polish legal system, is a key judicial body whose primary function, as a constitutional court, is to review the constitutionality of statutes.

The effective "appointment" of a judge of the Constitutional Tribunal is therefore governed primarily by the Constitution of the Republic of Poland of April 2, 1997. That constitutional regulation, however, is not exhaustive.

Detailed provisions on this matter, especially concerning the establishment and scope of the employment relationship of a judge of the Constitutional Tribunal, were adopted in the Act of November 30, 2016, on the Status of the Judges of the Constitutional Tribunal, i.e. a source of generally applicable law under the Constitution.

This issue had also been regulated in earlier statutes that have since been repealed, namely the Act of August 1, 1997, on the Constitutional Tribunal; the Act of June 25, 2015, on the Constitutional Tribunal; and the Act of July 22, 2016, on the Constitutional Tribunal.

The Constitutional Tribunal consists of 15 judges, elected individually by the Sejm for nine-year terms from among persons distinguished by their legal knowledge (Article 194 of the Constitution of the Republic of Poland).

However, the employment relationship of a judge of the Constitutional Tribunal is established only after the person elected to that office has taken the oath before the President of the Republic of Poland. Only then does that

person, as a judge of the Constitutional Tribunal, immediately report to the Tribunal to assume his or her duties, after which the President of the Tribunal assigns cases and creates the conditions necessary for the judge to perform the duties of office (Articles 4(1) and 5 of the Act of November 30, 2016, on the Status of Judges of the Constitutional Tribunal).

Refusal to take the oath is tantamount to resignation from the office of a judge of the Constitutional Tribunal (Article 4(2) of the Act of November 30, 2016, on the Status of Judges of the Constitutional Tribunal).

The obligation of a person elected by the Sejm of the Republic of Poland to the office of judge of the Constitutional Tribunal to take the oath before the President of the Republic of Poland, as well as the legal consequence of refusing to take that oath, also existed under earlier, now-repealed statutes: Article 5(5) and (6) of the Act of August 1, 1997, on the Constitutional Tribunal; Article 21(1) and (2) of the Act of June 25, 2015, on the Constitutional Tribunal; and Article 6(5) and (6) of the Act of July 22, 2016, on the Constitutional Tribunal. Thus, this is not a new legal provision introduced into the legal system only by the currently applicable statute.

Every Polish dictionary unambiguously defines the preposition *wobec*, when used in the context of an oath, as meaning "in the presence of."

Likewise, in legal language – the language of normative acts – the meaning of the preposition *wobec* has not raised, and does not raise, any interpretive doubt.

By way of example, the President of the Republic assumes office after taking the oath before the National Assembly (Article 130 of the Constitution of the Republic of Poland), while the Prime Minister, Deputy Prime Ministers, and ministers take the oath before the President of the Republic of Poland (Article 151 of the Constitution).

Accordingly, a person elected by the Sejm to the office of judge of the Constitutional Tribunal can take the legally required oath before the President of the Republic of Poland only in the President's presence.

It must be emphasized that the Constitutional Tribunal itself held that Article 4(1) of the Act of November 30, 2016, on the Status of the Judges of the Constitutional Tribunal, insofar as it is interpreted as imposing on the President of the Republic of Poland an obligation to administer the oath to a person elected by the Sejm as a judge of the Constitutional Tribunal, is inconsistent with Article 126 in conjunction with Article 2 of the Constitution of the Republic of Poland (Constitutional Tribunal's judgment of May 12, 2026, in case no. K 3/26).

It must not be overlooked that judgments of the Constitutional Tribunal are universally binding and final (Article 190(1) of the Constitution of the Republic of Poland).

For conduct that undermines the dignity of the office of Constitutional Tribunal judge, for a breach of the Code of Ethics for Constitutional Tribunal Judges, or for any other unethical conduct that may weaken confidence in the

judge's impartiality or independence, a Constitutional Tribunal judge is subject to disciplinary proceedings before the Tribunal. Such proceedings may result in a disciplinary ruling removing the judge from office, which in turn causes the term of office to expire before the end of the statutory term (Article 18(1)(4) and Article 24(1) of the Act of November 30, 2016, on the Status of the Judges of the Constitutional Tribunal).

III. Magdalena Bentkowska and Dariusz Szostek, having been elected by the Sejm to serve as judges of the Constitutional Tribunal, took the oath of office before the President and therefore hold the status of judges of the Constitutional Tribunal.

Their participation in the purported re-swearing-in ceremony allegedly conducted before the President, organized by Marshal of the Sejm Włodzimierz Czarzasty despite the President's obvious absence, should be assessed in disciplinary terms and should result in disciplinary action.

The purported re-swearing-in was nothing more than a purely political event, devoid of any legal effect.

Accordingly, the participation of Constitutional Tribunal judges Magdalena Bentkowska and Dariusz Szostek in that event constituted, at the very least, a serious breach of the dignity of the office of Constitutional Tribunal judge. It also demonstrated a lack of the ethical and moral qualities required of a judge of the Constitutional Tribunal, which should result in the disciplinary court imposing the penalty of removal from office.

Anna Korwin-Piotrowska, Marcin Dziurda, Krystian Markiewicz, and Maciej Taborowski, although elected by the Sejm to serve as judges of the Constitutional Tribunal, did not take the oath of office before the President. Accordingly, they are not judges of the Constitutional Tribunal.

Because the President of the Republic of Poland is under no obligation to administer the oath to a person elected by the Sejm to the office of judge of the Constitutional Tribunal, as confirmed by the Constitutional Tribunal's judgment of May 12, 2026, in case no. K 3/26, it appears that – given the conduct of the above-mentioned individuals and the attitude they have displayed, particularly their participation in the purported re-swearing-in ceremony allegedly conducted before the President, organized by Marshal of the Sejm Włodzimierz Czarzasty despite the President's obvious absence, which demonstrates a lack of the ethical and moral qualities required of a judge of the Constitutional Tribunal – the President should not accept the oath from them.

The conduct of Anna Korwin-Piotrowska, Marcin Dziurda, Krystian Markiewicz, and Maciej Taborowski may also be regarded as a refusal to take the oath before the President.

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Using Notarial Acts Without Legal Basis to Carry Out Ostensible Public-Law Actions: The Pseudo-Oath of Constitutional Tribunal Judges Before a Notary in the Presence of the Marshal of the Sejm

On April 9, 2026, a ceremony took place in the Sejm of the Republic of Poland that constituted a flagrant violation of law, an attack on the constitutional powers of the President of the Republic of Poland, and a threat to the stability of constitutional law. Four individuals elected by the Sejm as judges of the Constitutional Tribunal, who had not previously taken the oath before the President of the Republic of Poland, took an oath before the Marshal of the Sejm. Two judges who had taken their oaths before the President a few days earlier were also present alongside them. The entire ceremony, in which the President of the Republic of Poland – the only person authorized by law to receive the oath from Constitutional Tribunal judges – did not participate, was conducted in the Sejm by the Marshal of the Sejm. The taking of the oath before a representative of the Sejm by individuals whose role, had they become judges – that is, after being sworn in by the President – would have included adjudicating cases in which the Sejm is a party, including the review of the constitutionality of statutes enacted by the Sejm, effectively disqualifies those individuals from performing such potential future duties. They took an oath before a party to the very legal disputes they would be called upon to decide. This also resulted in a loss of independence on the part of the two judges who had previously taken a lawful oath before the President. Taking the oath, even in a farcical manner, before the Marshal of the Sejm also signaled allegiance to a party in proceedings they would be expected to adjudicate.

From a legal standpoint, of course, the act was merely performative. Its sole purpose was to escalate the conflict between, on the one hand, Donald Tusk's government, which violates the rule of law, and the parliamentary majority serving it, led by Marshal of the Sejm Włodzimierz Czarzasty, and, on the other hand, those who uphold constitutional law: Bogdan Święczkowski, President of the Constitutional Tribunal, and Dr Karol Nawrocki, President of the Republic of Poland.

Pursuant to Article 21(1) of the Act of June 25, 2015, on the Constitutional Tribunal: "A person elected to the position of judge of the Tribunal shall take

an oath before the President of the Republic of Poland within 30 days from the date of election." The 30-day period is directory in nature; failure to comply with it does not produce legal consequences. The President's refusal to accept the oath from the four individuals elected by the Sejm as judges of the Constitutional Tribunal resulted from serious doubts concerning violations of law during the Sejm's appointment procedure, including a violation of the standard of individual election set forth in Article 194 of the Constitution of the Republic of Poland. The President referred a legal question on this matter to the Constitutional Tribunal itself. In doing so, he explained in detail his doubts regarding the legality of the election and justified the appointment of only two of the six individuals presented to him.

For obvious reasons, the April 9, 2026 ceremony in the Sejm constituted a violation of constitutional law. The entire setting and atmosphere of the ceremony were highly farcical, but this does not alter the fact that those actively participating in the spectacle committed a flagrant violation of law. A parallel political reality was openly and blatantly set against the letter of the law. The persons taking the oath used the phrase "before the President" in the text of the oath, even though the President was not present at the ceremony. This fact was loudly pointed out by MP Łukasz Kmita of the Law and Justice Party, who was passing by the place where the oath was being administered, causing considerable confusion for one of the individuals taking the oath. The ceremony was intended to gain gravitas from the presence of several figures regarded as patriarchs of the Polish judiciary, including former Presidents of the Constitutional Tribunal, some of whom served during the communist period, as the Constitutional Tribunal was established in Poland during the final years of the communist state. These individuals, advanced in age and showing signs of senility, have for years been exploited by Donald Tusk's circle to voice random and often contradictory views previously implanted in them, depending on political needs. This is deeply distressing and also demonstrates a complete lack of human decency on the part of representatives of the ruling coalition and the journalists acting as their media mouthpiece. The participation of these elderly men in the ceremony, serving as puppets wearing wise expressions, completed the satirical performance that had been staged.

Of course, the "oath" itself was not taken before the President. At the same time, bizarre explanations emerged, including from the Minister of Justice, claiming that the statutory phrase "before the President" does not mean "in the presence of the President." In fact, the Polish term used in this context – *wobec* – is a shorthand for *w obecności* – "in the presence of."

The individuals taking the oath were themselves fully aware of its fictitious nature. Two of them were judges of the common courts, yet they did not resign from their judicial offices in connection with the alleged oath. Under both Article 23(2) of the Act on the Constitutional Tribunal and Articles 86(1) and 98(2) of the Act on Common Courts Organization, however, the office of

a judge of the Constitutional Tribunal cannot be combined with the office of a judge of the common courts.

The most puzzling aspect of this political spectacle, which had nothing to do with actual law, was the presence of a notary. Polish law recognizes the institution of a civil-law notary, not a notary public. There is no mechanism in Polish law for taking public oaths or making public pledges before a civil-law notary, as exists in some common-law systems. Even in foreign legal systems that permit public pledges before a notary public, such an act generally cannot substitute for an oath required by constitutional law, which is effective only when taken before a specific state authority, such as the head of state, whether a monarch or a president.

Meanwhile, those in power sought to use the civil-law notary as a substitute for the absent President. Paradoxically, the mechanism they employed deprived the statements made of any legal effect, even under the entirely irrational narrative advanced by the Marshal of the Sejm and the Minister of Justice. The notary invited to the ceremony violated the law. His presence seemed so strange to observers that information about him immediately entered the public sphere, together with allegations that he, too, had violated the law and the rules governing the exercise of his profession of public trust. The notary was quickly identified in the media as Dariusz Kramarz, a Warsaw notary, and the media also emphasized his ties to the ruling coalition and his political involvement on the side of Minister of Justice Waldemar Żurek.

The National Council of Notaries, the supreme body of the notarial self-government, came to the defense of the notary. In its statement of April 10, 2026, it declared:

> In connection with statements and assertions appearing in the public sphere, the National Council of Notaries, as the statutory representative of the notarial profession, clarifies that, in accordance with the provisions of the Act on Notaries, civil-law notaries are authorized to draw up notarial records documenting the course of various types of legal acts and events that may have legal consequences. The scope of these acts or events is open-ended and is not limited to a closed statutory list. It should be emphasized that notarial records are documentary in nature. When drawing up a notarial record at the request of the parties, the civil-law notary does not make a binding assessment of the legal consequences of the recorded events. The notary's task is to impartially reflect the course of the legal act or event to the extent requested by the participants, including the essential content of the statements made by them. The preparation of notarial records, which, pursuant to Article 79 of the Act on Notaries, constitutes one of the legal acts for which a civil-law notary is appointed, serves to provide the parties with the opportunity to document circumstances that may have legal significance in a reliable and official manner. Accordingly, a notarial record does not create legal effects of the events to which it relates, but constitutes their official documentation; as an official document, it benefits from a presumption of truthfulness and may serve as

> significant evidence. The assessment of the legal effects of specific events or statements falls within the jurisdiction of the competent authorities, in particular the courts. By drawing up a notarial record, a notary does not replace those authorities or encroach upon their jurisdiction. The National Council of Notaries urges restraint in commenting on the role and functions of notaries and calls on participants in public debate to refrain from spreading harmful and disparaging opinions. The notarial profession performs a strictly defined statutory function within the legal system, and the legal acts performed by notaries are neither discretionary nor opinion-forming, but are based on applicable law. Criticism based on an incomplete understanding of this role may lead to misunderstandings and undermine trust in the notarial profession. We also note that, under the Act on Notaries, a notary performing notarial acts is a person of public trust and enjoys the protection afforded to public officials. We expect all participants in public debate to act responsibly and with restraint when expressing opinions on notaries' activities and to respect the role they perform in the legal system.

The National Council of Notaries, as a self-governing body of the notarial profession, naturally came to the defense of one of its representatives. This is understandable. However, its position does not reflect the truth of the matter. In this case, there was a violation of the Act on Notaries of February 14, 1991, as well as of the ethical standards governing notaries' conduct. The Council's position minimizes the notary's role in cases in which he merely records legal acts. It also ignores the significance of the term "party," whose use in the Act is not accidental.

Pursuant to Article 1 § 1 of the Act on Notaries: "A notary is appointed to perform legal acts which the parties are required or wish to have notarized (notarial acts)." In other words, a notary may perform legal acts when their participation is mandatory for a given type of legal act, or when the parties wish to involve a notary, meaning in cases where such participation is not required for the legal act in question.

However, the interpretation that the "parties" invited a notary to record their act is incorrect. In the case of public-law acts, there are no "parties" within the meaning of the Act on Notaries. Proceedings before a notary, as governed by the Act on Notaries, constitute a specific type of civil proceeding. Of course, the Act on Notaries refers to a party to a civil-law act – that is, an act within the sphere of private law. It does not concern acts within the sphere of public law, much less a specific branch of public law such as constitutional law. Contrary to the position of the National Council of Notaries, a notary is not appointed to record whatever any individuals may wish in the course of applying, or violating, provisions from any branch of law. A notary is authorized to record civil-law acts at the request of the parties, and thus only within the sphere of private law. A notary called upon by politicians to record a public-law act lacks authority to do so. Such an act is not a notarial act within the meaning of Article 1 § 1 of the Act on Notaries. Guided by Article 81 of the Act

on Notaries – "A notary shall refuse to perform a notarial act that is contrary to law" – the notary should have refused to record such an act. Recording a public-law act at the request of persons who are not "parties" in the proper legal sense is contrary to law.

Even assuming, for the sake of argument, that a notary may record public-law acts – that is, at the request of anyone, not only a "party" within the meaning of civil law – he was undoubtedly prohibited from recording an act that clearly and flagrantly violated the law. As a professional lawyer, he necessarily possessed the legal knowledge and civic awareness required to understand that the oath was not taken before the President, which is a condition of its validity and legality. Accordingly, under Article 81 of the Act on Notaries, even on that broader interpretation, the notary should have refused to perform a notarial act contrary to law. It is absurd to claim, as the National Council of Notaries does, that a notary may record any event. A notary may not record violations of public law. The position of the National Council of Notaries would imply, for example, that a notary could record the execution of a mafia death sentence or the division of mafia profits from drug trafficking. The illegality in those examples – and in the case of the oath before the Marshal of the Sejm – is equally obvious. So too is the violation of law by the notary who records such acts.

One could assume that the Marshal of the Sejm and the persons taking the oath decided to establish a private-law relationship between themselves, and that this was merely recorded by the notary. That assumption, however, carries other consequences, discussed at the end of this text.

Undoubtedly, in addition to violating the law, the notary also violated the ethical rules governing the profession, namely the Code of Professional Ethics for Notaries, adopted by Resolution No. 19 of the National Council of Notaries of December 12, 1997. Pursuant to § 7 of that Code, "A notary shall, through his or her conduct and actions, reflect well on the profession and safeguard its authority, honor, and dignity." Participation in a public-law undertaking that constituted a blatant violation of constitutional law – and that was conducted in an obviously farcical format – can hardly be regarded as consistent with the dignity, honor, or prestige of the profession. It is also difficult, in the case of a notary's participation in such an event, not to find a violation of § 16 of the Code, even if one erroneously assumes that there were "parties to a notarial act." That provision states: "While ensuring the application of law in a manner consistent with the will and intentions of the parties, a notary is simultaneously obliged to maintain loyalty to the State." It is difficult to accept that the notary was unaware that the purpose of the acts performed by the Marshal of the Sejm and recorded by the notary was to further undermine the constitutional order of the Republic of Poland, and that the act in question struck at the embodiment of the Polish State, namely the Head of State – the President of the Republic. In such circumstances, and taking into account other provisions of the Code of Professional Ethics for Notaries, including § 17 –

"A notary is obliged to ensure the dignity of the office and independence when state, local government, or other institutions are parties to the legal act, while maintaining due respect for the persons representing those institutions" – the notary should also have protected the dignity of the institution of the Marshal of the Sejm itself, regardless of Mr. Czarzasty's conduct. The notary should also have acted in accordance with § 18 of the Code: "In the event of a conflict between the parties or an obvious conflict of interests, the notary is obliged to refuse to perform a legal act."

By undertaking the act, the notary, from the standpoint of civil law, effectively covered with a notarial act any potential private-law obligations between the persons involved: the person administering the oath and the persons taking the oath, who had been elected by the Sejm as judges of the Constitutional Tribunal. The record drawn up by the notary, reflecting the content of the purported "oath," is purely private-law in nature. No public-law relationship was established as a result of taking the oath in a form not prescribed by law. It is not binding on the President or on any state authority. This may have specific consequences for liability for damages between the persons taking the oath before an individual not authorized to administer it and the individual who administered the oath. No public-law relationship arose from this "oath-taking," not even between the Marshal of the Sejm, in his capacity as a public official, and the persons taking the oath. Consequently, a civil-law relationship may have arisen, as a result of the notarial act, between Mr. Włodzimierz Czarzasty, acting as a private individual rather than as Marshal of the Sejm, and the persons who unlawfully took the oath. This could allow those persons to seek appropriate compensation from him for misleading them as to the validity of such a statement in the public sphere. If, however, those individuals were to prove that they had been misled by the notary, they could also seek appropriate compensation from the notary, including for performing an unlawful notarial act. On the other hand, the political posture of these individuals leaves no doubt as to their conscious participation in this spectacle, while raising serious questions about the scope of their basic legal knowledge. That knowledge appears insufficient for holding any public office, although, as media reports have shown, they are perfectly suited for cabaret-style performances.

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The National Council of the Judiciary: From the "Round Table" to Corporatist Selection and Democratic Reform

1. The Origins of the National Council of the Judiciary and the Rules Governing Its Judicial Membership Prior to the 2017 Amendment

After World War II, authorities subordinated to the Soviet Union began constructing a new political system for the Polish People's Republic. This process culminated on July 22, 1952, when the Legislative Sejm adopted the Constitution of the Polish People's Republic (Journal of Laws of 1952, No. 33, item 232, as amended). The Constitution departed from the Montesquieuian separation of powers and instead distributed authority among organs of "state power," exercised by the Sejm (Article 15), the Council of State (Article 25), and national councils (Article 34), as well as organs of "state administration," namely the government (Article 29) and ministries (Article 32). This structure was designed to blur the distinctions among the powers of individual state bodies, enabling them – guided solely by the interests of the communist regime – to enforce the laws they themselves had created (see A. Albert [pseudonym of Wojciech Roszkowski], *Najnowsza historia Polski 1918–1980*, London: Puls Publications LTD, 1991, p. 642). In this spirit, the powers of the courts were also defined: they were to serve as guardians of the political system of the Polish People's Republic, the rule of law, social ownership, and citizens' rights, and to support the achievements of the Polish working people (Article 48). The courts were expected to combat "enemies of the system," "class enemies," "reaction," "the bourgeoisie," "reactionary forces," and "clericalism." Thus, they were entrusted with assisting the exercise of power, not the administration of justice (see J. Migdał, "Polityka karna i penitencjarna Polski lat 1944–1956," *Annales Universitatis Mariae Curie-Skłodowska Lublin – Polonia*, vol. XV, 2 Section K, 2008, p. 127). With the courts' duties defined in this manner, the constitutional provision on judicial independence (Article 52) existed in a vacuum. After the existing judiciary was replaced with new personnel – often lacking legal training – the administration of justice was largely carried out by judges affiliated with the party (Albert, *Najnowsza...*, p. 644).

The judiciary's dependence on the Polish United Workers' Party deepened during martial law. A striking example was the attitude of certain Supreme

Court judges who, as Lech Falandysz observed, were expected to ensure the "proper" conduct of martial law so that "everything took place in accordance with the law." This was to be achieved, for example, by adopting the principle that internment would not count toward a sentence of solitary confinement, by retroactively holding that the application of the martial-law decree did not violate the International Covenant on Civil and Political Rights, or by correcting what were deemed overly lenient sentencing practices of provincial courts (see L. Falandysz, *Ja i moje prawo*, Warsaw: KOS, 1991, p. 234).

At the same time, as early as 1981, demands to restore judicial independence and the decisional independence of judges, as well as to free the judiciary from party control, gave rise to the idea – then still unsuccessful – of establishing a judicial council in Poland. This need was raised both by the opposition and by judges themselves, who at that time were appointed and dismissed by the Council of State at the request of the Minister of Justice (https://www.krs.gov.pl/pl/?view=article&id=168:informacje-o-krs&catid=105; accessed on May 12, 2026).

The issue of establishing a judicial council returned during the "Round Table" talks. Ultimately, an agreement was reached and signed by Janusz Reykowski, on behalf of the coalition and government, and Bronisław Geremek, on behalf of the opposition and Solidarity. The agreement stated:

> Judicial independence will be safeguarded by the National Council of the Judiciary, composed mainly of judges delegated by the general assembly of judges of the Supreme Court, the Supreme Administrative Court, and the common courts. It will present to the President, for appointment to the office of judge or for promotion to a higher court, one of two candidates nominated by the general assembly of courts in the circuit where the need for judges has arisen. Judicial independence will be based on the principle enshrined in the Constitution that judges cannot be removed from office, except in cases specified by law, and cannot be transferred against their will to another place of service (See *Konstytucje w Polsce: 1791–1990*, selected and edited by T. Kołodziejczyk and M. Pomianowska, Warsaw: Przemiany, 1990, p. 190).

As a result of that agreement, the so-called April Amendment to the Constitution of the Polish People's Republic – the Act of April 7, 1989, amending the Constitution of the Polish People's Republic (Journal of Laws of 1989, No. 19, item 101) – amended Article 60 to read as follows: "1. Judges are appointed by the President upon the recommendation of the National Council of the Judiciary. 2. Judges are irremovable, except in cases specified by law. 3. The powers, composition, and mode of operation of the National Council of the Judiciary shall be defined by statute."

Ultimately, the National Council of the Judiciary (hereinafter: "NCJ" or the "Council") was established by the Act of December 20, 1989, on the National Council of the Judiciary (Journal of Laws of 1989, No. 73, item 435; hereinafter: the "1989 Act"). Its status was consolidated after the entry into force of the

Constitutional Act of October 17, 1992, on the Mutual Relations Between the Legislative and Executive Branches of the Republic of Poland and on Local Government, commonly known as the "Small Constitution" (Journal of Laws of 1992, No. 84, item 426, as amended). The Council's constitutional position was further strengthened by the Constitution of the Republic of Poland of April 2, 1997 (Journal of Laws of 1997, No. 78, item 483; hereinafter: the "Constitution of the Republic of Poland").

The newly established body was intended to serve as an instrument for implementing the constitutional principle of balance among the three branches of government, reflected in the mixed composition of the NCJ, as well as a forum for cooperation and balancing among those branches.

Originally, the composition of the NCJ and the rules for electing its members were defined by statute. Beginning with the Constitution of the Republic of Poland, however, the composition of the NCJ has been regulated at the constitutional level. The following remarks concern the so-called judicial membership of the NCJ.

Pursuant to Article 4(1) of the 1989 Act, the Council consisted of the First President of the Supreme Court; the President of the Supreme Court presiding over the Military Chamber of the Supreme Court; the President of the Supreme Administrative Court; two judges of the Supreme Court; one judge of the Supreme Administrative Court; nine judges of the common courts; and one judge of the military courts. Members selected from among judges of the Supreme Court and the Supreme Administrative Court were elected by the general assemblies of judges of those courts (Article 6(1)). Members of the National Council of the Judiciary selected from among judges of the common courts were elected from their own ranks by assemblies of representatives of the general assemblies of judges in provincial courts, while the member selected from among judges of the military courts was elected by assemblies of judges of those courts (Article 6(2)).

It is significant that judges of the common courts were to be elected exclusively by assemblies of representatives of the general assemblies of judges in provincial courts. This inevitably resulted in the election to the NCJ of judges connected to the authorities and owing their position within the judiciary to them.

Another significant step in the process of legitimizing the judiciary inherited from the Polish People's Republic was introduced by Article 4(1) of the Act of April 7, 1989, amending the Constitution of the Polish People's Republic (Journal of Laws of 1989, No. 19, item 101). Under that provision, the term of office of the then-existing Supreme Court was shortened by operation of law, and its composition was to be entirely reconstituted as a body composed of irremovable judges serving without fixed terms. Ultimately, pursuant to Article 9 of the Act of December 20, 1989, amending the Act on Common Courts Organization, the Supreme Court, the Supreme Administrative Court, the Constitutional Tribunal, the System of Military Courts, and the Notarial

Profession (Journal of Laws of 1989, No. 73, item 436), the term of office of the Supreme Court then in existence ended on June 30, 1990.

The new composition of the Supreme Court was appointed by the President of the Republic of Poland on June 4, 1990. A total of 57 judges were appointed to the four chambers of the Supreme Court, including 24 judges from the prior term-based composition of the Court: 5 from the Administrative, Labor, and Social Security Chamber; 11 from the Civil Chamber; 3 from the Criminal Chamber; and 5 from the Military Chamber. Judges from the prior composition therefore accounted for 38.6% of the newly appointed Court. On July 1, 1990, Professor Adam Strzembosz became the new First President of the Supreme Court. He opposed the vetting of judges who had violated the principle of judicial independence. The picture of the rules governing the selection of judicial personnel was further complicated by the lack of transparency in the selection process. The selection of judges for the Supreme Court and other courts took place in closed proceedings, generally without hearing the judge concerned, and the minutes of the National Council of the Judiciary's sessions usually revealed nothing of substance.

Subsequent statutes introduced only minor changes to the rules governing the election of the judicial component of the NCJ. The Act of July 27, 2001, on the National Council of the Judiciary (consolidated text of January 28, 2010; Journal of Laws of 2010, No. 11, item 67), and the currently effective Act of May 12, 2011, on the National Council of the Judiciary (consolidated text of August 1, 2024; Journal of Laws of 2024, item 1186), in their original wording, provided that the First President of the Supreme Court and the President of the Supreme Administrative Court were members of the Council for the duration of their terms of office (Article 4(1) and Article 7, respectively). Two members of the Council were elected from among the judges of the Supreme Court by the General Assembly of Judges of the Supreme Court, pursuant to Article 7(1) and (2) and Article 11(1) and (2). Two members from among judges of the administrative courts were elected by the General Assembly of Judges of the Supreme Administrative Court together with representatives of the general assemblies of provincial administrative courts. Significantly, district courts had virtually no representation on the NCJ, because the election of its members was conducted by meetings of representatives of the general assemblies of appellate judges, from among appellate court judges, and circuit court judges, from among their own ranks, pursuant to Article 7(3) and (4) and Article 11(3) and (4).

It follows that the election of members of the so-called judicial component of the NCJ was carried out by general assemblies or meetings of representatives of general assemblies. The elected members were not chosen randomly, nor were they persons who, by virtue of the President's "endorsement," had acquired a "right" to promotion to a higher court. The mechanism of preliminary selection and self-co-optation was particularly visible in nomination procedures for the Supreme Court, where the assembly se-

lected two candidates to be presented to the NCJ. All other candidates were effectively deprived of any meaningful chance of promotion, which caused them either to refrain from participating in the competitive procedure or to withdraw from it. The judicial selection mechanism described above was particularly dangerous given that the Supreme Court had, and continues to have, influence over the development of the case law of the common courts, among other matters. If one further considers that Supreme Court judges were selected by President General Wojciech Jaruzelski upon the request of the NCJ, and that members of the NCJ influenced judicial appointments, it becomes clear that the judicial community largely formed a closed structure, a kind of "caste" insulated from any influence by society.

This highly detrimental "feudal system" within the judiciary – where the selection of members of the NCJ depended on political decisions and remained beyond public scrutiny; where the vote of a higher-ranking judge carried more weight than that of a lower-ranking judge; and where the preferences, likes, and dislikes of immediate superiors or the local judicial community determined appointments and promotions – was bound to erode public trust in the courts. This situation required corrective measures aimed at increasing the democratic legitimacy of members of the NCJ, creating a mechanism for public debate on their candidacies, and improving the transparency of the selection and promotion process for judicial personnel.

2. The 2017 Amendment to the Act on the National Council of the Judiciary

The Act of December 8, 2017, amending the Act on the National Council of the Judiciary and certain other acts (Journal of Laws of 2018, item 3), addressed these expectations.

Among the most significant changes, the amendment introduced the principle that, when selecting judges of the Supreme Court, common courts, administrative courts, and military courts to serve on the Council for a joint four-year term, the Sejm should, to the extent possible, take into account the need to ensure representation of judges from different types and levels of courts (Article 9a).

The method for electing members of the NCJ was also changed by granting citizens, in addition to judges, the right to nominate candidates for Council membership. Under Article 11a(2), entities authorized to nominate a candidate for Council membership include a group of at least 2,000 citizens of the Republic of Poland who are at least eighteen years old, have full legal capacity, and enjoy full public rights, as well as a group of at least 25 active judges.

As a result of the amendment, the Marshal of the Sejm is required to announce in the Official Journal of the Republic of Poland, *Monitor Polski*, the commencement of the procedure for nominating candidates for new members of the Council no earlier than 120 days and no later than 90 days before the expiration of the term of office of the current Council members (Article

11a(1)). In addition, within three days of receiving a candidate's nomination, the Marshal of the Sejm must submit a written request to the president of the court having jurisdiction over the nominated candidate. Where the nomination concerns the president of a district court, circuit court, or military garrison court, the request is submitted to the president of the higher court. Where the nomination concerns the president of a court of appeals, provincial administrative court, or military circuit court, the request is submitted to the vice president or deputy president of that court. The request seeks information, to be prepared and submitted within seven days, concerning the candidate's judicial record, including socially significant or precedent-setting rulings and relevant information regarding professional conduct, particularly as revealed during inspections and evaluations (Article 11a(6)).

If the president of the court competent to prepare that information fails to do so within the statutory time limit, the amended provisions allow the candidate judge to prepare the relevant information independently and submit it to the Marshal of the Sejm.

Before the amendment, the provisions of the Act governing the election of the judicial component of the NCJ were reviewed by the Constitutional Tribunal at the initiative of the Prosecutor General. In its judgment of June 20, 2017, case no. K 5/17 (https://trybunal.gov.pl/s/k-517; accessed on May 12, 2026), the Constitutional Tribunal held that the constituent authority had not specified who was to elect those judges. The amendment resolved this issue by introducing the principle that the Sejm would select Council members from among the nominated candidates by a qualified majority of three-fifths of the votes. The purpose of this rule was to ensure that members of the NCJ would be selected not only by the parliamentary majority, but also with the participation of other political groups, so that their selection would result from an agreement among the forces represented in Parliament. If selection could not be made under that procedure, the amendment provided that Council members would be selected by an absolute majority of votes (Article 11d(5) and (6)).

Another significant innovation was the introduction, in Article 20(1), of the obligation to broadcast the proceedings of the NCJ. The amendment also clarified the guidelines to be taken into account when determining the Council's rules of procedure, prioritizing the provision of information on proceedings before the Council, as well as information on candidates and the reasons for submitting a motion to appoint a particular person to judicial office (Article 22(1)(a)).

Another change was introduced by the new wording of Article 35(2), under which, when determining the order of candidates on the list for a judicial or judicial-assessor position, the panel is to be guided primarily by an assessment of the candidates' qualifications. It must also take into account professional experience, including experience in applying legal provisions, academic achievements, opinions of superiors, recommendations, publica-

tions, and other documents attached to the application. Finally, Article 44a was added, imposing on the Council the obligation to submit to the President of the Republic of Poland proposals for the appointment of specific judges, together with a statement of reasons, as well as information on the remaining candidates and an assessment of all candidates. This amendment was intended to enable the President to make an informed decision after reviewing all submitted nominations.

3. Concluding Remarks

The guiding principle behind the establishment of the National Council of the Judiciary was to fulfill the demand for restoring the independence of courts and judges and freeing the judiciary from the influence of the party apparatus. The idea itself was sound, but its implementation proved problematic. Contrary to the claims of First President of the Supreme Court Adam Strzembosz, the judicial community "did not purge itself," and the provisions of the Act on the National Council of the Judiciary were drafted in a manner that gave an advantage in elections to the NCJ to judges connected to the authorities and owing their positions within the judiciary to them. This undoubtedly influenced the personnel decisions made by that body.

Several decades of the NCJ's operation revealed significant flaws, including:

- its corporatist character, which insulated the body from public scrutiny and favored the professional interests of selected judges;
- insufficient representativeness, as the method of selecting members did not adequately reflect the structure of the judiciary and did not guarantee participation by judges from different levels of courts;
- lack of democratic legitimacy, since citizens had no right to participate in the process of selecting members of the judicial component of the NCJ;
- low operational efficiency, reflected in the protracted nature of nomination procedures; and
- lack of transparency in its operations.

These developments necessitated amendments to the Act on the National Council of the Judiciary, which were enacted through the 2017 amendment. The politicized segment of the judicial community characterized those changes as an attack on the Council's independence, resulting in the alleged "loss of its constitutional identity."

Depriving the previous decision-makers of their influence over the filling of judicial offices initiated a process of undermining the effectiveness and correctness of nomination procedures and reducing public confidence in the judiciary. This triggered a protracted constitutional dispute and led to the virtual dismantling of the domestic judicial system, in which the stability of a ruling subject to review – whether on appeal, cassation, or reopening of proceedings – depends largely on the "moral correctness" of the judge, deter-

mined by the date of appointment to judicial office or promotion to a higher court. How this crisis will end remains unknown. Overcoming it will require time, consistency, and the restoration of public trust in the judicial system. What is certain, however, is that without respect for constitutional principles and the independence of courts and judges, it is impossible to build lasting stability in a democratic state governed by the rule of law.

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The Founding Lies of the Judicial Caste: How "Iustitia" and "Themis" Are Taking Over the Courts

On the eve of Christmas Eve, the Polish government adopted draft laws that had been under consideration at the Ministry of Justice for more than a year. The first concerned the status of judges appointed after 2017 by Presidents Andrzej Duda and Karol Nawrocki, while the second concerned the appointment of members of the judicial component of the National Council of the Judiciary. Given their obvious conflict with the Constitution, both bills amount merely to an attempt to satisfy the ambitions of the caste-like elites of the "Iustitia" and "Themis" judges' associations.

Nearly a decade ago, judge Irena Kamińska, the former head of both associations, stated during the Congress of Polish Judges that judges were, in her view, an "extraordinary caste." After December 13, 2023, when political power was assumed by the liberal-left parliamentary majority, the leadership of those associations supported the takeover of management positions within the judiciary. This occurred at every level, from the Minister and Deputy Minister of Justice – Minister of Justice Waldemar Żurek and Deputy Minister of Justice Dariusz Mazur – down to common courts judges, from court presidents dismissed before the end of their terms on the basis of fabricated allegations of involvement in allegedly defective judicial selection procedures to heads of court divisions.

The political ambitions of this group of judges are also reflected in the fact that Adam Bodnar, Minister of Justice from 2023 to 2025, entrusted judge Krystian Markiewicz, until recently president of "Iustitia," with chairing the Codification Committee for the Courts and Prosecution Systems. It was this same judge who became known for stating that the activities of the association he led had brought the slogan "money for the rule of law" onto the European stage. That this amounted to political blackmail was confirmed by the subsequent course of events: after the previous conservative parliamentary majority lost power, not a single comma was changed in the laws challenged by "Iustitia," yet the European Union began disbursing funds to Poland from the National Recovery Plan.

The circles associated with "Iustitia" and "Themis" deny the legitimacy of Polish judges appointed after 2017. Where does this temporal cutoff come from? In December 2017, the Act on the National Council of the Judiciary was

amended. That constitutional body presents judicial candidates to the President for appointment. As a result of the amendment, the so-called judicial component of the National Council of the Judiciary is elected by the Sejm, and the statute was structured so that all political forces, including the opposition, are represented in the appointment process.

This model implements the constitutional principle of a democratic state governed by the rule of law, set forth in Article 2 of the Constitution, by introducing – albeit indirectly – sovereign control (by the people) over the selection of the judiciary. By contrast, until 2018, the selection of judges to the National Council of the Judiciary was oligarchic in nature. The judicial community was insulated from democratic oversight, which not only undermined the rule of law but also conflicted with the democratic process by which the legislative and executive branches are selected. The paradox of history is that, in 2017, the conservative parliamentary majority implemented a proposal originally advanced by Civic Platform, which was then in opposition and is now the ruling liberal-left party. That proposal appeared in Civic Platform's 2005 programmatic document, "A Profound Restructuring of the State," co-authored by Bronisław Komorowski, Ewa Kopacz, Bogdan Zdrojewski, Adam Szejnfeld, and Stanisław Gawłowski.

The bills adopted by the government on December 23, 2025, on the one hand propose a return to an oligarchic method of selecting judges to the National Council of the Judiciary, again removing the judiciary from democratic control by the sovereign. On the other hand, they undermine the President's constitutional prerogative in the judicial appointment process. Under the Constitution, judges are irremovable and may be removed from office only through individualized disciplinary proceedings. Ultimately, President Karol Nawrocki refused to sign, and thus vetoed, the model of oligarchic selection of judges to the National Council of the Judiciary proposed by the executive branch.

Meanwhile, the draft of the second of the aforementioned laws – the so-called "rule of law" act – operates as a general statute that divides judges according to the arbitrary and discriminatory criterion of the date of appointment to judicial office, depending on political caprice. Under the Constitution, neither the legislature, the Minister of Justice, nor even the President himself is authorized to dismiss or remove a judge from office. Yet that is precisely what the so-called "judicial vetting" amounts to – a process questioned even by the Venice Commission, operating within the framework of the European Convention on Human Rights. The actual intention is to remove judges either from the profession altogether (the "red group," consisting of those who entered the judiciary from other legal professions) or from their current positions (the "yellow group," consisting of judges promoted to higher courts after 2017).

An obvious inconsistency, measured by the rules of formal logic, concerns the so-called "green group." These are judges who, upon beginning their train-

ing at the National School of Judiciary and Public Prosecution, allegedly had, according to Waldemar Żurek, no path to judicial office other than through the "politicized" National Council of the Judiciary. This is plainly false. Those who passed the entrance examinations to the judicial school after 2017 – already adults and law-degree holders – knew perfectly well that they would have to proceed before a National Council of the Judiciary shaped in that particular manner. Contrary to the politicized narrative, this group of judges is indeed subject to vetting, but by statute in a positive sense, unlike the red and yellow groups. These three color-coded categories together concern the so-called "neo-judges," a derogatory and extra-legal term.

What remains astonishing is that, according to the Ministry's position, although judicial appointments made after 2017 are supposedly invalid, procedural rulings issued by judges appointed during that period remain valid. As noted above, formal logic has not been a strong suit of either of the two Ministers of Justice serving since December 13, 2023 – Adam Bodnar and Waldemar Żurek – or of Judge Krystian Markiewicz of the aforementioned Codification Commission, since both drafts are his work. It could hardly be otherwise, since the so-called "neo-judges" issued rulings favorable to the personal financial interests of activist judges such as Waldemar Żurek and Piotr Gąciarek, as well as in private matters concerning certain politicians of the ruling coalition, without objection from those circles. In this way, the alliance of the judicial-political elite – Waldemar Żurek, formerly associated with "Themis"; Dariusz Mazur of "Themis"; and Krystian Markiewicz of "Iustitia" – is attempting to destroy the attribute of judicial independence, namely irremovability, by subordinating the judiciary to political power and making judicial tenure dependent on the will of the current or future parliamentary majority. This leads to the dismantling of the separation of powers and toward the realization of the principle of unity of state power, familiar from authoritarian regimes, including Poland's system of government before 1989.

It is therefore impossible not to agree with the view that a cryptodictatorship now prevails in Poland, since the executive branch's attitude toward the judiciary depends not on whether courts uphold the law, but on whether they carry out the will of politicians. For example, the same judge Dariusz Łubowski, praised by Waldemar Żurek for refusing to extradite a Ukrainian diver to Germany in connection with the alleged destruction of a Russian gas pipeline on the Baltic seabed, was publicly denounced by the Minister of Justice after issuing a ruling in the case of opposition politician Marcin Romanowski, in which the European arrest warrant against him was revoked.

The circles associated with the elites of "Iustitia" and "Themis," as well as the politicians who echo their position, are therefore hypocrites. They question public authorities and court rulings only when those authorities and rulings do not align with their own views, and their attitude toward the Constitutional Tribunal completes this picture of hypocrisy. For example, there has been no report of any judge refusing to accept the salary adjustment for

2023 after the Constitutional Tribunal ruled that the "freezing" of judges' salaries by the previous right-wing parliamentary majority was unconstitutional. This has not prevented representatives of the political establishment, some of whom have backgrounds in one or both of the aforementioned associations, from questioning the Polish Constitutional Tribunal.

The elites of "Iustitia" and "Themis" have betrayed their own identity, rooted in their status as Polish public officials and in their oath of office: fidelity to Polish law. They seek and find allies in the European Court of Human Rights and the Court of Justice of the European Union. The decisions of the latter are not sources of law and do not take precedence over the Constitution, as follows from the Constitution itself and from the case law of the Constitutional Tribunal. Meanwhile, both of those courts have for years been undermining the status of Polish courts – though not the status of judges, which many activists from the aforementioned associations unfortunately fail to grasp, thereby demonstrating their ignorance and proving that they have simply not read the statements of their European idols. Moreover, those courts are doing so beyond the scope of their own jurisdiction. Poland has not ceded to the European Union the power to determine the structure of its judiciary, and the Court of Justice of the European Union may rule only within the scope of competences conferred upon the European Union under the international treaties. In turn, the Constitutional Tribunal has denied the European Court of Human Rights the authority to pronounce on the Polish judiciary. Under the Constitution, this competence – the authority to review the constitutionality of international treaties, including the European Convention on Human Rights, under which the European Court of Human Rights was established – is reserved for the Constitutional Tribunal itself.

The height of the hypocrisy of the "Iustitia" and "Themis" circles is their participation in the elections to the National Council of the Judiciary in connection with the expiration, in May 2026, of the term of office of the judicial component of that body. Their challenge to the legality of the Council after 2017, which they had characterized as an extremely politicized body, was effectively abandoned once the conservative government was replaced in 2023 by Donald Tusk's liberal-left government. Although no provision of Polish law governing elections to the National Council of the Judiciary has changed in nearly a decade, the "Iustitia" and "Themis" circles – this time convinced that they would dominate the composition of the Council based on the results of the parliamentary elections of October 15, 2023 – eagerly participated in those elections.

The electoral process for selecting the judicial component of the National Council of the Judiciary for a four-year term consists of two principal stages. The first is the collection of supporting signatures by individual candidates. The second is the election by the Sejm of 15 judges, with the proviso that each parliamentary club, including opposition clubs, should have a person recommended by it on the Council. To be admitted to the second stage of the

procedure, a candidate must obtain the support of at least 2,000 Polish citizens or 25 active judges.

The "Iustitia" and "Themis" associations put forward a list of 15 candidates but sought to deflect accusations of blatant hypocrisy and duplicity. In 2018 and 2022, when a conservative parliamentary majority was in power, they refused to participate in elections to the allegedly politicized National Council of the Judiciary, hence the derisive neologism "neo-NCJ." The institution of "primaries" for the National Council of the Judiciary – unknown to Polish law – was designed to salvage the reputation of the "Iustitia" and "Themis" candidates, whose duplicity in this situation is obvious. Specifically, court presidents in Poland, inspired by the aforementioned judges' associations, convened general assemblies of judges in the courts under their jurisdiction so that the judicial community itself could select preferred candidates by secret ballot. At the same time, the Sejm passed a resolution undertaking to take the results of these unlawful "primaries" into account.

The "primaries" took place in April 2026 under circumstances in which the political authorities promoted exclusively candidates from the "Iustitia" and "Themis" circles. At the same time, the presidents of the appellate courts, who stand at the top of the common-court judiciary, urged judges to vote in official letters sent to them by email. Presidents of common courts – appointees of the politician serving as Minister of Justice – organized judges' assemblies to create the impression not only of high turnout but also of unequivocal support among judges for the "Iustitia" and "Themis" candidates.

As noted, the statutory electoral procedure for registering a candidate requires the support of 2,000 citizens or 25 judges and does not provide for primaries or consultations with judicial self-government bodies, that is, assemblies of judges in individual courts. At this initial stage, the candidates from "Iustitia" and "Themis" obtained the required number of judicial signatures, with judge Dariusz Zawistowski collecting the largest number – 425. Considering the declared membership of the "Iustitia" association, estimated at approximately 3,000 members, this was not an impressive result. This is all the more true because the process of collecting support lasted a full month, during which each candidate from the "Prawnicy dla Polski" Association received no fewer than 20,000 citizen signatures. In total, 310,326 votes were cast for the "Prawnicy dla Polski" Association's list – an unprecedented number in Polish history – together with support from members of the judiciary itself.

In this context, the so-called "primaries" not only lacked any basis in existing law, but were entirely unnecessary, since the candidates running on the "Iustitia" list had easily passed the first round of qualification. The purpose, of course, was not only to "outdo" the result achieved by "Prawnicy dla Polski," but also to create an impression of broad community support in such a way that the Sejm, elected by the votes of millions of Poles, would – as arrogantly demanded by "Iustitia" and "Themis" – merely accept the decision of what is,

after all, a small professional group. Unfortunately, as already emphasized, in its resolution of February 27, 2026, the Polish Sejm, representing the general public – that is, the Sovereign – undertook, without any statutory basis, to take into account the results of the "primaries" conducted in the numerically narrow judicial community.

Shortly after April 20, 2026, the success of "Iustitia" in the so-called "primaries" for the judicial component of the National Council of the Judiciary was widely proclaimed. The claim of massive support for that association's candidates, however, proved to be unfounded.

The so-called "primaries" – which, it bears repeating, were a private poll without any legal basis, organized by two judges' associations – were nevertheless held under the patronage and watchful eye of the political authorities, who were thus implementing another of their infamous "Plan Bs." "Plan B" is a neologism used by Minister of Justice Waldemar Żurek as a euphemism to conceal unlawful actions.

The absurdity of the situation was heightened not only by the fact that assemblies of judges, as self-governing bodies, are by definition intended to safeguard the independence of the courts against encroachments by the executive branch, but also by the fact that the powers of those assemblies are strictly defined in systemic statutes, such as the Act on Common Courts Organization. Plainly, they have no legal standing to participate in the election process for the National Council of the Judiciary. In this way, the judges usurped powers not granted to them by applicable law. This constitutes one manifestation of so-called judicial activism, contrary to the constitutional principle of legality, under which public officials must act within the limits and on the basis of applicable law.

As if that were not enough, some court presidents ordered judges to participate in the assemblies, effectively imposing compulsory voting. Yet no provision of Polish law, including the Constitution, creates an exception to the principle of voluntary participation in elections. Moreover, each voter received not one vote, but as many as 15, which was plainly intended to create the impression of support by thousands of judges for the endorsed candidates. The "Aequitas" Judges' Association pointed out – predictably, as a voice of one crying in the wilderness – that if every citizen had received 460 votes in the October 15, 2023 parliamentary elections, then, with the 35.38% support obtained at that time, the conservative Law and Justice party would have won 100% of the seats in the Sejm. Thus, in terms bordering on the comical, one should note the nearly 52,000 votes cast in this peculiar poll for the "Iustitia" and "Themis" candidates, even though the entire judicial community today numbers only about 9,500 people.

Given the illegality of the so-called "primaries," the "Prawnicy dla Polski" and "Sędziowie RP" associations boycotted them. This, however, did not prevent court presidents from processing the personal data of those organizations' candidates. Even before the vote, the media reported on the opinion

of the Data Protection Officer of the Supreme Administrative Court, who indicated that there was no legal basis for such activity. On the day of the vote, text messages exchanged among "Iustitia" members were disclosed, in which judges were urged to vote only for specific numbers on the ballots. This was widely understood as a clear indication that the association's own candidates were anonymous even within their parent organization. It also showed that the "Iustitia" candidates had failed to achieve recognition, despite the fact that court presidents – by some strange coincidence – had previously organized meetings in public buildings with candidates for the National Council of the Judiciary whom they had arbitrarily selected. Needless to say, candidates from the "Prawnicy dla Polski" and "Sędziowie RP" associations were not offered comparable promotional opportunities. Moreover, as already described, in a letter dated February 26, 2026, nearly all presidents of appellate courts encouraged participation in the primaries, although those primaries had no statutory basis.

Despite these efforts, the results of the poll proved unrepresentative, and turnout – significantly, not disclosed by "Iustitia" – amounted to only about 40%. Based on the published data, the "Sędziowie RP" Association determined that a total of 61,603 votes were cast for all candidates. Since each judge had as many as 15 votes, the obvious conclusion is that only 4,107 judges participated in the poll. Considering that the judicial community, including common courts, administrative courts, the Supreme Administrative Court, and the Supreme Court, consists of approximately 9,500 judges, turnout was 43%. Even within that segment of the judiciary, support for the "Iustitia" and "Themis" candidates was not unanimous. In the aforementioned peculiar "electoral system," 51,942 out of 61,603 votes – 84% – were cast for them. When measured against the total judicial population, this amounts to only 33%.

The conclusions are obvious. The poll was not representative, since not even half of those eligible participated. The level of support for the "Iustitia" and "Themis" candidates, given the boycott of the so-called primaries by a significant part of the judicial community, reflects at most the degree of polarization within the judiciary, interpreted in a manner extremely favorable to those associations. The lack of representativeness is also demonstrated by the fact that no unlawful judicial assemblies were held at all in the Supreme Court, in the administrative courts, including the Supreme Administrative Court, and in some common courts, where simply no one appeared. Even at the Warsaw Circuit Court, Poland's largest court, only about one-third of eligible voters cast ballots.

The background described above also reveals another feature of the judicial community centered around the "Iustitia" and "Themis" candidates. Their supporters could have endorsed those candidates at the first stage of the election, namely during the collection of supporting signatures. That phase lasted as long as 30 days, whereas the "primaries" lasted only about an hour, or at most a few hours. The first stage, however, had one key requirement: the

legally prescribed endorsement list required disclosure of the judge's first name, last name, PESEL number, and place of service. When that information had to be provided, even with a full month available, judges were not eager to provide mass support for "Iustitia" candidates. Dariusz Zawistowski collected the largest number of signatures: a mere 425. It was only anonymous voting in the unlawful "primaries," despite lasting many times less than the statutory first stage of securing support from the judicial community and citizens, that motivated an already unrepresentative portion of the judiciary to approve the lists of "Iustitia" and "Themis."

This type of opportunism – which is, of course, a mild synonym for the opposite of courage – is an obvious consequence of the attitude taken by "Iustitia" and "Themis" toward judges who ran in the elections to the National Council of the Judiciary in 2018 and 2022, as well as toward those who supported candidates at that time. Not only that: disciplinary proceedings against those judges have been announced, and attempts are being made to initiate them. The absurdity is compounded by the fact that judge Wojciech Buchajczuk, currently running in the elections to the National Council of the Judiciary with the support of "Iustitia," filed a report two years ago alleging that candidates in the previous elections had committed a crime. According to judge Buchajczuk's report, mere participation in the elections provided for by law was supposedly criminal at that time. Although the electoral procedure has not changed in nearly a decade, judge Buchajczuk does not appear to feel any dissonance about the fact that he is now participating in the very competition he once characterized as criminal.

By contrast, judges organized in the "Prawnicy dla Polski" and "Sędziowie RP" associations obtained support not only from members of their own professional community, but above all from citizens. In total, more than half a million votes were cast for the candidates of both associations, with each vote including the supporter's full identifying information, including first name, last name, PESEL number, and place of residence.

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The Ruling Class's Ignorance of the Law: The Defective Election of Constitutional Tribunal Judges

1. The Tribunal as a Constitutional Body of the State

The Constitutional Tribunal is a constitutional body of the judiciary. Its powers are defined by the Constitution and by statute. The Constitutional Tribunal adjudicates matters concerning the constitutionality of statutes and international treaties; the conformity of statutes with ratified international treaties whose ratification required prior statutory consent; the conformity of legal regulations issued by central state authorities with the Constitution, ratified international treaties, and statutes; the constitutionality of the purposes or activities of political parties; and constitutional complaints. It also decides whether the President is temporarily unable to perform his duties where the President is unable to notify the Marshal of the Sejm of that fact, and resolves jurisdictional disputes between central constitutional bodies of the state (see B. Naleziński, *Konstytucja Rzeczypospolitej Polskiej. Komentarz, wyd. II*, ed. P. Tuleja, Warsaw: Wolters Kluwer, 2023, Article 188).

The Constitutional Tribunal consists of 15 judges, elected individually by the Sejm for nine-year terms from among persons distinguished by their legal knowledge. Re-election to the Tribunal is not permitted (Article 194(1) of the Constitution of the Republic of Poland).

2. The December 13 Coalition's War Against the Tribunal

The current government stubbornly maintains that, since 2015, the Constitutional Tribunal has lost its character as a constitutional body of the state because its composition allegedly includes three judges elected in a defective manner to seats that had already been filled. For that reason, the Constitutional Tribunal is said to be "subordinated to political interests," which has resulted in "the institution's inability to fulfil its constitutional role as the guardian of the Constitution's supremacy, the principles of democratic rule of law, and the protection of individual freedoms and rights" (Letter of the Minister of Justice of Poland to the Venice Commission, December 2, 2024, www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2024)035-e.)

Consequently, the government has taken a series of measures against the Constitutional Tribunal that impede its normal functioning. In addition to restricting the Constitutional Tribunal's funding (see K. Wytrykowski, *"Starving" the Constitutional Tribunal* https://doi.org/10.63189/UENI8997) and suspending the publication of the Tribunal's rulings (see Order of the President of the Constitutional Tribunal of November 28, 2024, on the publication of judgments on the website, www.trybunal.gov.pl/wiadomosci/uroczystosci-spotkania-wyklady/art/zarzadzenie-prezesa-trybunalu-konstytucyjnego-z-dnia-28-listopada-2024-r-o-publikacji-orzeczen-na-stronie-internetowej; K. Wytrykowski, "What's Next with the Constitutional Tribunal?", https://doi.org/10.63189/KRHX7992), the government has also pursued a policy of leaving vacant judicial seats on the Tribunal unfilled. As of early March 2026, six of the 15 positions on the Constitutional Tribunal remained vacant.

To date, the current parliamentary majority has already decided four times not to nominate its own candidates for successively vacated Constitutional Tribunal judicial seats, and has then rejected, in votes held on February 21, 2025, May 9, 2025, September 12, 2025, and January 23, 2026, the candidates nominated by the opposition (obserwator-praworzadnosci.pl/pl/sejm-wybral-sedziow-do-tk-z-naruszeniem-regulaminu-sejmu/).

3. The 2026 Selection of Constitutional Tribunal Judges: A Farce of Errors and Irregularities

On March 9, 2026, the Marshal of the Sejm set March 11, 2026, as the deadline for the next round of nominations for judges of the Constitutional Tribunal. This meant that entities authorized to submit nominations had only two days to do so. The very next day, March 12, the Sejm Committee on Justice and Human Rights held a meeting to review all nominations. In organizing the Committee meeting, the participation of civil society actors was restricted. First, representatives of civil society organizations were informed that they would not be permitted to take part in the Committee's deliberations, in violation of both the Rules of Procedure of the Sejm and established best practices. It came as a complete surprise when, 41 minutes (!) before the Committee meeting began, an announcement was made approving the participation of representatives of those organizations. This effectively prevented them from reaching the meeting in time. Ultimately, of the eight candidates nominated, the Committee issued a positive opinion on seven (www.obserwator-praworzadnosci.pl/pl/sejm-wybral-sedziow-do-tk-z-naruszeniem-regulaminu-sejmu/).

The very next day, on March 13, 2026, the Sejm proceeded to vote on the nominations for judges of the Constitutional Tribunal. The vote was preceded by a report from the Committee Chair, MP Paweł Śliz, who informed members that only the candidates nominated by the governing majority – Magdalena Bentkowska, Marcin Dziurda, Anna Korwin-Piotrowska, Krystian Markiewicz, Dariusz Szostek, and Maciej Taborowski – had received a positive recommen-

dation. The rapporteur failed to mention the apolitical citizen candidate, Dr. Michał Skwarzyński, who had also received a positive opinion from the Committee (Parliamentary Print No. 2349, https://orka.sejm.gov.pl/Druki10ka.nsf/0/AE2817772AFDD6F4C1258DB800768F3E/%24File/2349.pdf, https://wpolityce.pl/polityka/755578-mec-skwarzynski-chca-wlozyc-politykow-w-togach-do-tk).

The Sejm elected the following individuals, nominated by the governing majority, as judges of the Constitutional Tribunal: Magdalena Bentkowska, Marcin Dziurda, Anna Korwin-Piotrowska, Krystian Markiewicz, Dariusz Szostek, and Maciej Taborowski.

The vote was conducted en bloc, without individual voting and without specifying which seat – that is, which vacancy left by a particular Constitutional Tribunal judge – each candidate was to fill.

It is widely believed that the selection of Constitutional Tribunal judges in this manner constituted a flagrant violation of the legal order of the Republic of Poland. The rules governing the selection of judges, as set forth in the Rules of Procedure of the Sejm, were violated.

Pursuant to Article 30(3)(1) of the Rules of Procedure, motions nominating a specific candidate must be submitted no later than 30 days before the expiration of the term of the judge vacating the seat on the Tribunal. Under Article 30(4) of the Rules of Procedure, a vote on the election of a Constitutional Tribunal judge *may not take place earlier than the seventh day after the list of candidates has been delivered to members of the Sejm, unless the Sejm decides otherwise*.

This provision means that, in order to shorten the applicable deadlines, the Sejm must adopt an appropriate resolution. On March 13, 2026, the vote on the election of Constitutional Tribunal judges took place one day after the candidate lists were delivered to members of the Sejm and without any prior decision by the Sejm to shorten the period referred to in Article 30(4) of the Rules of Procedure.

There is also the issue of how the presentation of incomplete information to members of the Sejm regarding the Committee's work – and the omission of key elements of the Committee's position, particularly its positive opinion on the candidacy of Dr. Michał Skwarzyński – affected the outcome of the vote. There is no doubt that this misled members of Parliament. It must be emphasized that the vote in the Sejm took place the very next day after the Committee issued its opinion, after the Committee had concluded its work very late, leaving members with no opportunity to review the Committee's written report before the vote. It has also been noted that the terms of Constitutional Tribunal judges are individual in nature and, therefore, their selection should likewise be individual. The Sejm's failure to fulfill its obligation to elect judges within the timeframes specified in its Rules of Procedure – timeframes tied to the expiration of the terms of previously serving Constitutional Tribunal judges – means that the election is invalid and legally defective (*Konstytucjonali-*

sta upokorzył Żurka, Radio WNET, March 17, 2026; https://t.co/X5pDpx894E). It is no coincidence that the Constitution defines the terms of Constitutional Tribunal judges as individual. This implies an obligation to replenish the Tribunal's composition on an ongoing basis as individual judges' terms expire. Leaving vacancies unfilled without an intention to elect judges to those seats means that, in the event of a mass election such as the one held on March 13, 2026, the joint election for six vacant Constitutional Tribunal seats should have included opposition candidates. The constitutional principle that the election is conducted by a unicameral body – the Sejm – means that the Constitutional Tribunal must correspond to the composition of the Sejm; every political faction represented in the Sejm, and therefore every citizen, should have representation in the event of a mass election.

Furthermore, the Constitution requires that Constitutional Tribunal judges be selected from among persons distinguished by their legal knowledge. Yet among the selected candidates, there were no individuals distinguished by academic standing: not a single professor of law, and not even a lawyer specializing in constitutional law. Nor were there individuals distinguished by judicial or professional achievements, as there was not a single Supreme Court judge or Supreme Administrative Court judge among them. There was not even a single appellate court judge. Instead, the selected Constitutional Tribunal judges included individuals who had worked closely with the executive branch, including as many as three members of codification commissions appointed and generously compensated by the executive branch. Among them was the chair of the Codification Committee for the Courts and Prosecution Systems, which became notorious for producing draft legislation plainly contrary to the Constitution and the European Convention on Human Rights – a fact emphasized even by the strongly left-leaning Venice Commission in its opinion of October 11–12, 2024 (Poland – Joint Opinion of the Venice Commission and the Directorate General Human Rights and Rule of Law on European standards regulating the status of judges; www.coe.int/en/web/venice-commission/-/opinion-1206).

Finally, leaders of judges' associations – who for years had engaged in activities resembling those of a trade union or political party, expressly prohibited for judges by the Constitution – were appointed as judges of the Constitutional Tribunal.

The lack of transparency in the candidate selection procedure is also notable, particularly the failure to hold hearings before the Sejm, which should have taken place especially where more candidates received a positive opinion from the Justice Committee than there were vacancies.

It is therefore reasonable to ask what effect the described violations of the rules and procedures governing the selection of Constitutional Tribunal judges have on the validity of the election.

Some argue that these serious errors constituted violations of legal procedure and invalidated the elections (https://niezalezna.pl/polska/szereg-nie-

prawidlowosci-w-wyborze-sedziow-trybunalu-konstytucyjnego-glos-zabrali-prokuratorzy/565828). Others point out that, although the practice of the government majority does not deserve praise from the standpoint of sound parliamentary practice, it would be difficult to argue that it invalidated the election of Constitutional Tribunal judges (Six vacancies and an accelerated procedure – legal doubts regarding the election of Constitutional Tribunal judges – the opinion by the Institute for Legal Culture Foundation Ordo Iuris, www.ordoiuris.pl/analiza/szesc-wakatow-i-przyspieszona-procedura-prawne-watpliwosci-w-sprawie-wyboru-sedziow-tk/#sdfootnote46anc).

4. The Consequences of Playing Fast and Loose with the Law

Importantly, while Polish law provides that the Sejm elects judges of the Constitutional Tribunal, the relevant legal framework provides that a person becomes a judge of the Constitutional Tribunal only after three conditions are satisfied: the candidate is elected by the Sejm, takes the oath before the President of the Republic of Poland, and then immediately appears before the Tribunal to assume judicial duties.

Persons elected by the Sejm remain candidates for the office of judge of the Constitutional Tribunal. They are then presented to the President and take the oath before him. The President may, however, refuse to accept the oath. As guardian of the Constitution, the President has the right to deliberate on the selected candidates for judges of the Constitutional Tribunal; he may examine and evaluate them.

Neither the Constitution nor any statute specifies a deadline by which the President must accept the oath (https://wpolityce.pl/polityka/755516-prof-pawlowicz-opisuje-procedure-powolywania-sedziow-tk). Accordingly, the President is entitled to refuse to administer the oath to a person elected by the Sejm to the office of judge of the Constitutional Tribunal. He must take into account not only the course of the entire Sejm selection procedure, but also – and above all, as the highest representative of the Republic of Poland, charged with ensuring observance of the Constitution under Article 126(1)–(2) – his duty to ensure that candidates for the office of judge of the Constitutional Tribunal satisfy the constitutional and statutory requirements for that office. In addition to requirements concerning education, age, and professional experience, one such requirement is impeccable character. That requirement may be open to serious doubt in the case of certain candidates who have been publicly accused of domestic violence and of being subject to the "Blue Card" procedure (https://dorzeczy.pl/kraj/862114/muszynski-damski-bokser-w-tk.html).

The President's authority to refuse to accept the oath from a person elected by the Sejm to the office of judge of the Constitutional Tribunal has been confirmed in the case law of the Constitutional Tribunal (judgment of 3 December 2015, K 34/15, OTK-A 2015, no. 11, item 185; https://trybunal.gov.

pl/s/k-3415). In that judgment, the Constitutional Tribunal held that the President has the right to withhold acceptance of the oath from a person elected as a Constitutional Tribunal judge until serious doubts are resolved; that, until the oath is taken, a person elected as a judge of the Constitutional Tribunal is not yet a judge, but only a person elected to that office; and that the oath may be taken only before the President.

The Constitutional Tribunal held that, in exceptional circumstances, situations may arise that objectively require the President to protect a higher value than the immediate fulfillment of the duty to administer the oath. Every person exercising public authority, in performing the duties entrusted to him, is obligated to independently assess the legality of his own actions (www.wpolityce.pl/polityka/755742-piotrowski-odmowa-przyjecia-slubowania-aktem-sprawowania-urzedu).

It must also be emphasized that, in its judgment of May 12, 2026, the Constitutional Tribunal clearly stated that no statutory provision may oblige the President of the Republic of Poland to administer the oath to a person elected by the Sejm of the Republic of Poland as a judge of the Constitutional Tribunal (www.trybunal.gov.pl/postepowanie-i-orzeczenia/wyroki/art/zasady-i-tryb-wyboru-sedziego-trybunalu-konstytucyjnego-3).

The Office of the President sent two letters on this matter to the Marshal of the Sejm, stating that "an analysis of the appointment process raises very serious doubts" due to the failure to meet the deadline for submitting nominations and "a violation of procedural integrity standards by failing to present one of the nominated candidates to the members of the Sejm." The Office of the President requested detailed information from the Marshal of the Sejm.

The response provided by the Chancellery of the Sejm did not dispel the President's fundamental constitutional concerns. In a subsequent letter, the Office of the President characterized that response as avoiding the substance of the matter. It again requested clarification on two fundamental issues: the lack of individual terms for judges of the Constitutional Tribunal and the Sejm's failure to act in a timely manner to fill vacant seats on the Tribunal. In the view of the Office of the President, this may indicate that the government and the parliamentary majority are paralyzing the work of the Constitutional Tribunal and "intentionally destroying this constitutional body" (www.niezalezna.pl/polityka/kazde-z-tych-uchybien-wymaga-pilnego-wyjasnienia-prezydent-pyta-czarzastego-o-wybor-sedziow-tk/566125; www.x.com/BoguckiZbigniew/status/2036112127065268386)

In this context, the question arises as to the real purpose behind the rushed selection of judges (https://www.tysol.pl/a155378-ekspert-skad-ten-pospiech-w-parlamentarnej-procedurze-wyboru-sedziow-do-krs; https://t.co/X5pDpx894E). Is it truly about the declared "restoration of the rule of law," or rather about taking control of the entire state, including bodies that had previously remained independent of the government?

In this context, it is important to recall the Venice Commission's thesis that restoring the rule of law means rejecting the source of its decline: the idea that the winner takes all, and that the majority may govern while disregarding the rights and legitimate aspirations of minorities (1203/2024 – Poland – opinion on the draft constitutional amendments concerning the Constitutional Tribunal and two laws on the Constitutional Tribunal; www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2024)035-e).

Piotr Schab
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Disciplinary Spokesman for the Judges of Common Courts)

State Repression Against Sławomir Cenckiewicz, 2024–2026

1. Introduction

Sławomir Cenckiewicz is a historian, publicist, and habilitated doctor of the humanities.

His scholarly work focuses on the history of the Polish intelligence and security services from 1944 to the present, as well as their impact on society, the economy, and the Polish state after 1944. He also studies the recent history of Poles outside Poland, including Polish political emigration, the Polish diaspora in the United States, and the history of the anti-communist opposition during the Polish People's Republic. He is the author of approximately 200 scholarly publications and numerous books, including a widely discussed and controversial biography of Lech Wałęsa. He is also a co-author of the documentary series *Reset*, which aired in 17 episodes beginning in June 2023. Based on declassified diplomatic and archival documents, the series offered a detailed analysis of Polish foreign policy from 2007 to 2015, focusing on the diplomatic and economic relations between the PO-PSL government and the Russian Federation. Sławomir Cenckiewicz was responsible for the substantive analysis of archival documents and participated in interviews with experts.

In 2006, he chaired the Liquidation Commission of the Military Information Services and later served as an adviser to the head of the Military Counterintelligence Service.

From 2016 to 2023, he served as director of the Military Historical Office. From 2016 to 2021, he was a member of the Board of the Institute of National Remembrance, and he subsequently served as the Adviser on Scientific Affairs to the President of the Institute of National Remembrance.

On August 30, 2023, he became head of the State Commission for the Investigation of Russian Influence on the Internal Security of the Republic of Poland in the years 2007–2022. The Commission's principal task was to conduct investigations aimed at clarifying the activities of individuals who, between 2007 and 2022, served as public officials or senior management personnel and who, under Russian influence, acted to the detriment of the interests of the Republic of Poland. He was dismissed by the current ruling coalition on November 29, 2023.

From August 7, 2025, to April 23, 2026, he served as head of the National Security Bureau.

On March 12, 2026, he became chairman of the newly established Security and Defense Council under the President of the Republic of Poland. The Council's tasks include, among other things, preparing opinions and expert reports for the President, identifying threats to the interests of the Republic of Poland in the areas of security and defense, and reviewing and analyzing legislative solutions concerning security and defense matters.

His investigations into Russian influence between 2007 and 2014 – especially as they concerned certain politicians, including members of the ruling coalition formed after the 2023 elections – made him politically inconvenient to the current authorities. The same was true of the findings of the State Commission for the Investigation of Russian Influence on the Internal Security of the Republic of Poland in 2007–2022, his role in dissolving the Military Information Services, his archival research for the *Reset* documentary, and his findings concerning Lech Wałęsa's activity as an agent. Taken together, these factors prompted state authorities, acting under the influence of the current political leadership, to undertake repressive and retaliatory measures against him. Those actions, centered on a media smear campaign – particularly by liberal circles and the current government – the revocation of his access to classified information, and consequently his dismissal as head of the National Security Bureau, as well as the initiation of criminal proceedings, in reality concern a broader conflict: the disclosure of an unwelcome truth about the policies pursued at the time and the actual influence of the intelligence and security services on state institutions.

2. The "Bolek" Case

The conflict between Sławomir Cenckiewicz and politicians from the current ruling coalition, who come from liberal circles, as well as Lech Wałęsa, who is associated with those circles, arose from Cenckiewicz's findings concerning Wałęsa's relations with the Security Service. Those findings sparked public debate over the former president's past. The first of these works was an academic monograph published in 2008, *SB a Lech Wałęsa. Przyczynek do biografii* [*The Security Service and Lech Wałęsa: A Contribution to His Biography*], which provided a detailed analysis of Security Service documents and Wałęsa's relations with the security organs of the Polish People's Republic between 1970 and 1976. This was followed, in the same year, by a popular scholarly expansion and supplement to the monograph's conclusions, titled *Sprawa Lecha Wałęsy* [*The Case of Lech Wałęsa*].

Another relevant work is *Wałęsa. Człowiek z teczki* [*Wałęsa: The Man in the File*] – a journalistic and historical publication offering a comprehensive account of Lech Wałęsa's cooperation with the Security Service under the pseudonym "Bolek."

The subject of Lech Wałęsa and the activities of the communist secret services against the opposition also appears regularly in other books by Sławomir Cenckiewicz, including *Oczami bezpieki. Szkice i materiały z dziejów aparatu bezpieczeństwa PRL* [*Through the Eyes of the Security Service: Sketches and Materials from the History of the Security Apparatus of the Polish People's Republic*], as well as in numerous scholarly and journalistic articles.

Lech Wałęsa's repeated public claims that Sławomir Cenckiewicz had allegedly falsified documents concerning a secret collaborator of the Security Service operating under the pseudonym "Bolek" formed the basis for a lawsuit filed against the former president for protection of personal rights. The first judgment favorable to Cenckiewicz was issued by the Warsaw Circuit Court on September 24, 2021, in case no. III C 849/19. Subsequently, on May 14, 2025, the Warsaw Court of Appeals issued a final judgment ordering Lech Wałęsa to cease publicly stating or publishing information implying that Cenckiewicz had forged documents, and to publish a statement apologizing to him for disseminating false information that damaged his reputation – namely, the allegation that he had forged documents concerning a secret collaborator of the Security Service of the Polish People's Republic operating under the pseudonym "Bolek," which were held by the Institute of National Remembrance.

The court found that Lech Wałęsa's fault was flagrant and that his conduct was persistent, intense, malicious, and determined. The court also held that accusing a historian of falsifying historical documents could disqualify and discredit him in the academic sphere.

This ruling therefore confirmed the integrity of Cenckiewicz's work as a historian investigating the activities of the secret police during the Polish People's Republic and rejected the accusation of alleged document forgery.

The publication of historical research and the analysis of archival files sparked a broader public discussion about the mechanisms of the communist apparatus of repression, while at the same time shattering the myth of Lech Wałęsa as an impeccable figure.

3. Revocation of Security Clearances

By a decision later deemed unfounded by the Supreme Administrative Court, the head of the Military Counterintelligence Service, General Jarosław Stróżyk, revoked Sławomir Cenckiewicz's security clearances on July 30, 2024 (decision no. 1626/ZV/S/2024). The revoked clearances covered access to classified information bearing the following classifications: 1) "ESA CONFIDENTIAL", 2) "CONFIDENTIEL UE/EU CONFIDENTIAL", 3) "NATO CONFIDENTIAL", 4) "POUFNE", 5) "ESA TOP SECRET", "ESA SECRET", "ESA CONFIDENTIAL", 6) "TRES SECRET UE/EU TOP SECRET", "SECRET UE/EU SECRET", "CONFIDENTIEL UE/EU CONFIDENTIAL", 7) "COSMIC TOP SECRET ATOMAL", "NATO SECRET ATOMAL", "NATO CONFIDENTIAL ATOMAL", 8) "ŚCIŚLE

TAJNE", "TAJNE", "POUFNE". The revocation thus covered access to classified information at the highest national levels and within the international systems of the European Union, NATO, and the European Space Agency.

The public justifications for the revocation decisions contained particularly sensitive data that had not been classified, including extensive and detailed information concerning Cenckiewicz's medical history, prescribed medications, and prescription records, including the addresses of medical facilities and pharmacies. As early as August 2024, some of this information was leaked, including on the social media platform X.

Prime Minister Donald Tusk, by decisions numbered 198/2024, 196/2024, 195/2024, 194/2024, 193/2024, 192/2024, 191/2024, and 190/2024, upheld the decisions of the head of the Military Counterintelligence Service.

Sławomir Cenckiewicz appealed those decisions to the Provincial Administrative Court in Warsaw, which, on June 17, 2025, heard the appeals concerning all revoked security clearances in cases numbered II SA/Wa 153/25, II SA/Wa 154/25, II SA/Wa 155/25, II SA/Wa 156/25, II SA/Wa 157/25, II SA/Wa 158/25, II SA/Wa 159/25, and II SA/Wa 152/25. The court overturned the decisions of the Prime Minister and the decisions of Jarosław Stróżyk and the Military Counterintelligence Service, finding that the clearances had been revoked unlawfully.

By judgment dated April 15, 2026, in case no. III OSK 1694/25, the Supreme Administrative Court dismissed the Prime Minister's cassation appeals against the June 17, 2025 judgments of the Provincial Administrative Court in Warsaw in the above-referenced cases.

Despite that favorable final ruling, both the Head of the Military Counterintelligence Service and representatives of the current government took the position that the judgment did not restore Sławomir Cenckiewicz's security clearances, stating that the Military Counterintelligence Service would once again address the procedure concerning the Head of the National Security Bureau's security clearance by conducting a further review.

This action by state authorities effectively prevented the Head of the National Security Bureau from performing his duties by blocking his access to classified information. As a result, on April 22, 2026, Sławomir Cenckiewicz submitted his resignation from the position of Secretary of State and Head of the National Security Bureau.

4. Media Attacks and the Disclosure of Sensitive Medical Data

The uncompromising nature of Sławomir Cenckiewicz's historical research was widely contested by media outlets sympathetic to politicians linked to the current ruling camp, primarily *Gazeta Wyborcza* and the Onet.pl portal. This concerned, in particular, his analysis of the government's foreign policy from 2007 to 2015, with special emphasis on the attempted "reset" and diplomatic rapprochement with the Russian Federation; relations between

the Military Counterintelligence Service (SKW) and Russia's FSB; the government's actions following the Smolensk disaster; and the public offices held by Cenckiewicz.

Gazeta Wyborcza regularly published articles featuring Sławomir Cenckiewicz, addressing his political and historical activity. The revocation of his security clearances received particularly extensive coverage.

On December 19, 2024, Onet.pl published an article titled "Sławomir Cenckiewicz skłamał w ankiecie bezpieczeństwa? Znalazł się na celowniku służb" ["Did Sławomir Cenckiewicz Lie in the Security Questionnaire? He's in the Crosshairs of the Intelligence Services"]. Citing military counterintelligence sources, the author claimed that Cenckiewicz had lied in the security questionnaire out of fear that disclosure of certain facts might expose him to "shame" and "embarrassment," and that, "according to military intelligence and the special services coordinator acting on behalf of the Prime Minister, Cenckiewicz had withheld important information about his personal life."

On December 15, 2025, two further articles appeared on the *Gazeta Wyborcza* website: "Tajne leki szefa BBN. Co brał Cenckiewicz?" ["The National Security Bureau Chief's Secret Medications. What Was Cenckiewicz Taking?"] and "Leki szefa BBN. Wiemy, co w ankiecie bezpieczeństwa zataił Sławomir Cenckiewicz" ["The National Security Bureau Chief's Medications. We Know What Sławomir Cenckiewicz Concealed in the Security Questionnaire"]. In those articles, the author relied on data obtained by the SKW, including the content of the personal security questionnaire and medical records, and claimed that Cenckiewicz had concealed in the questionnaire his use of two medications affecting the nervous system and consultations with a specialist. This indicated that the information had been leaked from the services directly to media outlets hostile to him, with the clear purpose of discrediting him in the eyes of the public.

Following Cenckiewicz's filing of a lawsuit for protection of personal rights, on March 19, 2026, the Warsaw Circuit Court issued an order requiring the editorial staff of *Gazeta Wyborcza* to anonymize all passages containing the author's statements or suggestions that the plaintiff had concealed health information in a personal security questionnaire and had lied publicly about the matter. The order also required anonymization of all passages containing data and information concerning or relating to the plaintiff's health, medical consultations, healthcare services received, the nature of the conditions treated, the duration of treatment, prescriptions issued, and the type and description of prescribed medications contained in the articles. The court also prohibited the newspaper, for a period of one year, from publishing articles or other content containing such information.

At the same time, Sławomir Cenckiewicz filed private criminal complaints against the journalists under Article 212 § 2 of the Criminal Code, concerning the offense of defamation.

In addition, based on his report of suspected criminal conduct, the Regional Prosecutor's Office in Warsaw initiated an investigation on March 11, 2026, concerning:

1. abuse of authority between April 2024 and July 30, 2024, in Warsaw, by a public official – the Director of the Military Counterintelligence Service – under the Act of August 5, 2010, on the Protection of Classified Information, and the Act of June 9, 2006, on the Military Counterintelligence Service and the Military Intelligence Service, by obtaining, for purposes of an expanded background investigation conducted against Sławomir Cenckiewicz, data concerning his health, including medical records, and by evaluating such data, thereby acting to the detriment of the public interest and the private interest of Sławomir Cenckiewicz – an act under Article 231 § 1 of the Criminal Code;
2. failure, on July 30, 2024, in Warsaw, by a public official – the Director of the Military Counterintelligence Service – to fulfill obligations under the Act of August 5, 2010, on the Protection of Classified Information, and the Act of June 9, 2006, on the Military Counterintelligence Service and the Military Intelligence Service, to protect classified information marked "confidential" concerning Sławomir Cenckiewicz's health condition, submitted to the Military Counterintelligence Service in 2021, as well as data concerning his health obtained during an expanded background check, resulting in the disclosure of such data through its inclusion in the public justifications of eight decisions dated July 30, 2024, revoking security clearances, which subsequently led to its disclosure by an unidentified person to an unauthorized person without the victim's consent, thereby acting to the detriment of the public interest and the private interest of Sławomir Cenckiewicz – an act under Article 231 § 1 of the Criminal Code in conjunction with Article 266 § 2 of the Criminal Code and Article 11 § 2 of the Criminal Code;
3. unauthorized disclosure of information, contrary to statute, on an unspecified date in October 2025 in Warsaw, by an unidentified person who had obtained the information in connection with his or her work. The information was subject to protection as classified information marked "confidential" and derived from a personal security questionnaire submitted to the Military Counterintelligence Service in 2021 by Sławomir Cenckiewicz, as well as data concerning his health condition collected in the files of an expanded vetting procedure, thereby acting to the detriment of the public interest and the private interest of Sławomir Cenckiewicz – an act under Article 266 § 1 of the Criminal Code;
4. incitement, in October 2025 in Warsaw, to disclose information protected as classified information marked "confidential," derived from the personal security questionnaire submitted by Sławomir Cenckiewicz while serving in the Military Counterintelligence Service in 2021, and data concerning his health condition collected in the files of the

expanded vetting procedure, followed by the receipt from an unidentified person of data concerning Cenckiewicz's health, with knowledge that the information originated from the files of the vetting procedure conducted by the Military Counterintelligence Service, thereby acting to the detriment of the public interest and the private interest of Sławomir Cenckiewicz – an offense under Article 18 § 2 of the Criminal Code in conjunction with Article 266 § 1 of the Criminal Code; and

5. publication and dissemination, without Sławomir Cenckiewicz's consent, of information concerning his health condition on December 15, 2025, in Warsaw, by identified individuals in the *Gazeta Wyborcza* article titled "Tajne leki szefa BBN. Co brał Cenckiewicz?" No. 290/2025, and in the article on the Wyborcza.pl website titled "Leki szefa BBN. Wiemy, co w ankiecie bezpieczeństwa zataił Sławomir Cenckiewicz" – an offense under Article 49 of the Act of January 26, 1984, Press Law, in conjunction with Article 14(1) of that Act.

5. Criminal Proceedings

In September 2023, the then Minister of National Defense removed the "Top Secret" and "Secret" classifications from portions of strategic-level operational planning documents, including, among others, the *Plan for the Use of the Armed Forces of the Republic of Poland WARTA-00101 Independent Defense Operation – Main Part*. In the event of an invasion by the Russian Federation, that plan outlined a concept for Poland's defense along the Vistula River. These excerpts were subsequently used by Sławomir Cenckiewicz in an episode of the documentary series *Reset*. Approximately 10 months after the episode aired, in August 2024, the Head of the Military Counterintelligence Service, General Jarosław Stróżyk, filed a report alleging that the former Minister of National Defense had committed a crime.

The investigation was initiated and conducted by Prosecutor Marcin Maksjan of the Circuit Prosecutor's Office in Warsaw. On May 8, 2025, he charged Sławomir Cenckiewicz with offenses under Article 231 § 2 of the Criminal Code and Article 18 § 3 of the Criminal Code in conjunction with Article 231 § 2 of the Criminal Code, in conjunction with Article 265 § 1 of the Criminal Code, Article 11 § 2 of the Criminal Code, and Article 12 § 1 of the Criminal Code. The alleged conduct consisted of the fact that, as Director of the Military Historical Office, Cenckiewicz gave written consent to an authorization signed by the Director of the Department of Strategy and Defense Planning of the Ministry of National Defense for two officers from that Department to access strategic-level operational planning documents classified as "Secret" and "Top Secret," held in the archives of the Military Historical Office, including the *Plan for the Use of the Armed Forces of the Republic of Poland*. He then used excerpts from strategic-level operational planning documents – selected and subsequently declassified by the Minister of Na-

tional Defense – to record an episode of *Reset*, in which he published scans of those documents.

It is significant that the background and objectives of the investigation, and even the presentation of charges, were described in the *Gazeta Wyborcza* article "Operacja Linia Wisły" ["Operation Vistula Line"] already on February 7, 2025 – three months before the formal decision to present charges on May 8, 2025.

On August 22, 2025, Prosecutor Marcin Maksjan filed an indictment with the court.

Sławomir Cenckiewicz did not admit to committing the act charged. At the same time, on July 14, 2025, he filed a report alleging that the prosecutor conducting the criminal proceedings, Marcin Maksjan, may have committed the offense of abuse of authority under Article 231 § 1 of the Criminal Code by, among other things, presenting charges concerning the declassification of excerpts from operational planning documents despite the fact that those charges were entirely devoid of factual and legal basis. Subsequently, in August 2025, he filed another report with the Internal Security Agency against Prosecutor Maksjan concerning the questioning of one of the witnesses in the case without prior authorization for release from state secrecy by the Minister of National Defense and the President of the Supreme Audit Office.

On March 18, 2026, the Internal Security Agency filed a report with the prosecutor's office concerning Sławomir Cenckiewicz's participation in a meeting of the National Security Council on February 11, 2026, as a person allegedly lacking access to classified information. Yet, as Head of the National Security Bureau, he had been admitted to the Council's classified deliberations by decision of the Head of the President's Office, Zbigniew Bogucki, and had additionally been authorized to access information classified as "Restricted," which was in effect during the National Security Council meeting. Among other matters, media reports concerning the Marshal of the Sejm's business and social contacts in the East were discussed at that meeting.

It is worth noting the identity of the prosecutor handling the case against Cenckiewicz. Prosecutor Marcin Maksjan, who until recently held the rank of major and is now a lieutenant colonel, is an active member of the Lex Super Omnia Prosecutors' Association, known for its sharp criticism of the previous political leadership. He is the author of a public statement posted on the Association's website in which he complains about the actions of politicians from the then-ruling camp. It is impossible to overlook the fact that Prosecutor Maksjan's father served during the communist period in a military unit that was later assessed by the Military Historical Office under Professor Sławomir Cenckiewicz; on the basis of that assessment, soldiers from that unit were required to state in their lustration declarations that they had served in the security apparatus of the Polish People's Republic. Moreover, Cenckiewicz was involved in the dissolution of the Military Information Services, in which the prosecutor's father also served.

Prosecutor Marcin Maksjan's promotion from major to lieutenant colonel took place on December 6, 2024, during the pendency of this case. On August 29, 2025 – one week after he filed the indictment with the court concerning, among others, Sławomir Cenckiewicz – Marcin Maksjan was assigned to the National Prosecutor's Office by Dariusz Korneluk, who was unlawfully acting as National Prosecutor.

Anna Gąsior-Majchrowska
(judge of the Circuit Court in Piotrków Trybunalski)

The Dispute Over the Taking of the Oath by Constitutional Tribunal Judges-Elect: Reactions to President Karol Nawrocki's Actions

I. Introduction

On March 13, 2026, the Sejm of the Republic of Poland elected six individuals to serve as judges of the Constitutional Tribunal. On April 1, 2026, President Karol Nawrocki administered the oath of office to two of them – Magdalena Bentkowska and Dariusz Szostek – while the oath was not administered to the remaining four individuals at that time. The Office of the President stated that the reason was to fill two vacancies that had arisen during Karol Nawrocki's presidency, which began on August 6, 2025, and to ensure that the Constitutional Tribunal could function with the required number of members.

This matter became the subject of heated public debate. Some political, media, and legal circles began portraying President Karol Nawrocki's actions as a "refusal to appoint judges," a "violation of the Constitution," an "usurpation of authority," and even as conduct potentially giving rise to criminal liability. That narrative, however, requires critical assessment. In fact, the President of the Republic of Poland does not appoint judges of the Constitutional Tribunal; rather, he administers the oath of office following their election by the Sejm.

Accordingly, the simplified phrase "refusal to appoint judges of the Constitutional Tribunal" must be rejected at the outset. It does not correspond to the constitutional framework. Pursuant to Article 194(1) of the Constitution of the Republic of Poland, judges of the Constitutional Tribunal are elected by the Sejm. The President's role concerns the taking of the oath, which forms part of the procedure for assuming office. The dispute therefore does not concern the President's "appointment" of judges, but rather the scope of his authority where doubts arise as to the correctness of the Sejm's procedure, the individual nature of the election, the validity of the oath, and the limits of any automatic duty imposed on the head of state.

II. Legal and Constitutional Background to the Dispute Over the Constitutional Tribunal Judges' Oath

In this matter, it is vital to distinguish between three concepts: the election of a Constitutional Tribunal judge, the taking of the oath, and the assumption of office.

The election of a Constitutional Tribunal judge falls within the authority of the Sejm. The oath is taken before the President of the Republic of Poland. Only after these conditions are satisfied may the elected individual actually assume the duties of a Constitutional Tribunal judge. This is therefore a multi-stage process, and the Sejm's election alone does not complete the procedure for assuming office. Taking the oath before the President is a necessary condition.

In this light, the narrative that the President "refused to appoint judges" is particularly problematic. This phrasing is not only imprecise, but also politically charged. It may suggest to the public that the President blocked an act falling within his exclusive competence, whereas the Constitution assigns the election of Constitutional Tribunal judges to the Sejm. In reality, the President of the Republic of Poland performed the legal act of administering the oath to two individuals elected by the Sejm, but did not perform that act for the remaining four at the same time, citing serious procedural concerns and the need to ensure the proper functioning of the Constitutional Tribunal. This distinction is of fundamental importance. The temporary failure to administer the oath to some of the individuals must not be equated with a violation of the Constitution, a constitutional offense, or a crime.

Public debate often overlooks the fact that President Karol Nawrocki did not definitively refuse to accept the oath from the remaining four individuals. On the contrary, he publicly stated that he had never said he would not accept their oaths. This distinction is critical. A firm and definitive refusal to exercise constitutional authority is one thing; temporarily refraining from performing a legal act in the context of a jurisdictional, procedural, or constitutional dispute is quite another. Of particular significance is the fact that the President administered the oath to two individuals elected by the Sejm. By doing so, he did not challenge the Sejm's authority to elect judges of the Constitutional Tribunal, nor did he block the entire procedure. The President's Office indicated that the purpose was to fill two vacancies and ensure the functioning of the Constitutional Tribunal, which had nine judges before those swearing-in ceremonies.

Consequently, it cannot be said that the President completely disregarded the Sejm's election. Administering the oath to two individuals demonstrates that the President's actions did not constitute a general boycott of the Sejm or a total refusal to cooperate with constitutional bodies. On the contrary: they may be characterized as selective, precautionary measures taken in the context of a serious legal dispute.

Pursuant to Article 194(1) of the Constitution of the Republic of Poland, the Constitutional Tribunal consists of 15 judges elected individually by the Sejm for nine-year terms from among persons distinguished by their legal knowledge. The very wording of this provision indicates the individual nature of the election. A Constitutional Tribunal judge is not part of a collective political package, but a person elected for an individual term to perform a constitutional function individually. The procedure for assuming office therefore consists of at least three elements: election by the Sejm, taking the oath before the President of the Republic of Poland, and actual assumption of duties at the Constitutional Tribunal.

Two principal positions have emerged in the public debate. The first maintains that the President is obligated to administer the oath automatically to every person elected by the Sejm, without any right to examine circumstances related to the election procedure. The second holds that, because the law provides for the President's participation in the oath-taking procedure, his role cannot be reduced to a purely mechanical act devoid of constitutional significance. Under this view, the President, as guardian of the Constitution, may in exceptional circumstances refrain from performing that act until serious legal doubts have been clarified. This position does not imply granting the President the authority to arbitrarily block Constitutional Tribunal judges. It means only that, in an extraordinary situation involving genuine doubts as to the correctness of the procedure, the act of administering the oath cannot be regarded as entirely automatic and unreflective.

One of the main arguments raised by the President's Office concerned objections to the parliamentary procedure itself. In particular, it pointed to the lack of proper individual consideration of candidates, the collective processing of nominations, the shortening of deadlines for proposing candidates, the pace of parliamentary proceedings, a possible violation of the Sejm's Rules of Procedure, and the lack of clear assignment of specific individuals to particular vacancies. It was therefore argued that if the provision of the Sejm's Rules of Procedure concerning the deadline for submitting candidates had been violated, the entire procedure could be defective. The Head of the President's Office Zbigniew Bogucki argued that Article 194 of the Constitution requires the individual election of a Constitutional Tribunal judge, and that the Sejm, by electing six individuals collectively, failed to comply with that principle. According to the Office of the President, the President requested an explanation from the Marshal of the Sejm, but no explanation was provided. In this context, the President's actions may be viewed not as an arbitrary refusal, but as an exercise of constitutional caution. Since the head of state is to administer the oath to a person who is to serve as a judge of the Constitutional Tribunal, it is difficult to accept that he must entirely disregard indications of possible defects in the election procedure.

Article 126(2) of the Constitution of the Republic of Poland provides that the President shall ensure observance of the Constitution. This means that

the President is not merely a notary for the legal acts of the Sejm and other state bodies. His constitutional role includes safeguarding the continuity of the state, the stability of constitutional bodies, and the fundamental principles of the constitutional order. This does not mean, of course, that the President may replace the Sejm's judgment of the candidates with his own political assessment. Political oversight is one thing; responding to serious constitutional or procedural concerns is another. The current legal framework does not specify a concrete deadline for administering the oath; there is no obligation to act "immediately," no sanctions for delay, no alternative mechanism in the event of a dispute or a situation in which an elected person attempts to take the oath in the President's absence.

The absence of such regulations means that the claim that the President's action is entirely automatic does not follow directly from the text of the Constitution. Thus, the argument that because the Sejm elects judges, the President must not block their assumption of office, does not necessarily imply that every delay, every failure to perform the act, or every attempt to clarify doubts automatically constitutes a constitutional offense or a crime. Extremes should be avoided in constitutional law. It cannot be claimed that the President has complete discretion to refuse. But neither can it be claimed that the President is required to act in a purely mechanical manner even when serious legal obstacles arise.

A significant argument against the thesis that the President's role is absolutely automatic is the possibility of extraordinary situations. One can imagine a case in which, after election by the Sejm but before the taking of the oath, circumstances come to light that completely disqualify a given person from serving as a judge of the Constitutional Tribunal. This could involve, for example, a final conviction for an intentional crime, concealment of material information concerning qualifications or moral character, disclosure of a serious conflict of interest, an obvious procedural defect in the election, or failure to meet statutory requirements. In such a case, it would be difficult to argue that the President must nevertheless immediately administer the oath without any ability to respond. Such automaticity would be contrary to the basic logic of the rule of law.

This argument does not establish that, in the case under analysis, all objections necessarily had to result in a refusal to accept the oath. It does, however, show that the thesis of an absolute and unconditional obligation on the part of the President is unfounded in this instance.

III. Political and Media Escalation of the Dispute Over the Taking of the Oath by Constitutional Tribunal Judges-Elect and the Actions of President Karol Nawrocki

The dispute over the taking of the oath by the persons elected by the Sejm to the Constitutional Tribunal quickly ceased to be solely a legal and constitu-

tional matter. Public debate became dominated by political and media narratives portraying President Karol Nawrocki's actions as an alleged "violation of the Constitution", "usurpation of authority," "blocking of the Constitutional Tribunal," and even conduct potentially giving rise to criminal liability. The very manner in which the matter was described raised serious concerns. The phrase "refusal to appoint judges to the Constitutional Tribunal" appeared regularly in public debate, even though, pursuant to Article 194(1) of the Constitution of the Republic of Poland, judges of the Constitutional Tribunal are elected by the Sejm, not appointed by the President. The President's role concerns the administration of the oath of office, which forms part of the procedure for assuming office. Portraying the President's actions as a "refusal to appoint" was therefore an oversimplification that significantly distorted the true nature of the constitutional dispute.

In reality, President Karol Nawrocki administered the oath of office to two individuals elected by the Sejm: Magdalena Bentkowska and Dariusz Szostek. This fact alone undermines the narrative of a complete refusal to cooperate with the Sejm or of blocking the functioning of the Constitutional Tribunal. It shows that the President did not question the Sejm's very competence to elect members of the Constitutional Tribunal, but instead pointed to existing procedural doubts and the need for further clarification of the legal consequences of the entire situation. Of particular importance are the public statements of the President himself, who repeatedly emphasized that he had never said he would not accept the oaths of the remaining four individuals elected by the Sejm. The President also noted that the situation was further complicated by a ceremony organized in the Sejm and described as an oath "before the President," despite the absence of the head of state.

In this context, it is essential to distinguish between a definitive refusal to exercise a constitutional power and a temporary abstention from performing a specific legal act in the context of an existing procedural and constitutional dispute. The narrative advanced by some of the President's political opponents deliberately blurred this distinction, presenting the situation as an obvious and undisputed violation of the Constitution.

Claims began circulating in the public sphere that the President was "unlawfully choosing" whom to allow to take office and whom to exclude, and that he had no right whatsoever to refrain from administering the oath. The Chancellery of the Sejm even stated that the "refusal to administer the oath" to some of the persons elected by the Sejm "has no legal basis" and constitutes a "usurpation of authority" by the President. Such statements were exceptionally far-reaching. They were no longer part of a constitutional debate, but suggested that the President was acting outside the legal order and appropriating powers belonging to another state body. The matter, however, was far more complex. It concerned the scope of the President's powers, the nature of the oath-taking ceremony, the consequences of procedural defects on the part of the Sejm, the significance of the principle of individualized selection

of Constitutional Tribunal judges, and the validity of a ceremony conducted in the Sejm without the participation of the President.

Media coverage also frequently omitted the arguments presented by the Office of the President, which indicated that the President's actions were primarily intended to ensure the functioning of the Constitutional Tribunal. Administering the oath to two individuals was intended to enable the Tribunal to reach the minimum full-bench quorum necessary to adjudicate the most important constitutional matters. This element is essential to assessing the entire situation. It is difficult to claim that the President sought to paralyze the Constitutional Tribunal when his actions led to the filling of vacancies and restored the Tribunal's ability to adjudicate in full bench. The argument concerning the preservation of the Tribunal's functioning clearly undermines the narrative portraying the President's actions as directed against that body. In public debate, constitutional scholars also pointed out that the President's participation in the procedure for assuming the office of Constitutional Tribunal judge cannot be treated as a purely mechanical legal act devoid of constitutional significance. Since the legislature provided for the obligation to take the oath before the President, the head of state's participation in this procedure must have specific constitutional meaning. In this context, serious procedural doubts were also raised regarding the Sejm's selection of the six individuals. These included the lack of proper individualization of the selection, the collective processing of candidacies, the shortening of deadlines for proposing candidates, a possible violation of the Sejm's Rules of Procedure, and the lack of an unambiguous assignment of specific individuals to particular vacancies.

This line of reasoning led to the conclusion that the President, as guardian of the Constitution, need not act entirely automatically where real and serious doubts arise regarding the legality of a procedure leading to assumption of one of the highest constitutional offices in the state.

This is not, of course, tantamount to granting the President the right to arbitrarily block persons elected by the Sejm. However, the opposite claim – that the head of state must act in a purely mechanical manner even when significant procedural or constitutional doubts arise – is equally unfounded.

An additional factor escalating the dispute was the ceremony held in the Sejm, during which some of the persons elected by the Sejm made statements described as an oath "before the President," even though the President was absent. From the perspective of the Office of the President and some constitutional scholars, this event lacked a clear legal basis and could be viewed as an attempt to circumvent the constitutional procedure requiring the oath to be taken before the head of state. Contrary to the prevailing media narrative, this situation further complicated the legal assessment of the dispute. It raised the question of what legal consequences, if any, should be attributed to such a ceremony and whether the persons who participated in it could still properly be invited to take the oath before the President.

The most far-reaching element of the political and media escalation, however, consisted of suggestions that the President of Poland, or persons in his inner circle, could face criminal liability. Reports began to appear in the public sphere that Minister of Justice Waldemar Żurek had instructed the prosecutor's office to take action regarding the failure to administer the oath to four individuals elected by the Sejm to the Constitutional Tribunal. The media debate also included suggestions that the President had "committed a crime" and that those advising him on the matter may have been complicit in abuse of power or dereliction of duty.

Such statements must be viewed with extreme skepticism. The constitutional dispute was thereby shifted from the realm of political debate into the realm of criminal prosecution. In a democratic state governed by the rule of law, criminal liability cannot serve as an instrument of political pressure or as a means of enforcing a particular interpretation of constitutional provisions.

It must be clearly emphasized that, in the matter at issue, no unambiguous provision specifies the deadline within which the President must administer the oath to a person elected by the Sejm to the Constitutional Tribunal. Nor does the Constitution provide criminal sanctions for a temporary failure to perform this legal act. The very nature of the oath-taking act remains the subject of a genuine interpretive dispute. Consequently, the temporary failure to administer the oath cannot automatically be equated with a crime, a constitutional offense, or a clear violation of the Constitution. Such a classification would require a clear legal basis, an undisputed violation, and an obvious overstepping of constitutional powers. It is also important to distinguish constitutional liability from criminal liability. The President's constitutional liability before the State Tribunal could theoretically come into play in the event of a violation of the Constitution or a statute. Even in such a case, however, it would be necessary to demonstrate that the violation was obvious, flagrant, and culpable. Here, by contrast, there is a genuine interpretive dispute concerning the scope of the President's powers and the nature of the oath of office. Suggestions of criminal liability are even more problematic. Criminal liability is a measure of last resort and cannot be used to resolve constitutional disputes between state bodies. Were one to take a different view, every jurisdictional dispute could be transformed into criminal proceedings against one of the parties, leading to the dangerous instrumentalization of the prosecutor's office and criminal law.

The entire sequence of events must also be viewed in a broader political context. President Karol Nawrocki holds his own democratic mandate and occupies the constitutional role of guardian of the Constitution. In the context of an ongoing conflict between the parliamentary majority and the President, tensions concerning the limits of the powers of individual state bodies are natural. This does not mean, however, that every such dispute should automatically be portrayed as a crime or as an attack on the constitutional order.

In the matter under analysis, the manner in which public debate was conducted indicates that the President's actions were assessed not only through legal arguments, but also through the lens of the ongoing political conflict between the ruling camp and the head of state. Instead of substantive analysis, public statements appeared that delegitimized the President's actions and accused him of acting outside the law, even though he administered the oath to two persons elected by the Sejm, did not definitively refuse to administer the oath to the others, pointed to the need to clarify procedural doubts, acted in an area ambiguously regulated by the Constitution, and was additionally confronted with a situation complicated by an attempt to conduct an oath-taking ceremony without the participation of the President.

Consequently, the most accurate assessment is that the matter represents a political and media escalation of a constitutional dispute, in which exceptionally aggressive legal and political rhetoric was directed at the President of the Republic of Poland despite the absence of clear grounds for asserting an obvious violation of the Constitution or the commission of a crime.

IV. Summary

The dispute over the oath-taking procedure for the persons elected by the Sejm to the Constitutional Tribunal has become one of the most serious constitutional disputes in recent years. Its actual nature, however, has been significantly simplified in public debate and subordinated to the ongoing political conflict between the parliamentary majority and President Karol Nawrocki. The most widespread narrative portrayed the President's actions as a "refusal to appoint Constitutional Tribunal judges," a "violation of the Constitution," or an "usurpation of authority." These characterizations, however, do not reflect the true nature of the dispute or the constitutional structure of the procedure for assuming the office of Constitutional Tribunal judge.

First and foremost, it must be emphasized that the President of the Republic of Poland does not appoint judges to the Constitutional Tribunal. Under the Constitution of the Republic of Poland, judges of the Constitutional Tribunal are elected by the Sejm, while the President's role is limited to administering the oath of office as part of the procedure for assuming office. For this reason alone, the claim that the President "refused to appoint judges" was imprecise and could have distorted public understanding of the entire situation. It is also significant that President Karol Nawrocki administered the oath of office to two individuals elected by the Sejm, which unequivocally refutes the claim that he completely refused to cooperate with Parliament or intended to paralyze the Constitutional Tribunal. At the same time, the President did not definitively refuse to administer the oath to the remaining individuals, but instead pointed to procedural doubts and the need to clarify the legal consequences of the situation. Nor should it be overlooked that the dispute concerned a matter not clearly regulated by the Constitution or

statutes. The legal framework does not specify a deadline by which the President must administer the oath, does not provide sanctions for temporarily refraining from performing that act, and does not regulate the consequences of an attempted oath-taking ceremony conducted without the participation of the head of state.

Consequently, this matter constituted a genuine constitutional and interpretive dispute, rather than an obvious and indisputable violation of the Constitution. Under these circumstances, suggestions made in the public sphere regarding the criminal liability of the President of the Republic of Poland or persons in his inner circle were particularly unwarranted. The instrumental use of criminal law in constitutional disputes may dangerously weaken the separation of powers and undermine the independence of constitutional bodies.

An overall analysis of the events leads to the conclusion that President Karol Nawrocki's actions were portrayed by certain political and media circles in a manner disproportionate to the actual legal and factual circumstances. Instead of an in-depth debate on the scope of the powers of state bodies, the discourse was dominated by delegitimization, accusations, and attempts to portray the head of state as acting outside the constitutional order.

It therefore seems most reasonable to treat the entire matter as an example of political and media escalation of a constitutional dispute, in which legal argumentation was largely subordinated to the ongoing political conflict. In light of the circumstances presented, there are no grounds for unequivocally asserting that the President of the Republic of Poland clearly violated the Constitution or committed a crime. A far more accurate assessment is that the case concerns the limits of the President's constitutional powers and the manner in which he exercises his role as guardian of the Constitution amid a profound political dispute.

Michał Lasota
(judge of the Court of Appeal in Warsaw,
Deputy Disciplinary Spokesman for Judges of Common Courts)

Repression, Olsztyn-Style: The Cases of Maciej Nawacki and Tomasz Koszewski

I. Judges characterized by independence and a legalistic approach are being repressed by representatives of the political executive branch.

Baseless disciplinary proceedings are being initiated against such judges on a mass scale, and attempts are being made – also without grounds – to lift their immunity and subject them to criminal liability for conduct that is entirely lawful, including acts undertaken to uphold the law.

The impetus for these repressive measures comes from the Minister of Justice, who also serves as Prosecutor General (currently Waldemar Żurek, previously Adam Bodnar). The measures are carried out directly, primarily by "special" disciplinary spokesmen arbitrarily designated by the Minister and by prosecutors subordinate to him in his capacity as Prosecutor General.

In Olsztyn, however, both in the District Court and in the Circuit Court, the repression directed against judge Maciej Nawacki and judge Tomasz Koszewski has taken on a particular character because of its severity.

Political appointees of the Minister of Justice, acting as court presidents, are unlawfully reducing the remuneration due to these judges, or even unlawfully depriving them of it altogether.

Judge Maciej Nawacki, as a result of an unlawful decision by judge Krzysztof Krygielski – who unjustifiably claims to be President of the District Court in Olsztyn – had his salary reduced three times in 2024, by as much as half.

Judge Tomasz Koszewski, as a result of an unlawful decision by judge Rafał Jerka – who unjustifiably claims to be President of the Circuit Court in Olsztyn – has already had his entire salary withheld twice in 2026, leaving him only a small allowance. Further refusals to pay the salary due to him may be expected.

II. The reason for the unlawful conduct of judges Krzysztof Krygielski and Rafał Jerka, which led to depriving judges Maciej Nawacki and Tomasz Koszewski, as well as their families, of the means necessary for their livelihood, was solely their adherence to the law.

The scope of a judge's duties, including the number and type of cases assigned, follows from the division of duties established by the president of the court (Article 22a § 1 of the Act of July 27, 2001, on the Organization of Common Courts).

A judge is therefore not only obliged, but above all entitled, to perform judicial acts only in those cases that have been defined by type and number in a final, enforceable, and therefore effective division of duties.

A judge whose division of duties has been changed in a manner altering the scope of his or her responsibilities may appeal to the National Council of the Judiciary. The Council's resolution is final and not subject to further appeal. Until such a resolution is adopted, the judge continues to perform his or her previous duties (Article 22a § 5 and § 6 of the Act of July 27, 2001, on the Organization of Common Courts).

The assignments of judges Maciej Nawacki and Tomasz Koszewski were changed, and both judges appealed to the National Council of the Judiciary, which upheld their appeals by resolution.

The new assignments were therefore removed from the legal order in accordance with the procedure provided by law.

However, judge Krzysztof Krygielski, with respect to judge Maciej Nawacki, and judge Rafał Jerka, with respect to judge Tomasz Koszewski, failed to comply with the resolutions of the National Council of the Judiciary, thereby demonstrating contempt for the existing legal order.

Cases of this kind continued to be, and still are, assigned to judge Maciej Nawacki and judge Tomasz Koszewski, even though they had, and have, no authority to take any action in them, and any such action, if taken, would be legally ineffective.

Therefore, out of a sense of responsibility, respect for the parties' right to a court of competent jurisdiction, and compliance with generally applicable legal norms, these judges could not, did not, and do not take judicial action in cases assigned to them unlawfully – that is, contrary to the binding, legally valid, and effective division of duties.

III. A judge's remuneration is directly protected by the Constitution, which guarantees judges' working conditions and compensation commensurate with the dignity of the office and the scope of their duties (Article 178(2) of the Constitution of the Republic of Poland).

The legal framework governing judicial remuneration is comprehensively regulated by statute, namely the Act of July 27, 2001, on the Organization of Common Courts.

Accordingly, a judge's salary may be reduced only on the basis of statutory provisions and only in circumstances expressly provided for by statute.

First and foremost, a reduction in salary may constitute a disciplinary penalty imposed by a competent disciplinary court (Article 109 § 1(2a) of the Act of July 27, 2001, on the Organization of Common Courts).

A disciplinary court may also reduce a judge's salary where it imposes the penalty of removal from office, even if the ruling is not yet final (Article 123 § 1 of the same Act).

In addition, a disciplinary court may, by order, reduce a judge's salary in connection with the suspension of the judge from performing official judicial acts (Article 129 § 3 of the same Act).

By operation of law, the salary of a judge exercising the right to parental leave may also be reduced in connection with a reduction in caseload (Article 83a of the same Act).

Likewise, a judge's failure to undergo an examination by a Social Insurance Institution medical examiner may result in a reduction in salary (Article 94g § 1 of the same Act), as may absence from work due to illness after one year (Article 94 § 1 of the same Act).

In this context, the Labor and Social Insurance Chamber of the Supreme Court made an especially apt observation, fully deserving of approval and quotation in full:

The status of a judge may undoubtedly justify treating judges differently from other employees. Judges are the only professional category whose working conditions and remuneration are expressly regulated by the Constitution. This is intended to create real and appropriate foundations and guarantees for the proper performance of their adjudicative function, which is fundamental to a democratic state governed by the rule of law. It follows that issues relating to judicial remuneration in the broad sense extend beyond the ordinary employment-remuneration relationship and possess a special constitutional and functional value distinguishing them from all other forms of remuneration in the public sector. They are directly linked to the perception of this profession in terms of dignity and independence. Appropriate working conditions and remuneration commensurate with the dignity of the office and the scope of judges' duties must therefore be regarded as a constitutional institution serving the good of the state (Supreme Court judgment of April 15, 2021, Case No. III PSKP 14/21).

IV. No administrative body operating within the structure of the judiciary or within a specific court – and certainly no body directly subordinate to the political executive branch through the Minister of Justice – is authorized to interfere in any manner with a judge's remuneration.

A reduction in a judge's salary may occur only by operation of law or pursuant to a ruling issued by a competent disciplinary court.

Accordingly, the actions of judges Krzysztof Krygielski and Rafał Jerka – whose status as President of the District Court in Olsztyn and President of the Circuit Court in Olsztyn, respectively, is itself subject to serious legal doubt – were clearly and flagrantly unlawful and should be assessed in the context of satisfying the elements of a criminal offense.

The reduction or deprivation of the means of subsistence therefore constitutes a form of punishment unknown to the law and thus amounts to a form of repression imposed in response to an unyielding stance and refusal to submit to political pressure.

Stanisław Andrzej Potycz
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The Cross Controversy in Legnica: The Mayor's Order to Remove the Cross from the City Council Chamber

In 1997, a Cross was hung and consecrated on the main wall of the Legnica City Council chamber. This was done by decision of the council members. The Cross remained there until 2025, when, in connection with the renovation of the council chamber, it was removed by order of Legnica Mayor Maciej Kupaj of the Civic Coalition. When, on August 28, 2025, after the renovation had been completed, the council members attended the 20th session of the Legnica City Council, they noticed that the Cross was missing.

Interpellations

In response, on September 10, 2025, the Law and Justice Councilors' Club submitted an interpellation to the Mayor, asking the following questions:

1. Who decided that the Cross would not be returned to its place in the council chamber after the renovation?
2. On what legal basis was the decision made to remove it and not rehang it?
3. Was the matter consulted with the City Council or its Presidium? If so, please specify the date and form of those consultations.
4. Where is the Cross currently located, and who is responsible for its storage?
5. When does the Mayor intend to return the Cross to its previous location, thereby responding to the expectations of the city's residents?

In the statement of reasons for the interpellation, the councilors wrote, among other things:

> The Cross, which had been present in the council chamber for nearly seven terms, had primarily historical and communal significance. It was funded and hung by the council members of that time as an expression of local government initiative and as a symbol of the continuity of the City Council's work.

> Since then, it had been a permanent element of the council chamber, where the most important decisions concerning Legnica are made.

The interpellation also noted that it had been prepared in response to numerous inquiries from Legnica residents.

In his response dated September 25, 2025, the Mayor wrote:

> The Legnica City Council Chamber was refurbished after many years as part of ongoing maintenance work in City Hall. Accordingly, all elements that prevented the refurbishment were removed from the walls. After the work was completed, the national emblem and the coat of arms of the City of Legnica were placed on the walls, as they are indispensable elements of the interior design of public buildings, pursuant to the Act of January 13, 1980, on the Emblem, Colors, and Anthem of the Republic of Poland, and on State Seals. Article 25(2) of the Constitution of the Republic of Poland obliges public authorities to remain impartial in matters of religious, ideological, and philosophical convictions, while ensuring freedom of expression in public life. The Cross has been cleaned and is stored on the premises of Legnica City Hall.

Disagreeing with the Mayor's position, the Law and Justice Councilors' Club sent him another interpellation on October 27, 2025. In it, the councilors stated that the Mayor's position on the permanent removal of the Cross from the City Council chamber was not supported by statutory law or judicial precedent. They concluded:

> In light of the above, your unilateral action is incomprehensible. Since it was the City Council, acting as a collegial body, that decided on the presence of the symbol, only the City Council is authorized to change that decision. If you believed that the room's decor required a change, it was your duty to respect the Council's authority. You should have initiated a legislative proposal and presented a draft resolution addressing this matter. The fate of the Cross should be decided by council members through a democratic vote, not by you through an arbitrary order. In light of the above, we request the immediate restoration of the Cross to its historic place in the City Council Chamber and, acting pursuant to Article 24(3) of the Municipal Government Act, we request answers to the following questions: 1. Why did you remove the Cross by unilateral decision, completely disregarding the authority of the City Council, which had previously, by acclamation, formally decided on its presence in the Council Chamber? 2. When exactly do you intend to comply with the councilors' request and restore the Cross to its place in the City Council Chamber?

In response, by letter dated November 13, 2025, the Mayor upheld his previous position, adding:

> The Cross was removed for the purpose of renovating the rooms where Legnica City Council sessions are held. Contrary to the claims made in the letter in question, the consent of the legislative body is not required for this technical

act, as it does not fall within its scope of authority. Moreover, the executive body of the municipality is responsible for the day-to-day management of municipal property, while the decision-making body of the municipality decides matters expressly assigned to it by the relevant statutory provisions. Consequently, the municipal council may not undertake acts falling within the executive sphere, as doing so would violate the constitutional principle dividing local government bodies into executive and legislative branches.

Petition

The councilors' efforts to restore the Cross to the Legnica City Council chamber found support among Legnica residents, who attended the October 27, 2025 council session in large numbers. During the session, under the agenda item "Announcements and Miscellaneous Matters," a discussion was held concerning the removal of the Cross from the chamber. Several council members spoke, as did a representative of Legnica residents, who supported the efforts to restore the Cross.

These efforts were also supported by the Ordo Iuris Institute for Legal Culture, whose representatives visited Legnica twice – on November 4, 2025, and March 12, 2026 – and presented their legal position during press conferences held on those dates. The Institute also prepared a petition to the President titled "Let's Defend the Cross in Legnica," posted in November 2025 at bronmykrzyzawlegnicy.pl. The petition was signed by 1,385 people. It stated, among other things:

> The ideological neutrality of public institutions cannot mean the eradication of what constitutes the spiritual and cultural identity of the nation. The Constitutional Tribunal has repeatedly emphasized that the presence of religious symbols in public spaces does not violate the principles of a neutral state, but serves the memory and traditions of the community.
>
> [...]
>
> The first Council meeting without the cross was very turbulent. Residents protested in the chamber, and the media were also present. The mayor lost his temper and began shoving a reporter from Telewizja Republika, who was broadcasting live a conversation with one of the council members. The journalist was pushed by the mayor and his associates.

The petition did not lead to a change in the position of the Mayor of Legnica. In this situation, during the March 12, 2026 press conference, council members affiliated with Law and Justice and representatives of Ordo Iuris announced that they were giving the Mayor two weeks to rehang the Cross in the council chamber and warned that, if it was not returned within that time, they would take the matter to court.

Complaint

The Mayor did not comply with this demand. As a result, council members Adam Wierzbicki and Rafał Rajczakowski, represented by the law firm Parchimowicz i Kwaśniewski Spółka Adwokatów i Radców Prawnych Spółka Komandytowa in Warsaw, filed a complaint with the Provincial Administrative Court in Wrocław by letter dated April 22, 2026. The complaint challenged "the legal act of the Mayor of Legnica consisting in the removal of the Cross from the Legnica City Council chamber, which in substance constitutes an administrative order." It alleged a violation of substantive law, namely Article 30(2)(3) of the Municipal Government Act and Article 18(1) of that Act, "by misapplying them by treating the Mayor's removal of the Cross from the City Council chamber as a technical act and an expression of ordinary management of municipal property, whereas that act should be regarded as a decision in a public-administration matter concerning a religious symbol in a public place, which consequently violated the constitutional principle dividing local government bodies into executive and decision-making bodies, set forth in Article 169(1) of the Constitution of the Republic of Poland."

In light of the above, the council members requested that "the contested order of the Mayor of Legnica be declared null and void in its entirety." In the grounds for the complaint, they stated:

> By removing a religious symbol from the Legnica City Council chamber, the Mayor of Legnica violated the legal interests of the complainants, who are council members, by depriving them of the opportunity to participate in resolving this matter, which, as demonstrated above, falls within the jurisdiction of the municipal council. Under these circumstances, it is reasonable to assert that the complainants' legal interest was violated by an order issued by a municipal body in a matter pertaining to public administration.

With respect to the Mayor's position on the presence of religious symbols in public buildings in light of Article 25(2) of the Constitution of the Republic of Poland, the complainants cited three judicial decisions: the judgment of the Court of Appeals in Warsaw of December 9, 2013, I ACa 608/13; the judgment of the Court of Appeals in Szczecin of November 25, 2010, I ACa 363/10; and the decision of the Supreme Court of July 15, 2010, III SW 124/10.

The first of these rulings was issued in a case in which a group of members of the Sejm, acting as plaintiffs, claimed that the State Treasury, represented by the Marshal of the Sejm, was violating their personal rights by failing to remove a cross placed without authorization by two individuals on the wall of the Sejm's plenary chamber in 1997, and sought removal of the cross. In the reasoning dismissing the plaintiffs' appeal from the unfavorable judgment of the Warsaw Circuit Court, the Court of Appeals stated:

> The Latin cross is primarily a religious symbol; however, its significance as a symbol of culture and national identity cannot be overlooked. This perception of the symbol is evidenced by resolutions adopted in 2009–2010 by both chambers of Parliament, namely the resolution of the Sejm of the Republic of Poland of December 3, 2009, on assistance for freedom of religion and values constituting the common heritage of the peoples of Europe (M.P. 2009, No. 78, item 962), and the resolution of the Senate of the Republic of Poland of February 4, 2010, on respect for the Cross (M.P. 2010, No. 7, item 57). The fact that a cross is placed in the Sejm's Plenary Hall is associated solely with the so-called passive impact of this symbol, and such an impact does not constitute a manifestation of religious indoctrination by the state that violates the freedom of conscience and religion of members of parliament (see the judgment of the Grand Chamber of the European Court of Human Rights of March 18, 2011, application no. 30814/06). It should be emphasized that an intrusion by public authorities into the sphere of an individual's ideological sensibilities does not necessarily mean that there is always a violation of that individual's personal rights. Referring to the terminology used by the circuit court in the reasoning of the contested judgment, it must be stated that not every ideological discomfort felt by non-believers in connection with the display of a religious symbol in public space should be equated with a violation of their freedom of conscience and religion.

In the reasoning of the judgment of the Court of Appeals in Szczecin, concerning the removal of a cross located in the conference room of the City Council in Świnoujście, the court emphasized:

> In the present case, it must be recognized that the placement of the cross symbol in the defendant's premises constitutes an expression of the exercise by a group of councilors [...] of their own subjective rights – an expression that, as several years of experience have shown, has thus far been accepted by the entire community of this city. The exercise of subjective rights, however, precludes the unlawfulness of the action.

The court also cited a passage from the reasoning of the judgment of the Court of Appeals in Łódź of October 28, 1998, case no. I ACa 612/98, OSA 2007/7, which noted that an individual, in exercising his or her own rights, cannot deprive others of the right to cultivate their traditions, culture, customs, or to express collective sentiments, and that hanging a cross in a town hall or bringing religious symbols to work by officials constitutes an expression of the right of members of the local community – not of the municipality – to freedom of conscience and religion.

The Supreme Court, in the above-mentioned 2010 ruling, stated that the presence of a cross in a polling station located in premises made available by a primary school cannot be interpreted as discrimination against other faiths in the elections.

The Right to Express Religious Identity in Public Places

It should be noted that the rulings cited in the statement of grounds for the complaint filed by the Legnica councilors are consistent with the settled line of case law of Polish common courts and the Supreme Court, according to which tolerating religious symbols in public places does not constitute discrimination against minorities or non-religious individuals. This line of case law is an important point of reference in the legal debate over the principle of ideological neutrality of public authorities in Poland.

Not all representatives of public authorities in Poland share this view. One example of a different position is Donald Tusk's 2021 statement, quoted by *Portal Samorządowy PL* (www.portalsamorzadowy.pl). Asked during an online chat with internet users whether, in his opinion, crosses should hang in schools, the Civic Platform leader replied: "I don't think so." He added that he would very much like places where believers can meet in peace and mutual trust, and pray, to be churches, not public offices or schools. He noted that schools should teach mutual respect, regardless of whether someone is a believer. In his view, public places such as the Sejm or schools should be free of religious symbols.

This statement is inconsistent not only with the court rulings cited above, but also with the resolutions of the Sejm and Senate of the Republic of Poland cited in the statement of grounds for the complaint filed by the Legnica city councilors. The Sejm of the Republic of Poland recognized that "the sign of the Cross is not only a religious symbol and a sign of God's love for humanity, but in the public sphere it serves as a reminder of the willingness to sacrifice oneself for others, and expresses values that foster respect for the dignity of every human being and their rights." The Sejm also emphasized that "both individuals and communities have the right to express their own religious and cultural identity, which is not limited to the private sphere." The Senate of the Republic of Poland, in turn, stated: "Any attempts to ban the display of the Cross in schools, hospitals, government offices, and public spaces in Poland must be regarded as an affront to our tradition, memory, and national pride."

Conclusion

It is to be hoped that the complaint filed by the Legnica city councilors will be resolved in a manner consistent with the court rulings and resolutions of the Sejm and Senate of the Republic of Poland cited in this text. A court ruling may not be necessary, however, if the Mayor of Legnica changes his position and permits the Cross to be rehung in the Legnica City Council chamber, as happened in Łódź. Mayor Hanna Zdanowska of the Civic Coalition recently ordered the removal of the Cross from the meeting room of the Łódź City Council, but following the intervention of a Law and Justice council member, the Cross was returned to its place.

Let us also hope that the Mayor of Legnica – a city known for one of the most important battles of medieval Europe, the Battle of Legnica of April 9, 1241, in which Prince Henry II the Pious fought the Mongols and, as St. John Paul II said in Legnica on June 2, 1997, "gave his life for the people entrusted to his rule" and "for the Christian faith" – will reflect on the city's heritage. As the eminent Polish historian Professor Andrzej Nowak stated during a lecture in Legnica on September 26, 2020: "Prince Henry fell in battle. But he did not lose. Poland did not remain under the rule of invaders from another world. [...] Henry the Pious defended the Polish Piast dynasty and, at the same time, the border of Latin Europe and of the Christian world. Where is that border today? Where is that Europe? And what is our mission today [...]".

May fidelity to the Cross and love of the Fatherland – virtues so dear to Henry II the Pious, now a Servant of God whose beatification process has been underway in the Diocese of Legnica since 2021, and for which he gave his life – also remain dear to contemporary Poles. The message he left still binds us: to stand courageously, when necessary, in defense of Christian values in Poland, Europe, and the world.

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The Private State. The Prosecutor's Office in the Service of Politicians

1. The Independence of the Prosecutor

Both the Code of Criminal Procedure and the Act on the Public Prosecutor's Office require prosecutors to act impartially. Pursuant to Article 6 of the Law on the Public Prosecutor's Office, "A public prosecutor is obliged to administer the acts specified by laws in compliance with the principle of impartiality and equal treatment of all citizens." As noted in legal doctrine:

> Unlike independence, impartiality and objectivity are inherent characteristics of European prosecutors, who in virtually all European legal systems are required to act impartially and objectively. However, it is difficult to speak of impartiality and objectivity in isolation from independence. And vice versa. For a prosecutor, independence is one of the guarantees of maintaining impartiality and objectivity, while granting prosecutors independence without requiring them to act impartially and objectively would pose a serious threat to fundamental rights and freedoms. While the concept of independence is primarily legal in nature (it is the law that determines how independence is to be understood and, above all, defines its limits), impartiality and objectivity derive their meaning from the ordinary, common-sense understanding of those terms. A judge or prosecutor can be considered impartial only when able to decide a case without prejudice and, so to speak, anonymously – that is, without regard to the individuals involved and without treating defendants favorably or unfavorably on the basis of any personal characteristics other than those legally relevant. (P. Turek, in *Prawo o prokuraturze. Komentarz*, Warsaw 2023, Article 6.)

It is also indisputable that a trial is fair only when both the court and the prosecutor are fair and impartial. The view is well founded that:

> In light of Strasbourg case law, the ECHR's requirement of fairness must be understood in procedural terms, since the proper application of substantive law by national courts is not subject to substantive review. Under the European Convention on Human Rights system, a fair hearing and adjudication consist of numerous specific guarantees and rights, foremost among them the principle of equality of arms. This means that each party to the proceedings must have the same opportunity to present its case under conditions that do not place it at a disadvantage compared with the opposing party (ECHR

judgment of October 27, 1993, *Dombo Beheer B.V. v. the Netherlands*, Application No. 14448/88, HUDOC). A trial will be considered fair if a balance between the rights and obligations of the parties is maintained throughout the proceedings (R. Tabaszewski, "*Prawo do jawnego, publicznego rozpoznania sprawy przez bezstronny i niezależny sąd*," in K. Orzeszyna, M. Skwarzyński, R. Tabaszewski, *Prawo Międzynarodowe Praw Człowieka*, C.H. Beck 2022, p. 378 et seq., para. 1178).

It should be noted that impartiality, meaning the absence of prejudice or bias, is relatively easy to identify, as reflected in the ECHR judgment of January 9, 2013, in *Volkov v. Ukraine*, Application No. 21722/11. Impartiality should be understood as objective impartiality on the part of a judge, prosecutor, expert witness, or expert. It includes both the official's subjective sense of impartiality and the appearance of impartiality as perceived by outsiders, assessed on objective grounds from the perspective of an average, reasonable observer of the proceedings (see Constitutional Tribunal judgments of January 27, 1999, K 1/98, OTK-A 1999/1, item 3, and July 20, 2004, SK 19/02, OTK-A 2004/7, item 67; Supreme Court resolution of April 26, 2007, I KZP 9/07, OSNKW 2007/5, item 39; and Supreme Court judgments of January 8, 2009, III KK 257/08, LEX No. 532400, and March 18, 2009, IV KK 380/08, LEX No. 491543).

The obligation to maintain impartiality and objectivity appears in all international instruments relating to prosecutors. The UN Guidelines on the Role of Prosecutors, developed to assist member states in ensuring and promoting the effectiveness, impartiality, and integrity of prosecutors in criminal proceedings, state that in the performance of their duties, prosecutors shall carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination (Article 13(a)) and that they shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded (Article 14). Compliance with these and other principles set forth in the Guidelines helps ensure impartial and fair criminal justice and effective protection of citizens against crime.

The standards of the International Association of Prosecutors also provide that prosecutorial powers should be exercised objectively and impartially. Prosecutors should not only act impartially, but also ensure that they are perceived as impartial. Article 3 is devoted to impartiality and provides:

> Prosecutors shall perform their duties without fear, favor, or prejudice. In particular, they shall: 3.1. carry out their functions impartially; 3.2. remain unaffected by individual or group interests, as well as by public or media pressure, and be guided solely by the public interest; 3.3. act with objectivity; 3.4. take into account all relevant circumstances, regardless of whether they are favorable or unfavorable to the suspect; 3.5. ensure, in accordance with local law or the requirements of a fair trial, that all necessary and reasonable investigative acts are carried out and that their results are disclosed, regardless

of whether they point to the guilt or innocence of the suspect; and 3.6. always seek the truth and assist the court in arriving at the truth and rendering a decision that is just from the perspective of society, the victim, and the accused, in accordance with law and the requirements of fairness.

It should also be emphasized that prosecutorial actions should not be directed specifically against journalists, activists, or civil society organizations. The relevant standard protects freedom of expression and the right to information. The abuse of legal proceedings to intimidate, silence, or discourage citizens from publicly expressing their views is unacceptable.

2. Principles Governing the Prosecution of Privately Prosecuted Offenses

Against this background, the practice of the Polish prosecutor's office, which appears to support politicians from the ruling political faction, is particularly noteworthy. This is especially visible in private matters, where, as a rule, the parties act independently, without the involvement of the prosecutor's office. This applies both to offenses prosecuted by private complaint and to civil lawsuits.

The category of privately prosecuted offenses includes acts of relatively low social harm, such as defamation, insult, and minor assault. The legislature rightly recognized that the initiation and conduct of criminal proceedings in such matters should depend on the will of the victim, who should assess for himself or herself whether his or her rights have been violated, whether that violation constitutes a criminal offense, and whether pursuing criminal proceedings is in his or her interest. By way of exception, Article 60 of the Code of Criminal Procedure provides that, in cases involving privately prosecuted offenses, the prosecutor "initiates proceedings or, as public prosecutor, joins proceedings already initiated if required to protect the rule of law or the public interest."

Thus, by way of exception, prosecutors have been granted the authority to conduct criminal proceedings in cases involving acts that, as a rule, are prosecuted by private complaint. Legal doctrine and case law uniformly hold that prosecutorial intervention is permissible only where the act involves an unusually high degree of social harmfulness or where the victim is a vulnerable person unable to exercise the right of private prosecution independently.

At times, a privately prosecuted offense cannot be assessed solely through the lens of individual interests because, regardless of the victim's reaction, the public good requires that the offender be punished. Allowing the act to go unpunished would be contrary to respect for law and would undermine the public's sense of justice. In such situations, making prosecution dependent on the victim's will – as rightly emphasized in legal doctrine – loses its justification, and refraining from prosecuting the offender merely because the victim failed to act would amount to a travesty of justice (see W. Daszkie-

wicz, *Oskarżyciel w polskim procesie karnym*, Warsaw 1960, p. 350; B. Zygmont, "Przestępstwa ścigane z oskarżenia prywatnego w postępowaniu w sprawach podlegających orzecznictwu sądów wojskowych", *Wojskowy Przegląd Prawniczy* 2002/3, pp. 112–113).

The public interest in prosecuting privately prosecuted offenses arises where the criminal act directly infringes not only the victim's legally protected interests, but also the public good. This generally concerns two situations: first, where the victim is factually unable to file a complaint, for example because of illness or age; and second, where the offender's conduct takes an especially drastic form (A. Gaberle, J. Czapska, *Postępowanie w sprawach z oskarżenia prywatnego*, p. 16; K. Wytrykowski, in D. Drajewicz, ed., *Kodeks postępowania karnego. Komentarz*, vol. 1, Warsaw 2020).

Legal doctrine and case law identify, by way of example, circumstances relating to the offender's conduct, such as the use of particularly crude and extreme insults in the presence of minors, hooligan-like behavior, the particularly malicious nature of the act, commission of the act in a public place, and the offender's personal characteristics and circumstances, including a history of multiple convictions, alcoholism, exploitation of the victim's disability or other vulnerability, the victim's difficult life situation arising from disability, advanced age, mental impairment, or serious illness, significant material or moral harm inflicted on the victim, the victim's helplessness or dependence on the offender, obstruction of the victim's exercise of rights, violation of essential provisions in ongoing private prosecution proceedings, treatment of action in defense of the violated right as consistent with the public interest, the complexity of the case, particularly where it concerns allegations relating to public life, difficult evidentiary proceedings in which the prosecutor's participation may serve the public interest, difficulties in identifying the offender, or the offender's use of anonymous communications (see R. A. Stefański, in S. Zabłocki, ed., *Kodeks postępowania karnego. Tom I. Komentarz do art. 1-166*, Warsaw 2017, Article 60).

3. The Prosecutor Acting on Behalf of Politicians

Meanwhile, under the rule of the December 13 Coalition, the prosecutor's office has, without sufficient justification, all too often acted on behalf of politicians, assisting them in bringing private criminal complaints or supporting them in civil cases.

One example is the action taken by the National Prosecutor's Office, which applied to the Supreme Court for authorization to bring criminal charges against three disciplinary spokesmen for judges of the Court of Appeals in Warsaw: Przemysław Radzik, Piotr Schab, and Michał Lasota. The Prosecutor's Office seeks to prosecute them for allegedly defaming a former judge and deputy director of the National School of Judiciary and Public Prosecution, now Minister of Justice and Prosecutor General – and therefore the superior

of all prosecutors in Poland – Waldemar Żurek. In January 2026, the Internal Affairs Division of the National Prosecutor's Office, which primarily handles the prosecution of judges, filed motions with the Supreme Court to waive the immunity of Przemysław Radzik, Michał Lasota, and Piotr Schab. According to the prosecutor's office, the motions were filed in connection with an investigation into suspected criminal conduct to the detriment of Waldemar Żurek. The current Minister of Justice and Prosecutor General had filed reports with the prosecutor's office while he was still a judge. The allegations include, for example, remarks made by Piotr Schab, a judge of the Court of Appeals in Warsaw, directed at judge Żurek on May 30, 2022, during a press conference held in his capacity as Disciplinary Spokesman for Judges of the Common Courts. In connection with disciplinary proceedings against Waldemar Żurek conducted by the spokesmen, Piotr Schab stated that he wished to report on "the shocking acts of judge Waldemar Ż.," which allegedly consisted of "Waldemar Ż., while serving as a member of the National Council of the Judiciary from 2012 to 2018, falsifying rulings bearing his signature in at least 64 cases, primarily by providing a false date of issuance for those rulings" (https://www.prawo.pl/prawnicy-sady/spor-o-godnosc-miedzy-sedziami-schabem-a-zurkiem,1544154.html; www.wyborcza.pl/7,75398,32528467,za-nekanie-zurka-prokuratura-chce-uchylenia-immunitetu-dawnym.html; www.gazetaprawna.pl/prawnik/artykuly/11243798,schab-immunitet-sad-najwyzszy.html).

Similarly, earlier, in September 2024, the Prosecutor's Office led by then Minister of Justice and Prosecutor General Adam Bodnar demanded that judge Jakub Iwaniec be punished for criticizing Waldemar Żurek, then a judge and deputy director of the National School of Judiciary and Public Prosecution, and now Prosecutor General and Minister of Justice. To this end, the Kielce-East District Prosecutor's Office filed a motion with the Professional Responsibility Chamber of the Supreme Court seeking authorization to hold judge Jakub Iwaniec criminally liable for allegedly defaming Waldemar Żurek through posts on X, formerly Twitter. As reported by the press, "the offense of defamation and public insult is prosecuted by private indictment. However, the prosecutor's office headed by Adam Bodnar decided to intervene on behalf of Judge Waldemar Żurek, citing 'protection of the rule of law and the public interest.' An investigation was launched in connection with Judge Jakub Iwaniec's statements criticizing Judge Żurek" (www.wpolityce.pl/polityka/694175-prokuratura-broni-zurka-i-sciga-dyscyplinarnie-iwanca).

By a non-final resolution dated February 17, 2025, the Supreme Court refused to waive judge Jakub Iwaniec's immunity in the case concerning alleged "repeated defamation and public insult through the mass media against Waldemar Żurek, a judge of the Circuit Court in Kraków," finding that the evidence did not indicate his guilt. Interestingly, the prosecutor present at the hearing requested that the session be closed to the public, but the Court denied that request (www.niezalezna.pl/polska/sedzia-iwaniec-zachowa-immunitet-sad-najwyzszy-waldemar-zurek-prokuratura-bodnara/537590). This

case has not yet been finally resolved. The Prosecutor's Office, whose current superior is Prosecutor General Waldemar Żurek, continues to seek the waiver of immunity in favor of its head.

The Prosecutor's Office is also actively involved in civil cases brought by politicians and judges aligned with the executive branch. One example is the lawsuit filed against Judges Łukasz Piebiak and Jakub Iwaniec, as well as the Ministry of Justice, by Krystian Markiewicz, who, under the rule of the December 13 Coalition, served as chair of the Codification Committee for the Courts and Prosecution Systems, was until recently president of the pro-government Iustitia Association, and, on March 13, 2026, was elected by votes of ruling-coalition politicians to the office of judge of the Constitutional Tribunal. Prosecutor Anna Pamrowska from the Warsaw-Praga District Prosecutor's Office was present at the hearing on April 22, 2026 because, as reported by the press, the prosecutor's office "is participating in this trial as a guardian of the rule of law," and the prosecutor "sits on the bench with Markiewicz" (www.oko.press/starcie-zurka-z-piebiakiem-ws-afery-hejterskiej-to-pierwsze-takie-zeznania).

It is difficult to imagine that Waldemar Żurek or Krystian Markiewicz – both until recently prominent judges highly active within Poland's ruling December 13 Coalition – are unable to pursue their own legal claims independently. On the contrary, they are highly trained lawyers and former judges who undoubtedly do not require state-funded legal assistance from the Prosecutor's Office.

4. The Minister Oversteps the Bounds of Prosecutorial Independence

Finally, one further example illustrates the instrumental use of the Prosecutor's Office and criminal law by the aforementioned politician of the December 13 Coalition, Minister of Justice Waldemar Żurek. Recently, a situation arose in which a politician, a Member of the European Parliament, with respect to whom the European Parliament had consented to the filing of charges but had not consented to detention or pretrial arrest, left the Prosecutor's Office building without the prosecutor's consent before the hearing had concluded. This prevented the procedural act from being completed. At that point, Prosecutor General and Minister of Justice Waldemar Żurek announced on X his "decree," stating:

> Grzegorz Braun's notorious violations of the law and his attempts to evade responsibility require a decisive response. A parliamentarian's mandate is a commitment to set an example, not a shield to avoid responsibility. In light of his persistent disregard for procedures and blatant attempts to place himself above the law, I have instructed prosecutors: with every motion to waive MEP Braun's immunity, a motion for his arrest and compulsory appearance must be filed simultaneously. No more disregard for state institutions.

Waldemar Żurek's astonishing action drew a response from the Independent Association of Prosecutors "Ad vocem":

> [...] such an order crosses the line of prosecutorial independence. One cannot issue an order that presumes in advance that there are grounds for someone's arrest and forcible apprehension. It is the prosecutor handling the case who, before ordering an arrest and forcible apprehension, must each time consider whether there are statutory grounds for applying such coercive measures. If it is assumed *a priori* that someone's conduct justifies the use of coercive measures, then the guarantees provided by the Code become a fiction. And this does not apply only to a Member of the European Parliament, but to every citizen.

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Censorship Under Many Names: ACTA, the Draft Law on So-Called "Hate Speech," and the DSA

The Essence of Freedom of Thought and Freedom of Expression

Censorship is generally prohibited in countries that respect human rights. This follows from freedom of thought and freedom of expression.

Freedom of thought, conscience, and religion has two dimensions: internal and external (*forum internum* and *forum externum*). Under the European Convention on Human Rights, the internal dimension encompasses freedom of thought, conscience, belief, and religion (see more in L. Garlicki, "Komentarz do art. 9 EKPCz," in *Konwencja o ochronie praw człowieka i podstawowych wolności. Komentarz do artykułów 1–18*, vol. 1, ed. L. Garlicki, P. Hofmański, and A. Wróbel (Warszawa, 2010), 556–59, paras. 11–14). The *forum internum* is important here because it concerns the exercise of a clergyman's (see more in M. Skwarzyński, "Spowiedź jako przedmiot ochrony prawa człowieka do wolności sumienia i religii spowiednika," in *Prawo do prywatności w Kościołach i innych związkach wyznaniowych. Od tajemnicy duszpasterskiej do ochrony danych osobowych*, ed. Tadeusz J. Zieliński and M. Hucał (Warszawa, 2019), 223–38) or believer's own rights, and not merely the right to practice one's faith publicly. It is therefore also an individual human right. Of greater practical significance is the *forum externum*, which consists of the freedom to manifest religion or belief (L. Garlicki, "Komentarz do art. 9 EKPCz," in *Konwencja...*, ed. L. Garlicki, P. Hofmański, and A. Wróbel (Warszawa, 2010), para. 23) in the four forms specified in Article 9(1) of the ECHR: worship, teaching, practice, and observance (ibidem, para. 26). Their order is not accidental, and the permissible scope of state interference increases accordingly (see I. C. Kamiński, "Komentarz do art. 10 KPP," in *Karta Praw Podstawowych Unii Europejskiej. Komentarz*, ed. A. Wróbel (Warszawa, 2012), para. 26).

Legal doctrine states that "the sphere of internal freedom of thought, conscience, and religion, understood as the formation, holding, and changing of religious or philosophical beliefs, cannot be subject to any interference by public authorities" (see I. C. Kamiński, "Komentarz do art. 10 KPP," in *Karta Praw Podstawowych Unii Europejskiej. Komentarz*, ed. A. Wróbel (Warszawa, 2012), para. 20).

Thus, this element of protection for conscience and religion forms part of the essence of the protected freedom, because the state may not impose restrictions on views and beliefs, and therefore on thought itself. Restrictions may be imposed on the expression of beliefs or thoughts, but only under the limitation clauses and only in exceptionally rare cases dictated by their content. The *forum externum* is essential because limitation clauses concerning restrictions on freedom of conscience and religion apply exclusively to that sphere. The legislature may not restrict the internal sphere, as international law prohibits such interference. It may restrict the external sphere only in accordance with the applicable limitation clause. Article 9(1) of the ECHR guarantees complete independence in the internal sphere and freedom of thought, which cannot be subject to any restrictions. This does not mean, however, that the manifestation of religion or beliefs enjoys the same absolute protection, since such manifestation belongs to the *forum externum* (see M. A. Nowicki, "Komentarz do art. 9 Konwencji o ochronie praw człowieka i podstawowych wolności," in *Wokół Konwencji Europejskiej. Komentarz do Europejskiej Konwencji Praw Człowieka* (Warszawa, 2017)).

As to freedom of speech, the view that best captures its essence is that the appropriate term is "freedom of expression" (see R. Mizerski, in *Prawa człowieka i ich ochrona – podręcznik dla studentów prawa i administracji*, ed. T. Jasudowicz, B. Gronowska, M. Balcerzak, M. Lubiszewski, and R. Mizerski (Toruń, 2005), 328) although legal scholarship also uses the term "freedom of speech" (M. A. Nowicki, *Wokół Konwencji Europejskiej. Komentarz do Europejskiej Konwencji Praw Człowieka* (Warszawa, 2009), 413). It is undisputed in doctrine that the norms protecting freedom of speech are the source of artistic freedom, satire, and criticism. It has been aptly noted that, under Article 10(1) of the ECHR, there is essentially no category of "speech not protected" by that provision (see L. Garlicki, "Komentarz do art. 10 EKPCz," in *Konwencja o ochronie praw człowieka i podstawowych wolności. Komentarz do artykułów 1–18*, vol. 1, ed. L. Garlicki, P. Hofmański, and A. Wróbel (Warszawa, 2010), 594, para. 15). The European Convention on Human Rights defines this freedom in Article 10 as "freedom of expression." The terminology itself does not prevent the identification of the elements of this freedom. These include the right to hold opinions and the right to receive and impart information and ideas. It should be stated that the expression "freedom of speech" cannot result in treating the entitlements arising from it as "freedoms" rather than "rights." In this case, semantics does not alter the nature of those entitlements or the corresponding obligations of the state. Article 10(1) of the ECHR provides that freedom of expression "freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers." Similar provisions appear in Article 11(1) of the Charter of Fundamental Rights and Article 19(1) of the International Covenant on Civil and Political Rights (of December 7, 2000, OJ EU 2010 C 83, p. 389, hereinafter: the "Charter," as well as the International Covenant

on Civil and Political Rights, Article 19(1), opened for signature in New York on December 19, 1966, annex to Journal of Laws 1977, No. 38, item 167, hereinafter: the "ICCPR").

One cannot ignore the scope of the Covenant's limitation clause governing freedom of expression, or the linguistic implications of its interpretation. It is clear that no right is unlimited, and within the human rights system the convention legislator repeatedly defines the permissible scope of restrictions (M. Skwarzyński, *Specyfika prawa człowieka do własności intelektualnej* (Lublin, 2012), 17ff., 184–215, 221–25, 248–78, 280). What is essential in this regard is a comparison not only of the protected rights and freedoms themselves, but also of the limitation clauses applicable to freedom of expression, freedom of conscience and religion, and, to a lesser extent, the right to privacy.

In the case of freedom of expression, Article 10(2) of the ECHR provides that:

> The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

By contrast, Article 19(3) of the ICCPR provides that:

> The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Thus, limitations on freedom of expression strongly emphasize the responsibilities borne by those exercising that freedom. They also make clear that freedom of expression may not be exercised in a manner that violates the rights of others or public morals. Nor may it be used to disturb public order.

The Strasbourg Court has held that, although freedom of expression is one of the foundations of a democratic society, the "logic of the Convention" also requires protection of other rights (see ECtHR, *Otto-Preminger-Institut v. Austria*, judgment of September 20, 1994, Application No. 13470/87, para. 47). Consequently, the socio-historical experiences and legal systems of individual states will shape the scope and manner of resolving conflicts of rights arising from the exercise of freedom of expression.

The Polish Constitutional Tribunal has likewise emphasized that freedom of speech is not absolute and may be restricted in accordance with the

principle of proportionality (Constitutional Tribunal judgment of October 6, 2015, case no. SK 54/13, p. 27, para. 6.2). The Constitutional Tribunal rightly stated that freedom of conscience, "being itself a fundamental human right, is at the same time the source of many other rights and freedoms; it is a kind of 'right of rights'" (Constitutional Tribunal judgment of October 7, 2015, case no. K 12/14, para. 4.1.1). Its essence "is sometimes regarded as supra-positive, axiologically linked to human nature itself, and an essential element of human dignity." Accordingly, a legal system that failed to guarantee freedom of conscience "would be *ab initio* incomplete, ineffective, and inefficient, and consequently also undemocratic, as it would depart from the model of a state respecting the necessary *minimum minimorum* in the protection of human rights" (J. Szymanek, *Wolność sumienia i wyznania...*, 39). "The need to respect [this freedom] is closely linked to respect for and protection of human dignity, which is a duty of public authorities (See Constitutional Tribunal judgment of October 7, 2015, case no. K 12/14, para. 4.1.2)

It All Started with ACTA

The first idea for neo-censorship, particularly online, was known as the Anti-Counterfeiting Trade Agreement ("ACTA") (see the text of ACTA intended to become part of the EU legal order, available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0380:FIN:PL:PDF, accessed May 3, 2026), which was intended to harmonize, on a global scale, the detection and prosecution of copyright infringements (see P. Waglowski, "O tym się mówi: Anti-Counterfeiting Trade Agreement (ACTA)," available at http://prawo.vagla.pl/node/7899, accessed June 1, 2010; idem, "Odpowiedź na interpelację w sprawie ACTA, opinia prawna dla LIBE i międzynarodowa koalicja przeciwników," available at http://prawo.vagla.pl/node/9095, accessed June 1, 2010, especially the literature cited therein).

The text of this international treaty remained classified for many months. It was not until the second half of 2010 that the consolidated draft text was published (available at http://trade.ec.europa.eu/doclib/docs/2010/october/tradoc_146699.pdf, accessed May 1, 2012. For further discussion, see P. Waglowski, "Nie czytaj notatki o ACTA," available at http://prawo.vagla.pl/node/9233, accessed May 3, 2012). The secrecy surrounding the proceedings, together with subsequent "leaks," indicated that the ultimate purpose of the agreement was the global prosecution of intellectual property offenses. This contains a systemic error: the assumption that criminal law concerning intellectual property can be unified worldwide. As early as 1924, J. Makarewicz stated that "it is impossible (...) to create some average criminal law that could suit all societies for all time" (J. Makarewicz, 1924, *Prawo karne. Wykład porównawczy*, Lwów–Warsaw, p. 2). This follows from the simple fact that societies differ from one state to another. Their cultures, historical experiences, and even religions shape society and social attitudes in different ways. Law is

a sociological phenomenon that should serve society and adapt to it, since it arises from that society's culture. This is especially true of criminal law. For that reason, criminal law cannot be unified across all states. Some norms will not be accepted in a given society, while others may criminalize conduct that forms part of a centuries-old culture. Of course, there is an ongoing Europeanization of criminal law, as M. Tomášek rightly observed (M. Tomášek, 2010, "Human Rights as Means of Europeanization of Criminal Law," in *Czech Yearbook of International Law*, Volume I 2010: *Second Decade Ahead: Tracing the Global Crisis*, ed. A. J. Bělohlávek and N. Rozehnalová, New York–Prague, pp. 173–184). However, this concerns primarily procedural issues rather than substantive criminal law.

The ACTA provisions could have been used to build a semi-official censorship system, ostensibly aimed at protecting intellectual property. Without ACTA, censoring the Internet is significantly more difficult.

This project was not implemented because of opposition from many societies, including Polish society, where that opposition escalated into protests in 2012. Even before World War II, A. Mogilnicki aptly observed that "when laws exist that are incompatible with the moral sensibilities of the population (...), an abnormal state arises in which everyone thinks about how to circumvent such laws, and the entire society waits only for the moment to throw off the hateful yoke of restrictive laws (...) a sensible legislator thinks first and foremost about ensuring that laws correspond to social needs and the moral convictions of society, so that the law he creates is a just law" (see A. Mogilnicki, *Ogólne zasady prawa* (Warszawa, 1923), p. 21). In the case of ACTA, society influenced the legislator preventively. Undoubtedly, leaks from U.S. diplomatic documents published by WikiLeaks played a role (See P. Waglowski, "Dalsze przecieki WikiLeaks na temat negocjacji porozumienia ACTA i globalnego prawa autorskiego," available at http://prawo.vagla.pl/node/9351, accessed May 3, 2011; idem, "Prace nad globalnym prawem własności intelektualnej w niektórych notatkach WikiLeaks," available at http://prawo.vagla.pl/node/9293, accessed May 3, 2011), as did the attempt to conduct the legislative process in secret, which drew criticism especially in the United States (J. Kędzierski 2012, *Od TRIPS do ACTA - wokół międzynarodowego systemu ochrony praw własności intelektualnej*, Pal. nr 3/4/2012, s. 289 – 293). Resistance to ACTA also highlighted the public's desire to preserve access to creative works and freedom of speech on the Internet. It was rightly noted that protection of intellectual property may conflict "with the right to participate in cultural life, of which the Internet appears to be an inherent component today" (M. Barczewski, S. Sykuna, *ACTA*..., p. 10).

This idea was implemented during the administration of Prime Minister Donald Tusk.

How to Justify Censorship? Draft Laws on So-Called Hate Speech

The Act of March 6, 2025, amending the Criminal Code, introduced as Print No. 876 of the Sejm of the 10th term, constituted the tenth attempt to introduce into the Polish legal system provisions criminalizing so-called "hate speech." Previous legislative initiatives in this area had been undertaken regularly since 2011 and included, in succession: Print No. 4253 of the Sejm of the 6th term; Prints Nos. 340, 383, 1078, and 2357 of the Sejm of the 7th term; Prints Nos. 878 and 2301 of the Sejm of the 8th term; and Prints Nos. 138 and 465 of the Sejm of the 9th term. The 2025 bill was therefore part of a long-standing legislative process aimed at expanding the scope of criminal liability for statements deemed to be motivated by prejudice or hatred.

The bill was a private MP's bill drafted by then Minister of Justice Adam Bodnar. From the outset, it drew responses from civil society organizations and legal circles concerned with freedom of expression and criminal-law standards, much as ACTA had earlier.

In particular, the Ordo Iuris Institute took steps to challenge the proposed legislation (https://ordoiuris.pl/analiza/stanowisko-ordo-iuris-w-sprawie-projektu-nowelizacji-kodeksu-karnego/, https://obserwator-praworzadnosci.pl/pl/uprzywilejowanie-pewnych-grup-i-ograniczanie-wolnosci-slowa-projekt-ustawy-o-walce-z-mowa-nienawisci-w-sejmie/ and https://obserwator-praworzadnosci.pl/pl/cenzorska-ustawa-o-mowie-nienawisci-jest-sprzeczna-z-konstytucja-i-nie-wejdzie-w-zycie/), presenting arguments concerning the impact of the proposed changes on freedom of expression and criminal-law standards.

Despite the objections raised and the earlier failures of similar legislative initiatives, the bill was passed by the Sejm on March 6, 2025. It was approved by 238 members of parliament, including 151 members of the Civic Coalition, 31 members of the Polish People's Party, 29 members of Polska 2050, 21 members of the Left, 5 members of the Razem party, and 1 independent member. Voting against the bill were 182 members of Law and Justice, 1 member of the Civic Coalition, 1 member of the Polish People's Party, 15 members of Confederation, and 2 members of the Republicans (https://sejm.gov.pl/Sejm10.nsf/Glosowanie.xsp?posiedzenie=30&glosowanie=16). The result reflected a clear political divide over the direction of changes in criminal law concerning the criminalization of statements classified as "hate speech." Alliance Defending Freedom expressed a negative view of the bill (https://adfinternational.org/wp-content/uploads/2025/01/ADF-International-Submission_Poland-Amendment-of-Penal-Code_Hate-Speech_16-January-2025-1.pdf), an open letter was prepared, and a request was submitted to the President of Poland to veto the legislation (https://stopdyktaturze.pl, also https://ordoiuris.pl/sites/default/files/inline-files/Apel%20do%20Prezydenta%20o%20weto%20ustawy%20cenzorskiej.pdf).

The President submitted a request for review of the constitutionality of the bill. On September 30, 2025, in case no. Kp 3/25, the Constitutional Tribunal, sitting *en banc* and unanimously, held that:

1. Article 1 of the Act of March 6, 2025, amending the Criminal Code, insofar as it amends Article 53 § 2a(6), Article 119 § 1, Article 256 § 1, and Article 257 of the Act of June 6, 1997 – the Criminal Code (Journal of Laws of 2024, item 17, as amended) – by introducing the grounds of disability, age, gender, or sexual orientation, is inconsistent with Article 54(1), in conjunction with Article 42(1) and Article 2, of the Constitution of the Republic of Poland.
2. Article 1, points 1, 2, and 4 of the Act of March 6, 2025, amending the Criminal Code, insofar as Article 53 § 2a(6), Article 119 § 1, and Article 257 of the Criminal Code eliminate the pronoun "her," is inconsistent with Article 54(1), in conjunction with Article 31(3), of the Constitution, and these provisions are inseparably linked to the entire Act.

In assessing the constitutionality of the Act of March 6, 2025, amending the Criminal Code, the Constitutional Tribunal focused primarily on whether the new grounds for criminal liability were compatible with constitutional freedom of expression, the principle of legal certainty in criminal law, and the standards of a democratic state governed by the rule of law. The provisions under review expanded criminal liability by adding, to Article 53 § 2a(6), Article 119 § 1, Article 256 § 1, and Article 257 of the Criminal Code, grounds relating to disability, age, gender, and sexual orientation.

The Tribunal noted that freedom of expression is a cornerstone of a democratic state governed by the rule of law and plays a fundamental role in public debate, public oversight of government, and pluralism of opinion. In its reasoning, the Tribunal referred to classic concepts of freedom of speech presented by Edmund Burke, John Stuart Mill, Herbert Hart, and Ronald Dworkin. It emphasized that even controversial, offensive, or shocking statements enjoy constitutional protection, provided they do not cause actual and serious harm.

The Tribunal then emphasized that restrictions on freedom of expression may be imposed only in compliance with strict constitutional requirements, in particular those arising from the principle of specificity in criminal law and the principle *nullum crimen sine lege certa*. In this regard, the Tribunal recalled the requirements for criminal-law norms established in constitutional case law, according to which provisions criminalizing specific conduct must be precise, clear, and capable of allowing an individual to foresee the legal consequences of his or her actions solely on the basis of linguistic interpretation.

In analyzing the concept of "disability," the Tribunal noted that different definitions of that term exist within the Polish legal system, both in domestic and international legal instruments. It pointed out that those differences concern, among other things, the permanence of limitations and a scope of

the physical, mental, intellectual, or sensory impairments. In the Tribunal's view, this creates interpretive difficulty and uncertainty regarding the scope of criminal-law protection and the manner of establishing this element in criminal proceedings.

Similar reservations were expressed with respect to the concept of "age." The Tribunal noted that age is a characteristic inherent to every human being, making it difficult to identify groups requiring special criminal-law protection. It emphasized that there are no clear criteria for determining whether protection is required for children, adolescents, the elderly, or other age groups. In the Tribunal's view, such a broad and vague concept could lead to the expansion of criminalization even to legitimate public debate on demographic, educational, or social issues.

With regard to the concept of "sexual orientation," the Tribunal noted that its meaning has changed and continues to evolve scientifically and socially. The absence of a statutory definition leads, in the Tribunal's view, to interpretive uncertainty and a risk of arbitrary application of the law by law enforcement agencies and courts. As a result, statements concerning ideological disputes, scientific research, or public debate on sexual identity and related legal regulations could be criminalized.

The Tribunal assessed the extension of criminal liability to include the criterion of "gender" in a similar manner. The reasoning indicated that the concept may be understood biologically, socially, or in the context of transgender and intersex identities, which, in the absence of a statutory definition, creates unclear boundaries for criminalization. In the Tribunal's view, this creates a risk of arbitrary legal classification and produces a chilling effect on statements concerning gender roles, gender policy, or issues of transgender identity.

The Tribunal then emphasized that the legislature could have mitigated these concerns by introducing legal definitions into Article 115 of the Criminal Code. It noted that statutory definitions serve an essential protective function by limiting the discretion of law enforcement authorities and ensuring greater predictability of legal consequences for citizens. The absence of such definitions in the challenged law led, in the Tribunal's view, to an unacceptable interpretive gap in the field of criminal law.

As a result, the Tribunal held that the introduction of new grounds for criminal liability violated the constitutional principle of legal certainty and led to disproportionate interference with freedom of expression. It observed that imprecise regulations may result in arbitrary decisions, the instrumentalization of criminal law, and restrictions on the pluralism of public debate. It also emphasized that criminal law should remain a measure of last resort and cannot be used to criminalize every critical or controversial statement.

The Tribunal separately analyzed the amendment eliminating the pronoun "her" from Article 53 § 2a(6), Article 119 § 1, and Article 257 of the Criminal Code. In the Tribunal's view, this change would significantly expand the

scope of criminalization, because criminal liability would no longer require that the victim actually possess a specific legally protected characteristic. Consequently, criminal liability could be based solely on the perpetrator's subjective motivation toward a particular social group, thereby substantially expanding the scope and repressive character of criminal law.

In the remainder of its reasoning, the Tribunal conducted a proportionality analysis, noting that existing provisions of criminal and civil law already provide protection against violations of personal rights and conduct motivated by prejudice. Among other things, the Tribunal pointed to existing Criminal Code provisions concerning threats, insults, and violations of physical integrity, as well as remedies available under the Civil Code. In the Tribunal's view, the drafters failed to demonstrate why existing legal protections were insufficient.

Ultimately, the Constitutional Tribunal found the challenged provisions inconsistent with the Constitution and determined that they were inseparably linked to the entire amending act. Consequently, pursuant to Article 122(4) of the Constitution, the President was required to refuse to sign the Act, which terminated the legislative process and prevented the Act from entering into force.

The Constitutional Tribunal's ruling must be regarded as clearly justified. Through the instruments of criminal law – which is intended to be the law of limits – an attempt was made to impose a single, exclusive interpretation of reality, namely a liberal-left vision. Referring to the specific nature of criminal law, W. Wolter described it as "the law of insurmountable limits" (W. Wolter, *Prawo karne. Zarys systematycznego ujęcia* (Warsaw, 1947), p. 122). In discussing "the limits and scope of criminal law," he argued that

> the question is whether the driving forces of our lives are to be criminal prohibitions at every turn, or whether our lives are to be a constant dance among swords – that is one extreme; or whether there should be so few prohibitions that life can develop completely spontaneously, and the state fulfills the function of that famous "night watchman" – that is the other extreme; or, finally, whether we should strive for some golden mean, where other legal incentives operate first, and the criminal norm remains the *ultima ratio* (W. Wolter, "Granice i zakres prawa karania, na przykładzie wczesnej Polski Ludowej," *Państwo i Prawo*, no. 2 (1957), p. 243).

The Constitutional Tribunal rightly noted that the fundamental principle of *nullum crimen sine lege* gives rise to four basic principles of substantive criminal law: *nullum crimen sine lege scripta*, under which the type of prohibited act must be defined in a statute, not in subordinate legislation; *nullum crimen sine lege certa*, requiring the utmost precision in defining a prohibited act so as to distinguish criminal conduct from lawful conduct; *nullum crimen sine lege stricta*, precluding broad interpretation and analogy to the detriment of the accused; and *nullum crimen sine lege praevia*, prohibiting retroactive applica-

tion of criminal law in a manner that worsens an individual's legal situation. A particularly important element of the standard expressed in Article 42(1) of the Constitution is the principle of specificity of penal provisions, *nullum crimen sine lege certa*. A substantial body of Constitutional Tribunal case law has developed around this principle. The Tribunal has repeatedly clarified the significance of constitutional standards of certainty in criminal-law regulations. In its judgment of November 26, 2003, case no. SK 22/02, the Constitutional Tribunal emphasized that:

> a criminal provision (...) should (...) unambiguously identify both the person to whom the prohibition is directed, the elements of the prohibited act, and the type of sanction for committing such an act. (...) The rule of specificity set forth in Article 42 of the Constitution thus determines the admissibility and scope of application of blanket criminal-law provisions. It requires the legislature to define the prohibited act, that is, its elements, in such a way that there is no doubt – for both the addressee of the criminal-law provision and the authorities applying the law and "decoding" the content of the regulation through interpretation – as to whether a specific conduct *in concreto* satisfies those elements. If the law imposes a sanction for prohibited conduct, it cannot leave the individual in ignorance or even uncertainty as to whether certain conduct constitutes a prohibited act subject to such a sanction. (...) Consequently, any general indication allowing broad discretion in interpreting the scope of the elements of a prohibited act or a certain category of conduct cannot be regarded as satisfying the requirement of specificity under Article 42(1) of the Constitution. (...) The Constitutional Tribunal does not rule out the possibility of defining the elements of a prohibited act in a statute other than the one that imposes the criminal sanction. Nor can one *a priori* rule out the possibility of the legislature using general clauses or blanket provisions, and thus applying incomplete norms in the broad sense. The literature even indicates that modern legislative technique cannot avoid resorting to blanket provisions (B. Kunicka-Michalska, in G. Rejman, ed., *Kodeks karny – część ogólna. Komentarz* (Warsaw, 1999), p. 62; T. Bojarski, *Polskie prawo karne. Zarys części ogólnej*, p. 51). This also applies to norms in the field of criminal law. However, in the opinion of the Constitutional Tribunal, the use of this latter tool of criminal-law regulation should be significantly limited. Such norms should be introduced in the process of applying the law only exceptionally and exclusively where, from the perspective of a rational legislator, comprehensive regulation within criminal-law provisions is not possible. (...) It should be noted that the so-called "core of the prohibition" should always be precisely and unambiguously defined in the Criminal Code (See L. Gardocki, *Prawo karne* (Warsaw, 2003), p. 16).

What was missing, however, was argumentation based on the principle of subsidiarity in criminal law and an examination of the bill through that lens. The view of criminal law as *ultima ratio* was adopted and developed by L. Gardocki, who asserts that "criminal law should not intervene, and thus criminalization

should not take place, if the measures provided for in other areas of law are sufficient" (L. Gardocki, *Subsydiarność...* p. 61). This statement captures the meaning of subsidiarity in criminal law. After all, the mechanisms of the current Criminal Code are sufficient in this area. Legal doctrine today generally accepts the existence of the principle of subsidiarity in criminal law. It is also generally understood in a similar way: as a characteristic (L. Gardocki, *Prawo karne*, pp. 26–29; idem, *Subsydiarność...*, p. 60; see also J. Śliwowski, *Prawo karne* (Warsaw, 1979), pp. 28–29), function (A. Marek, *Prawo karne* (Warsaw, 2000), p. 16; idem, *Prawo karne. Zagadnienia teorii i praktyki* (Warsaw, 1986), p. 12; see also O. Górniok, "Znaczenie subsydiarności w jego interpretacji," *Państwo i Prawo*, no. 5 (2007), p. 49), or role (W. Wolter, *Nauka o przestępstwie* (Warsaw, 1973), p. 14) of criminal law in relation to other branches of law, consisting in supporting them only where other, non-criminal legal norms cannot properly protect specific interests, social relations, or the subjects of those relations. A. Grześkowiak (*Prawo karne* (Warszawa, 2007), pp. 5ff) views subsidiarity differently, treating it as a feature rather than a principle of criminal law. Yet subsidiarity in criminal law is a principle, albeit one with broader meaning and application, because it is structural in nature for criminal law and may be described as a meta-principle (see S. Żółtek, *Prawo karne gospodarcze w aspekcie zasady subsydiarności prawa karnego* (Warsaw, 2009), pp. 95, 103).

It is no accident that legal doctrine attempts to connect the principle of subsidiarity with the functions of criminal law. This is because subsidiarity stems from the fundamental principle of every legal system: the principle of justice. By its very nature, law must be just. Indeed, the application of law is referred to as the "administration of justice." Law should be righteous; this was the formulation used by F. Zoll (F. Zoll, *Prawo* (...), p. 53; for further discussion, see A. Bierć, "Racjonalna procedura prawodawcza jako podstawa dobrego prawa," *Studia Prawnicze*, no. 4, 2005, pp. 5–28). All other functions of law, including its protective function, are emanations of the axiom that law must be fair and just. Fair and just law effectively protects legal interests and prevents their violation. Protection and prevention are therefore derivative functions of law. Every legal norm must be fair and just. This applies to all branches of law, including – and indeed especially – criminal law. Hence the justice-based, or retributive, function of criminal law. In the complainant's view, the justice-based/retributive function is fundamental to criminal law. Because the violation of protected interests must be serious enough to justify a criminal-law response, it becomes necessary to use instruments involving the degree of hardship characteristic of penalties and penal measures. Only such instruments are capable of properly fulfilling the role of just retribution. In its second aspect, the principle of subsidiarity in criminal law is a means of achieving justice. It flows directly from the justicial function of criminal law, and that function, in turn, flows from the principle of justice in the legal system. Justice, as an end, is the same for all branches of law. The role of law in general is to regulate social relations fairly. If a dispute arises and can be

resolved fairly by means other than criminal punishment, that alternative method should be used. The legislature should resort to criminal law only when no other solution can satisfy the requirement of justice.

In summary, criminal law, on the one hand, performs a subsidiary, system-supporting function in relation to other branches of law, while, on the other hand, it serves as an instrument enabling the legislature to ensure that the legal system as a whole achieves its goal: justice. Both elements form the principle of subsidiarity in criminal law, although the latter is by far the more significant.

This principle applies not only to criminal liability in the classical sense, but also to all forms of punishment in the broadest sense, including administrative sanctions imposed in proceedings of a special nature. This means that repression cannot be treated as a primary or automatic instrument, but only as a last resort, requiring strict justification and respect for rigorous procedural safeguards.

As rightly emphasized in the literature,

> the principle of subsidiarity of criminal law, which requires that criminalization be treated as a last resort, (...) has not been enshrined in the Polish Constitution *expressis verbis*, yet it must nevertheless be counted among the fundamental constitutional principles concerning repressive law. A violation of this principle constitutes grounds for the Constitutional Tribunal to issue a judgment declaring a given legislative act inconsistent with Article 31(3) of the Constitution (K. Wojtyczek, "Zasada proporcjonalności jako granica prawa karania," *Czasopismo Prawa Karnego i Nauk Penalnych*, no. 2 (1999), p. 33).

Any attempt to criminalize conduct beyond the scope of the proportionality principle set forth in Article 31(3) of the Constitution, and any attempt by a judicial authority to apply norms exceeding that principle to conduct that does not meet the *ultima ratio* requirement, is fundamentally unacceptable. The Constitution of the Republic of Poland takes precedence over both the Criminal Code and the Code of Criminal Procedure. It is totalitarianism and dictatorship that govern through criminal law; the Polish Constitution protects against that.

Another Attempt at Censorship Under the Digital Services Act

Another attempt to introduce censorship is the draft law of December 18, 2025, amending the Act on the Provision of Electronic Services and certain other acts, submitted as Sejm Print No. 1757. This bill implements EU law and has formally noble objectives: it would grant the right to appeal, the right to receive a statement of reasons for decisions, and the right to defend against arbitrary removal of content by online platforms. It would also allow for the effective combating of illegal content, including pedophilia and fraud.

The proposed solutions implementing regulations related to the Digital Services Act would, however, produce a significant shift in authority over the assessment of the legality of speech and online content from independent courts to administrative bodies, namely officials of the Office of Electronic Communications and the National Broadcasting Council. This structure raises fundamental constitutional and systemic concerns, because decisions restricting freedom of expression and blocking content in the public sphere would be made not by an independent court, but by public administrative bodies operating within the executive branch.

Moreover, the powers provided for in the bill are exceptionally broad. Administrative bodies would be granted authority to interfere with content relating to as many as twenty-seven categories of prohibited acts, including, among others, criminal threats, incitement to suicide, glorification of pedophilic behavior, promotion of totalitarian ideologies, incitement to hatred, and insults based on nationality, ethnicity, race, or religion. The list also includes content relating to copyright infringements, the unlawful sale of goods, and the unlawful provision of services. Such a broadly defined scope of intervention gives administrative authorities real power to determine the permissible limits of public debate and online communication.

This solution raises particular concerns from the standpoint of the constitutional right to freedom of expression and the standards set forth in Article 54 of the Constitution of the Republic of Poland and Article 10 of the European Convention on Human Rights. Restrictions on freedom of expression should be imposed only under strict judicial oversight, with full procedural safeguards, including the right to a defense, the right to participate in proceedings, and the right to independent review of the legality of the interference. Transferring authority to block content to administrative bodies weakens these guarantees and creates a mechanism allowing rapid restriction of access to specific content without a prior judicial ruling.

Here, we see a similar phenomenon of overregulation of the kind that the principle of subsidiarity in criminal law is intended to prevent. Action by public administration itself, without judicial involvement, is in no sense auxiliary to resolving a social dispute or a conflict between individuals. It should also be noted that some of the categories identified in the bill are evaluative and vague, particularly concepts such as "incitement to hatred," "insult," or specific forms of propagating ideological content.

In practice, this grants administrative bodies a very broad margin of interpretation, increasing the risk of arbitrariness and the instrumental use of content-blocking mechanisms. As a result, it may produce a chilling effect, in which citizens limit their public activity out of fear of administrative interference with the content they publish. Of course, the precision required of administrative law does not go as far as the elements of a criminal offense. Here, however, we are dealing with a direct form of censorship – the removal of content – so the constitutional and human rights standard is particularly high.

It is also especially important that decisions concerning the blocking of content would be made by bodies that do not have the constitutional status of courts or the guarantees of independence characteristic of the judiciary. The Office of Electronic Communications and the National Broadcasting Council are administrative and regulatory bodies operating within the state apparatus, not bodies established to administer justice. This therefore leads to a dangerous expansion of public administration's powers into an area directly connected with the control of public debate and the assessment of the legality of speech.

As a result, the proposed solutions would weaken the standard of protection for freedom of expression by replacing the model of judicial review of speech with a model of administrative management of online content. This shifts the burden of protecting individuals' rights from an independent court to administrative bodies, which, from the perspective of a democratic state governed by the rule of law, raises serious doubts as to the compatibility of such mechanisms with constitutional standards for the protection of civil rights and freedoms.

Moreover, it should be borne in mind that a single judge does not always satisfy the requirements of independence and impartiality applicable to a court as a judicial body (see the ECtHR judgment of May 6, 2003, in *Kleyn and Others v. the Netherlands*, applications nos. 39343/98, 39651/98, 43147/98, and 46664/99). A court is, in principle, collegial in nature, and its panels should, as a rule, be collegial. This appears to follow from the long-standing case law of the ECtHR, which, in identifying irregularities concerning a tribunal "established by law," refers to the court rather than individual judges and speaks of the participation of one or more improperly appointed judges (see *Gorguiladzé v. Georgia*, judgment of October 20, 2009, Chamber, Section II, Application No. 4313/04, § 68; *Pandjikidzé and Others v. Georgia*, judgment of October 27, 2009, Chamber, Section II, Application No. 30323/02, § 104). This reasoning appears to presuppose collegial, multi-judge panels. How, then, can such a standard be incorporated into an administrative decision?

Here, the process goes further: matters that are purely judicial in nature, such as censorship, are transferred to administrative bodies. This is a consequence of the lack of protest from the judicial community against the elimination of collegiality. To paraphrase the ECtHR and its judgments of February 21, 1975, in *Golder v. the United Kingdom*, and in *Guðmundur Andri Ástráðsson v. Iceland*, such a model does not satisfy the quality requirements inherent in the right to a fair trial, including availability, accessibility, acceptability, and quality. It is reasonable to maintain that "the independence of the judiciary means that it is not subject to any influence regarding the appointment, evaluation, and control of the composition of the judiciary by any other legislative or executive authority, nor by any other organization, social group, or legal entity" (see R. Tabaszewski, "Prawo do jawnego, publicznego rozpoznania sprawy przez bezstronny i niezależny sąd," in K. Orzeszyna, M. Skwarzyński,

R. Tabaszewski, *Prawo Międzynarodowe Praw Człowieka*, (Warsaw 2022), p. 377, para. 1172).

It should also be borne in mind that simplifying or streamlining a procedure must not come at the expense of the parties' rights, particularly the rights of the accused. The ECtHR has noted that states are not required to introduce simplified proceedings, but where such a procedure exists and is applied, the accused must not be arbitrarily deprived of the benefits associated with it (see judgment of September 17, 2009, Grand Chamber, § 139; see also *Oleksandr Volkov v. Ukraine*, judgment of January 9, 2013, Chamber, Section V, Application No. 21722/11, § 143).

The Polish Constitutional Tribunal rightly noted:

> It is more difficult to determine the content of the constitutional standard for such fair procedure. The concept of procedural justice does not have a strictly defined meaning. However, various concepts of procedural justice share a common core, which consists of:
> – the opportunity to be heard;
> – the clear disclosure of the grounds for the decision, to an extent allowing verification of the court's reasoning, even where the decision itself is not subject to appeal (legitimacy through transparency) and thus avoidance of arbitrariness or even capriciousness in the court's actions (Constitutional Tribunal judgment of January 16, 2006, case no. SK 30/05).

This is because international standards are binding on Polish courts, as the Supreme Court has emphasized. It held that:

> Referring in an appeal to international norms and acts binding on Poland, even though directly applied by courts, as well as to the Constitution, is unnecessary insofar as their implementation is already ensured by explicit and detailed statutory provisions. Reference to them may be justified only to support an allegation of violation of code provisions or as part of an allegation showing a flawed interpretation of those provisions contrary to those norms (Supreme Court judgment of March 9, 2010, case no. V KK 247/09).

Furthermore, in its judgment of January 16, 2006, case no. SK 30/05, the Constitutional Tribunal stated, in section 4.3, that reasoning is a component of the constitutional right to a fair hearing: "The fundamental functions, or essence, of the constitutional right to a fair hearing are closely linked to the functions commonly attributed to judicial reasoning." For this reason, the Constitutional Tribunal, in its decision of April 11, 2005, case no. SK 48/04, concerning reasoning in criminal cassation proceedings, expressed the view that the reasoning of judicial decisions is a decisive component of the right to a fair trial as a constitutionally protected individual right. Arbitrary administrative action precludes compliance with this standard.

It should also be noted that "the established elements of the concept of a fair trial under Article 6(1) of the ECHR – including the public nature of pro-

ceedings, equality of arms and the related right to be heard, the adversarial principle, the right to a reasoned judgment, and the finality of the decision (or *res judicata*; on these elements, see further P. Hofmański and A. Wróbel, in L. Garlicki, ed., *Konwencja*, vol. 1, pp. 326ff.; W. Peukert, in J. A. Frowein and W. Peukert, *Europäische Menschenrechtskonvention*, pp. 189ff.; J. Meyer-Ladewig, *EMRK*, notes pp. 90ff. on Article 6) are components of the right to a court within the meaning of Article 45(1) of the Polish Constitution. They form part of the right to properly conducted judicial proceedings and to a final decision. This means that all these guarantees have a dual basis in the Polish legal system: constitutional and convention-based (see Commentary on Article 45 of the Polish Constitution, in *Konstytucja RP. Tom I. Komentarz do art. 1–86*, eds. M. Safjan and L. Bosek (Warsaw, 2016), para. 10). The right to a court, regardless of the instance or the nature of proceedings before the Supreme Court, must respect the component of the right to be heard (see the ECHR judgment in *Axen*, para. 76). Moreover, with reference to *Aboushanif v. Norway*, Communication No. 1542/2007, CCPR/C/93/D/1542/2007, § 7.2, it follows that while the state has discretion in determining means of appeal, it may not arbitrarily deprive a person of the right to know the reasons for a decision. That is precisely the concern here.

Accordingly, the President was justified in vetoing this latest attempt to introduce censorship in Poland (https://www.prezydent.pl/aktualnosci/wydarzenia/prezydent-podpisal-osiem-ustaw-trzy-zawetowal%2C112911).

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Prosecutorial and Pro-Government Media Attacks on Judges: The Maria Szczepaniec Case

I. The Prosecutor's Office – Act One

In August 2024, W. Żurek – at that time still a judge and an activist in the so-called "fight for the rule of law," coordinated by the highly politicized judges' associations "Iustitia" and "Themis" – filed a criminal complaint against Supreme Court Judge Maria Szczepaniec. The allegation concerned conduct that supposedly consisted of usurping public office, specifically by presenting herself as a public official, namely a judge of the Extraordinary Control and Public Affairs Chamber of the Supreme Court, and performing judicial acts associated with that office: the hearing of an extraordinary appeal filed by the Prosecutor General in 2021. It should be clarified that the appeal was filed in a case in which W. Żurek was one of the parties, and the ruling issued at that time was unfavorable to him.

For clarity, it is necessary to briefly note that, pursuant to Article 179 of the Constitution of the Republic of Poland, judges are appointed by the President of the Republic upon the recommendation of the National Council of the Judiciary for an indefinite term. By Resolution No. 331/2018 of August 28, 2018, the National Council of the Judiciary, pursuant to Article 3(1)(2) of the Act of July 12, 2011, submitted to the President of the Republic a motion to appoint Maria Szczepaniec to the office of judge of the Supreme Court in the Chamber of Extraordinary Control and Public Affairs. By decision dated October 10, 2018, the President of the Republic appointed Maria Szczepaniec as a judge of the Supreme Court.

The situation is therefore entirely clear: Maria Szczepaniec is a judge of the Supreme Court. It should also be added that she is a professor at Cardinal Stefan Wyszyński University and a researcher in the Department of Criminal Law, specializing in substantive criminal law, criminal procedure, criminology, and forensic science.

Given this factual and legal background, not only a lawyer, but any rational and unprejudiced citizen, would be entitled to ask the author of the complaint a simple question: *quo vadis*? At first glance, in light of the allegation made in the complaint, it is clear that its author is, to put it mildly, lost in a fog of absurdity. To grasp the scale of this aberration, it should also be emphasized

that the alleged "usurpation" of the office of Supreme Court judge was supposed to have occurred only on the single day when a ruling unfavorable to W. Żurek was issued by a panel that included Supreme Court judge Maria Szczepaniec. At the time he filed the complaint, W. Żurek – then a judge and now, at the time of writing, Minister of Justice and Prosecutor General – did not challenge Maria Szczepaniec's legal status as a judge or any judicial acts she had performed before that day, over a period of nearly three years, or after that day, over a similarly long period. His position, which requires no further argument, is not only an expression of legal flippancy, but also glaringly contrary to basic logic and common sense, bordering on the ridiculous.

One might therefore have expected that, in a normal and properly functioning democratic state governed by the rule of law, criminal law enforcement authorities would refuse to conduct criminal proceedings in this case, given the plainly groundless nature of the complaint. In fact, although the National Prosecutor's Office initially opened an investigation, it subsequently dismissed the case after determining that the act did not satisfy the statutory elements of a criminal offense.

However, that decision was challenged by W. Żurek's attorney, who demanded, among other things, that Supreme Court judge Maria Szczepaniec be summoned as a witness in order to determine whether she was aware that persons appointed at the request of the so-called neo-KRS are not entitled to the status of judge and therefore lack authority to issue rulings on behalf of the Supreme Court of the Republic of Poland. According to the appellant, this could lead to the conclusion that Supreme Court judge Maria Szczepaniec issued a ruling while being aware of, or at least having doubts about, her own status.

Here begins the first act of the drama, which in the long run opened the door to harassing and repressive actions by criminal law enforcement authorities against Supreme Court judge Maria Szczepaniec. The prosecutor granted the attorney's complaint and ordered her to be questioned as a witness.

This decision, in fact, exposes the prosecutor's true intentions. It confirms that the purpose of his action was not to verify the validity of the allegation contained in the report of the alleged crime of "usurpation" of the office of Supreme Court judge. That could have been done very easily on the basis of facts commonly known, under Article 168 of the Code of Criminal Procedure, limiting the investigation to verification of judicial acts through which the relevant legal documents relating to the nomination procedure would have been obtained. Ordering the questioning of judge Maria Szczepaniec as a witness was, in reality, intended to create a quasi-legal basis for essentially repressive and humiliating actions that were to be taken against her in the near future.

What supports this conclusion? On the one hand, the factual circumstances; on the other, the legal circumstances – and more precisely, the fundamental principles of criminal procedure on which the Polish model of criminal proceedings is based. Supreme Court judge Maria Szczepaniec, pursuant to

a request by W. Żurek's attorney that was granted by the prosecutor, was to be questioned as a witness as to whether she "was aware of, or at least had doubts about, her status" as a Supreme Court judge.

Leaving aside the fact that judge Szczepaniec has continuously served as a Supreme Court judge since October 2018, which itself excludes such "awareness" or "doubts" – for otherwise, as one may safely assume, she would have resigned from the office, which she did not do – her judicial activity and public statements consistently and firmly reflect the position that she is a Supreme Court judge elected to the office entrusted to her through a lawful procedure culminating in a decision of the President of the Republic of Poland.

A different element is more significant for the issue analyzed here. Under a fundamental principle widely accepted both in Polish criminal procedure scholarship and in the case law of the highest court, testimony given by a person questioned as a witness cannot later be used if, at a subsequent stage of the investigation, the public prosecutor charges that person with a criminal offense. Such testimony cannot constitute evidence usable in court proceedings at trial.

This corresponds to the principle *nemo se ipsum accusare tenetur*, under which no one is required to prove his or her own innocence or provide evidence against himself or herself. It implies that there is no obligation to incriminate oneself, and thus no obligation to provide evidence against oneself. Pursuant to Article 14(3)(g) of the International Covenant on Civil and Political Rights, ratified by Poland and opened for signature on December 19, 1966 (Journal of Laws of 1977, No. 38, item 167), Polish legal scholarship and case law recognize that the scope of the *nemo tenetur* principle is broader than the procedural guarantees of an accused or suspect. It also protects any participant in criminal proceedings who is required to make procedural statements, including witnesses. It therefore provides protection even before charges are brought. Similarly, the European Court of Human Rights recognizes the right to remain silent and the privilege against self-incrimination as components of international standards defining the essence of a fair trial. This confirms every person's protection against undue pressure from an interrogating authority seeking to compel disclosure of incriminating circumstances. The Court took this position, among others, in *Paul Serves v. France*, while also deeming unlawful an attempt to question as a witness a person who, based on prior actions by the authorities, could infer that the testimony provided would later be used against him or her (see ECtHR judgment of October 20, 1997, *Serves v. France*, Reports of Judgments and Decisions 1997-VI, paras. 45–47).

Consequently, the interrogation of Supreme Court judge Maria Szczepaniec as a witness, ordered by the prosecutor in the circumstances described above, not only could not contribute to achieving the objectives of pretrial proceedings under Article 297 of the Code of Criminal Procedure, but was also generally irrational from the standpoint of the legitimacy of the entire proceeding. Moreover, it was a pointless act from the perspective of procedur-

al economy. Due to the normative framework in force in the Polish legal system, it could not provide evidence capable of confirming the circumstances that it was supposedly intended to establish. To repeat, the testimony given by Supreme Court judge Maria Szczepaniec could not have been treated as legitimate evidence in any potential later trial. Under legal principles, it would have been treated as non-existent.

The order to carry out this procedural act, following the prosecutor's acceptance of the complaint filed by W. Żurek's attorney, therefore had no practical sense or significance. It created a façade, a pretense of legality, which nevertheless opened the door to further harassing actions against Supreme Court judge Maria Szczepaniec.

II. The Prosecutor's Office – Act Two

On July 1, 2025, the Extraordinary Control and Public Affairs Chamber of the Supreme Court ruled on the validity of the election of the President of the Republic of Poland. During the session, former Minister of Justice, Prosecutor General, and then Polish Senator Adam Bodnar attempted to challenge the Chamber's jurisdiction to rule on the matter, using the already familiar method of undermining the status of Supreme Court judges and of the Chamber as a whole. He struck at the very foundation of the Supreme Court by seeking the recusal of all judges of the Chamber of Extraordinary Control and Public Affairs and the transfer of the case to the Labor and Social Insurance Chamber for adjudication. According to Adam Bodnar, the Chamber of Extraordinary Control and Public Affairs did not meet the constitutional requirements of independence and impartiality. The Prosecutor General expressly stated that the Chamber was not a court within the meaning of Article 45(1) of the Constitution and that its rulings could not be regarded as lawful.

During the session and debate on the Prosecutor General's arguments, Supreme Court judge Maria Szczepaniec asked Adam Bodnar whether, in light of the position he had presented, he considered himself a "neo-senator." She was referring to the fact that several months earlier, the same Chamber of Extraordinary Control and Public Affairs of the Supreme Court had ruled on the validity of the elections to the Sejm and Senate of the Republic of Poland held on October 15, 2023. In those elections, Adam Bodnar won a Senate seat. It is worth noting that, in those proceedings, the Prosecutor General took the position that the Chamber of Extraordinary Control and Public Affairs of the Supreme Court should adopt a resolution confirming the validity of the parliamentary elections. "This is a reflection of constitutional schizophrenia," constitutional-law expert Professor Ryszard Piotrowski commented emphatically. "When we want to see this body – that is, the Chamber of Extraordinary Control and Public Affairs – as a court, then we recognize it as such. We do this, for example, when it confirms the validity of parliamentary elections, and when it is not politically convenient for us, we say that it is not a court."

Judge Maria Szczepaniec's question caused confusion and irritation for the Prosecutor General, all the more so because it was widely publicized as an accurate exposure of the hypocrisy of a representative of the executive branch currently in power in Poland. For all participants and observers of the political scene, it was obvious that the purpose of undermining the status of the judges and of the entire Extraordinary Control and Public Affairs Chamber of the Supreme Court was to block the adoption of a resolution confirming the validity of Karol Nawrocki's election as President of the Republic of Poland on June 1, 2025. Had that occurred, the political situation would have changed radically. The liberal-left coalition ruling Poland would then have faced the possibility of seizing full power, unrestricted and unchecked. The obstacle to realizing that objective was precisely the Chamber of Extraordinary Control and Public Affairs of the Supreme Court, which, in the assessment of the December 13 Coalition, did not guarantee the desired result. Hence the attempt to undermine its status and thereby transfer the case – in violation of applicable law – to the Labor and Social Insurance Chamber of the Supreme Court, whose judges have on numerous occasions expressed, in violation of the principle of political neutrality, their political affiliation with the December 13 Coalition. One example is that Chamber's adjudication, beyond its jurisdiction, on the expiration of the parliamentary mandates of Mariusz Kamiński and Maciej Wąsik.

Events then accelerated. After a session lasting several hours on July 1, 2025, judge Maria Szczepaniec received a summons from the Internal Affairs Division of the National Prosecutor's Office, issued that same day, to appear for questioning in the case described above, which had been initiated on the basis of a complaint filed by Waldemar Żurek. The second phase of repressive actions directed against Supreme Court judge Maria Szczepaniec had begun.

Pursuant to Article 177 of the Code of Criminal Procedure, any person summoned as a witness is required to appear and testify. This also applies to a judge enjoying immunity. Judge Maria Szczepaniec fulfilled that obligation by appearing at the prosecutor's office on the scheduled date. She underwent a lengthy, four-hour interrogation conducted by prosecutor Anna Kaniak, who had been seconded from the District Prosecutor's Office to the National Prosecutor's Office, Department of Internal Affairs. Two professional legal representatives of the complainant, Waldemar Żurek, participated in the questioning. The procedural act itself, despite the available legal possibility, was not recorded by audiovisual means on the prosecutor's decision. Moreover, the manner in which it was conducted violated the standards of fair proceedings arising from the Polish Code of Criminal Procedure.

It should therefore be recalled that, under the Polish model of criminal procedure, the person being questioned must be allowed to speak freely within the limits defined by the purpose of the procedural act, and only thereafter may questions be asked to supplement, clarify, or verify the statement. Questions suggesting the content of the answer may not be asked, pursuant to

Article 177 § 1 and § 4 of the Code of Criminal Procedure. In other words, an interrogation consists of two essential stages: first, the stage of free or spontaneous statement, in which the person being questioned presents all facts known to him or her that are related to the purpose of the questioning, and that statement may be interrupted only if it exceeds the limits defined by the purpose of the procedural act; and second, the stage of questions, in which the interrogator asks detailed questions that must strictly concern the subject of the interrogation.

The course and manner of the interrogation are best described by judge Maria Szczepaniec's own statements to the media:

> The interrogation was absolutely scandalous; I was not allowed to speak freely, and I was asked leading questions. It was four hours of brutal attacks against me carried out by three people: the prosecutor and two representatives of judge Żurek. The manner in which I was interrogated violated the principles of tactical witness interrogation. The way questions were asked, the comments on my answers, and the way they "wrestled" other answers out of me besides the ones I had given. If the interrogators did not like the answer I gave, they would ask additional questions intended, as it were, to steer the answer toward what they wanted it to be. For me, the most shocking and unprofessional aspect was, above all, the prosecutor's comments on my answers. Commenting on my abilities, on what I did, and on what I should not have done. This is not the kind of behavior a prosecutor conducting a witness examination is authorized to engage in. A prosecutor is supposed to ask questions related to the case, not express their own opinions about the witness's character or behavior. This is not the time for that; this is not the procedure. It didn't resemble a witness examination at all. A professional witness examination.

In light of the above, it is justified to state that freedom of expression – the very foundation of a fair hearing – was not entirely excluded, but was undoubtedly substantially restricted.

The violations of the procedural provisions contained in the Polish Code of Criminal Procedure described above were not the only violations committed by the prosecutor during the questioning. Pursuant to Article 148 § 2 of the Code of Criminal Procedure, testimony, statements, motions, and findings of specific circumstances by the investigating authority must be recorded in the minutes with the greatest possible accuracy. In other words, everything said by the person being questioned must be recorded, omitting only details irrelevant to the case. Where the rights and interests of persons participating in the procedural act are concerned – including the witness – those persons have the right to demand that everything concerning their rights or interests be included in the record with full accuracy. The phrase "with full accuracy" implies greater precision than "with the greatest possible accuracy." Full accuracy means a verbatim record of the statement or declaration. In such a case, all words spoken by the person participating in the procedural act should be recorded.

The prosecutor conducting the interrogation, Anna Kaniak, failed to comply with the procedural requirements described above. Supreme Court Justice Maria Szczepaniec described the situation as follows:

> Not all elements were recorded; not all conduct of the prosecutor or the interrogators was included. In other words, only those questions were recorded that suited the interrogators. Of course, the record does not include the prosecutor's opinions about me, my skills, or my competence. None of that is there. I could have demanded that everything that occurred during the interrogation be included in the record, but then I would have spent 12 hours at the National Prosecutor's Office instead of four, and I did not have the strength for that, given the conduct of the three people interrogating me. Of course, I made comments in the record; there were quite a few of them. I protested against such blatant manipulation of the questions and my answers.

The following statement by Supreme Court Justice Maria Szczepaniec, though made by way of contrast, also sheds considerable light on how the interrogation was conducted: "I am a lawyer, a former attorney, and have been a Supreme Court judge for nearly seven years. Of course, I can handle such situations, but I was deeply moved by the way the hearing was conducted." She added: "I do not know how Barbara Skrzypek was questioned, but after leaving the prosecutor's office, I did think about how she must have felt. Because I felt terrible, treated that way. To me, these were brutal, oppressive attacks with a specific purpose."

To understand the context of this statement, Barbara Skrzypek was a longtime associate of the president of the opposition Law and Justice party who died a few days after a nearly five-hour, exhausting interrogation as a witness. That interrogation was conducted after the prosecutor, by arbitrary decision, refused to allow her attorney to be present. Like the questioning of Supreme Court judge Maria Szczepaniec, that interrogation was not audio-visually recorded. As in the case of judge Szczepaniec, three people participated in Barbara Skrzypek's questioning: the prosecutor and two representatives of the complainant. Barbara Skrzypek's sudden death resonated strongly with the public. Among those who spoke out was then-President of Poland Andrzej Duda, who firmly demanded a thorough investigation into all the circumstances. In his view, doubts were raised primarily by the impartiality of the prosecutor conducting the hearing, Ewa Wrzosek, who was known for sharply political public statements. The President of Poland critically noted, among other things, that "the Prosecutor General appointed such a prosecutor to this case, knowing full well what this person's personality profile and worldview are, and what kind of conduct she exhibits." The circumstances of Barbara Skrzypek's death subsequently became the subject of a separate investigation by criminal law enforcement authorities.

Similarly, the criminal investigation into the alleged "usurpation" of the role of Supreme Court judge by Supreme Court judge Maria Szczepaniec, de-

spite its obvious groundlessness and the significant passage of time, is still being conducted by the National Prosecutor's Office, which, it should be emphasized, was unlawfully taken over by the December 13 Coalition (that issue was the subject of earlier reports prepared by the Prawnicy dla Polski Association).

There is nothing coincidental about this. In the situation under analysis, the proceeding is not intended to implement substantive criminal law. On the contrary, it is being exploited instrumentally as a means of pressure and coercion on the one hand, and as a form of humiliation and repressive harassment against Supreme Court judge Maria Szczepaniec in connection with her judicial activity on the other. *Eo ipso*, it damages her reputation and undermines the dignity of the judiciary. At the same time, it sets a dangerous precedent that may contribute to the emergence of a chilling effect within the judicial community.

The actions taken by the National Prosecutor's Office met with a strong response from the Supreme Court's Collegium, which, in Resolution No. 7/10/2025 of October 8, 2025, expressed its opposition to the unprecedented and openly intimidating interrogation of Supreme Court judge Maria Szczepaniec in proceedings initiated in connection with a manifestly unfounded criminal charge of usurping the office of Supreme Court Justice. The Supreme Court Council, in Resolution No. 6/10/2025 of October 8, 2025, concerning the proper functioning of the administration of justice, including the Supreme Court, emphasized:

> The legitimacy of each judge of the Supreme Court to administer justice derives from the Constitution of the Republic of Poland, which is the supreme law of Poland (Article 8(1)). Each of them was appointed by the President of the Republic of Poland, pursuant to Article 179 of the Constitution, at the request of the National Council of the Judiciary for an indefinite term, and each has sworn to serve the Republic of Poland faithfully. No actions by representatives of the political authorities can undermine the legitimacy arising therefrom, even if they refer to statements from various international organizations of which the Republic is currently a member.

III. The Prosecutor's Office – Act Three

The pretext for yet another series of unprecedented attacks by the executive branch on Supreme Court judge Maria Szczepaniec was, once again, her judicial activity – this time within the Professional Responsibility Chamber of the Supreme Court. In short, that Chamber, within the scope defined by law, deals with disciplinary liability of judges, including decisions on the waiver of judicial immunity.

On January 28, 2026, while sitting in the Professional Responsibility Chamber, Supreme Court judge Maria Szczepaniec considered a motion seeking to waive the immunity of Appellate Court judge Piotr Schab. The mo-

tion was connected with the intention to charge him with abuse of authority, allegedly consisting of his failure, as Disciplinary Spokesman for Judges of the Common Courts, to release disciplinary case files at the request of the Minister of Justice, and consequently to hold him criminally liable.

Two days before the hearing, Minister of Justice and Prosecutor General Waldemar Żurek questioned the legality of the Professional Responsibility Chamber of the Supreme Court in the media. Judge Szczepaniec addressed that statement during the hearing, saying:

> The Supreme Court, in its current composition, wishes to emphasize that all statements appearing in the public sphere regarding any alleged misconduct on the part of judges or the Professional Responsibility Chamber are fabricated. The narrative circulating in the public sphere that there is a group of judges unauthorized to adjudicate is a fabrication; these are statements of a purely political nature, having no basis in the current legal framework. I consider it self-evident that we are a court and that we adjudicate. And the fact that, for the eighth year in a row, wishful statements have appeared in the media claiming that there are judges who were improperly appointed, I regard as part of a political struggle.

At the same time, the Court adjourned the hearing, citing doubts as to the authority of the prosecutors from the National Prosecutor's Office appearing in the case.

Ultimately, at the next hearing, on March 26, 2026, the Supreme Court, presided over by judge Maria Szczepaniec, first granted the defense motion seeking to exclude from the case the prosecutor from the Internal Affairs Division of the National Prosecutor's Office who was present in the courtroom, due to his lack of proper authority to act in the matter. The Court then dismissed the case for lack of a complaint filed by an authorized party. The Court, presided over by judge Szczepaniec, thus adopted a firm legal position in the dispute over the leadership of the National Prosecutor's Office, which has been ongoing for more than two years.

To clarify that legal position, it is necessary to recall the circumstances in which the dispute arose. On January 12, 2024, then Minister of Justice and Prosecutor General Adam Bodnar, seeking what was in substance an unlawful takeover of the Prosecutor's Office, handed National Prosecutor Dariusz Barski a document stating that his reinstatement from retirement to active service had been carried out in violation of applicable law and had no legal effect. Pursuant to a decision by Prime Minister Donald Tusk – which was unlawful because it was issued without the statutorily required consent of the President of the Republic of Poland – prosecutor Jacek Bilewicz was appointed acting National Prosecutor. Subsequently, in mid-March 2024, Prime Minister Tusk appointed Dariusz Korneluk as the new National Prosecutor, and that decision likewise did not obtain the legally required opinion of the President of the Republic of Poland. The unlawfulness of the above acts, and therefore

their lack of legal effect, was confirmed, among others, by the Supreme Court in its resolution of September 27, 2024, I KZP 3/24, and by the Constitutional Tribunal in its judgment of November 22, 2024, SK 13/24. A legal view consistent with those rulings was expressed by judge Szczepaniec, who noted in the reasoning of the ruling that Dariusz Barski holds the status of an active prosecutor and serves as National Prosecutor, and that the entrustment of Barski's duties to other prosecutors in 2024 had no factual or legal basis. Consequently, the motion to waive the immunity of Appellate Court judge Piotr Schab – drafted, signed, and filed with the Supreme Court by the head of the Internal Affairs Department of the National Prosecutor's Office – came from a person unauthorized to take such action. That function had not been entrusted to him by the lawful National Prosecutor, Dariusz Barski.

Obviously, such a ruling did not meet the expectations of Minister of Justice and Prosecutor General Waldemar Żurek. As a result – as the media, ever eager to please those in power, were quick to report – the National Prosecutor's Office almost immediately filed motions with the Supreme Court seeking the recusal of judge Maria Szczepaniec from all (!) immunity cases she had been handling in the Professional Responsibility Chamber. This is an unthinkable situation in a democratic state governed by the rule of law. The Prosecutor's Office – a state authority closely connected with and organizationally linked to the executive branch – took steps to remove a judge because of her judicial activity, which, to put it plainly, did not suit the ruling executive. By exploiting procedural instruments for its own purposes, the aim – to state it bluntly – was to remove an inconvenient judge who prioritized independence over political expectations and whose rulings had become a problem for the executive branch.

This action did not go unnoticed. Judge Maria Szczepaniec took a clear position:

> All decisions I have made in immunity cases stem exclusively from a thorough analysis of the law and from the court's duty to examine *ex officio* whether procedural motions originate from persons authorized to file them. Challenging the authority of prosecutors appointed in violation of procedures is not a "manifestation of views," but the implementation of the constitutional principle of the rule of law. In issuing rulings, I rely exclusively on applicable legal provisions, taking into account legal interpretations and resolutions of the Supreme Court. Therefore, the National Prosecutor's Office's filing of motions to recuse me from judicial panels based on the content of my previous rulings constitutes an abuse of procedural instruments, as judicial independence is manifested precisely in the right to freely assess the facts of a case from a legal perspective, regardless of the expectations of the parties to the proceedings or the current political situation. (...) The proper avenue for challenging rulings is appellate review, not personal attacks directed at judges who are faithfully performing their duties. Legal disputes should be conducted in the courtroom, not in the press using arguments unrelated to the merits of the case.

IV. The Mainstream Media to the Rescue

In all the situations described above, pro-government media eagerly supported the prosecution's narrative. To understand the proper context and meaning of these media reports, however, it is necessary to begin with a few explanatory remarks introducing the issue at hand.

In today's reality, truth and falsehood have ceased to serve as points of reference, as Supreme Court judge Paweł Czubik aptly observed. Not only the language of everyday social communication, but above all the language of law, has become a language of vague concepts. For years, the meaning of existing terms has been systematically reversed, while new terms have been created for concepts that completely overturn the meaning of existing regulations or serve to circumvent or ignore them. This process began with a seemingly insignificant linguistic fact, persistently introduced into the public sphere by journalists, politicians, and some lawyers alike: the semantic shift of certain words and phrases. A judge became a "neo-judge," a court a "neo-court," a court ruling a "neo-ruling," a court president a "neo-court president," and the National Council of the Judiciary became the "neo-NCJ." Moreover, the prefix "neo," contrary to its traditional linguistic function, was used to emphasize a negative attitude toward the referent it denotes, that is, the second semantic element. It was intended, on the one hand, to suggest alleged superficiality or falseness and, on the other, to express the speaker's pejorative attitude toward the addressee, conveying contempt, disdain, and a challenge to the addressee's credibility, integrity, or impartiality. It frequently functioned in public discourse as a form of invective. From a linguistic perspective, and from the perspective of those using it, the term was intended to perform – and does perform – a stigmatizing function by attaching a pejorative label to a specific person or group. As a result, semantic manipulation has become a primary tool for shaping hostile attitudes toward judges lawfully appointed to office after 2017. Denying that several thousand judges possess ethical and professional qualities amounts to a form of stigmatization that appears harmless only on the surface, at the semantic and verbal level. In reality, this process is grounded – referring to H. Mannheim's principle – in the discriminatory assumption of their "inferior value." It is not difficult to see that this concerns moral value, hence the defamatory accusations concerning their alleged lack of professional competence, integrity of character, and their supposed actions motivated by improper considerations. This phenomenon, based on a false narrative concerning the allegedly defective nature of judicial appointments after 2017, was described by Supreme Court judge Maria Szczepaniec as "the greatest legal fraud of the century," devised by a handful of militant lawyers. Its consequences have proved dramatic: the undermining of the legal system, chaos in the judiciary, and its massive destabilization.

The person who first used this neologism was one of the long-serving Supreme Court judges. He did so, however, in a truly Pharisaical manner. Con-

testing the direction of judicial reforms in an interview, he used his characteristic eloquence to launch a campaign stigmatizing judges lawfully appointed to office by the President of the Republic of Poland. All neologisms such as "neo-judge" or "neo-court" were quickly and creatively expanded by parts of the legal community, left-liberal politicians, and especially media outlets sympathetic to them. The result was the emergence of a phenomenon that, following M. Głowiński, may without exaggeration be described as "newspeak": a language constituting a peculiar synthesis of ritual, pragmatic, arbitrary, and univocal elements, in which judgments leading to dichotomous divisions become more important than meaning. Meaning is subordinated to judgment. What matters is not what a given word means, but the value judgment attached to it: good or bad, ours or theirs, us or them. A relevant element of this language is its magical quality. Words do not so much refer to reality or describe it as create it. What is authoritatively spoken becomes real. Newspeak is therefore undoubtedly a manipulated language. It determines not so much what may be said and written, but how and with what words it must be said. It imposes a value judgment that cannot be questioned and is not open to discussion. In this sense, it is a dictatorial form of speech. It relies on slogans, buzzwords, and clichés in which values are always one-dimensional, presented directly to the audience, and placed beyond debate.

In media subservient to the authorities – which, as a journalistic community, should at least in theory ensure the reliability and truthfulness of news reporting – one could read the following terms referring to judges appointed after 2017: "non-judge," "pseudo-judge," "illegal judge," "neo-judge," "people dressed up in robes," "actors in robes," "a group of people dressed in robes bearing the symbols of the Polish state," and "the new Supreme Court judges are not judges in the constitutional and European sense. The fact that the President appointed them to these positions is irrelevant." In the same context, they referred to a "non-court," a "neo-court," and an "illegal Chamber of the Supreme Court." As to rulings issued by such bodies, they used terms such as "non-existent rulings" or "decisions," arguing, for example, that "we write that they issued a decision because the rulings of this Chamber are not binding. They can be overturned and even deemed non-existent, because a body that is not a court cannot issue binding rulings." Similarly, it was asserted that "a ruling issued by the Supreme Court's neo-judges should be deemed non-existent." Using this language, demands were made to "remove the 'neo-judges' from adjudicating" or to "bring them before a criminal court." It was also proposed to file recourse claims against them for alleged losses incurred by the State Treasury in connection with their adjudicative activity. The foundation of the newspeak described above was, of course, the false narrative concerning the alleged "defectiveness" of judicial appointments after 2017.

The essential characteristic of this propaganda was its focus on manipulation, which served as its driving force, took various forms, and appeared with varying degrees of intensity. Nevertheless, it effectively antagonized both the

legal community and society as a whole. After all, as P. Fidelius, a researcher of the discourse of power in 1960s Czechoslovakia, wrote: *propaganda locuta, causa finita*. As a result, this language became the only publicly accepted way of speaking about certain aspects of the Polish judiciary.

Over time, the language of propaganda not only entered ever-wider areas, but also brutally intensified. The use of neologisms such as "neo-judge" was not the only tactic employed. The left-liberal media resorted to especially pejorative euphemisms whose function was to cement the dominant characterization of a given person or institution. Such a euphemism was intended to serve as a linguistic label permanently attached to its target. This is particularly evident in the case of Administrative Court judge Przemysław Radzik, who serves as Deputy Disciplinary Spokesman for Judges of Common Courts. Mainstream and currently pro-government media began using defamatory terms against him such as "Ziobro's executioner," and, especially often, "butcher" or "the Minister's butcher." The use of the latter phrase was particularly brazen, as it evoked automatic associations with Klaus Barbie, the Gestapo officer known not only in Poland who, because of the crimes he committed during World War II, became known as "the Butcher of Lyon." Journalistic ethics had, in fact, become an empty cliché, a façade behind which nothing remained. The use of such stylistic devices was no accident. The goal was deliberate disparagement and defamation. Moreover, compliant journalists had no moral hesitation in placing, for purely political reasons, a judge of the Republic of Poland in the same category as a German war criminal. The repugnance of this fact is difficult to put into words. The example of Administrative Court judge Przemysław Radzik – who steadfastly carried out his duties even after the December 13 Coalition took power – shows that there are no longer any boundaries that would not be crossed or torn down solely to discredit, in the eyes of the public, judges lawfully appointed to office after 2017.

Thus, linguistic clichés were created as part of a stabilized and sanctioned style of speech, together with their defamatory association with specific individuals. These clichés, carrying a highly negative emotional charge, functioned as invective and as expressions of contempt and disregard. The paraphrases described above were intended to reveal and emphasize supposedly immoral traits or characteristics of particular judges. Importantly, however, this was no longer a supposition designed – as in the case of the prefix "neo" – to suggest illegality, politicization, or a lack of credibility in the office held. In this case, defamatory terms were used fully and consciously. After reading the text, the reader was expected to know in advance that the author held a negative view of judges described with words such as "butcher" and "executioner." Here, too, the fundamental mechanism of newspeak is revealed with particular clarity. Within it, there can be no value-neutral elements. Moreover, in the case under analysis, only a negative value was to be attached to the ethical characterization of the individuals labeled in this manner.

In the world of media constructions and left-liberal perceptions, anything was therefore possible. No rules of the game or principles of decency applied, especially journalistic decency. In this media maelstrom, no one thought logically or rationally. What mattered was the goal: to challenge the status of judges appointed after 2017. To achieve that goal, it became acceptable to use any and all vulgarized gibberish of pseudo-rule-of-law newspeak. The final result was what mattered; costs played no role. What mattered was the polarization of attitudes according to the principle: we are good, they are bad. Media delegitimization carried out through public and private media outlets subservient to the then-opposition December 13 Coalition – now ruling in Poland – played, and continues to play, a crucial role in this regard.

An example of this never-ending and, in essence, political operation is the recurring media uproar directed, among others, against Supreme Court Justice Maria Szczepaniec. In numerous publications, she has been routinely accused of acting unlawfully, unethically, from improper motives, incompetently, careeristically, politically, and allegedly to the detriment of the state:

- "together with a lay judge, she overturned a ruling favorable to Judge Żurek, contrary to the facts";
- "he wants to prosecute Maria Szczepaniec from the illegal Control Chamber appointed by PiS";
- "together, they issued a decision in his case. We write that they issued a decision because the rulings of this Chamber are not binding. They can be overturned and even deemed non-existent. Because a body that is not a court cannot issue binding rulings";
- "they issued the decision as a non-judicial body, and it is a non-existent ruling";
- "Szczepaniec had not previously served as a judge. She came to the Chamber [of Extraordinary Control and Public Affairs of the Supreme Court – author's note] from UKSW [University – author's note], and specializes in criminal law";
- "the notification is unprecedented because it concerns determining whether Szczepaniec made decisions in the Żurek case as a legitimate Supreme Court judge";
- "she is not a legitimate Supreme Court judge because she was appointed by the illegitimate neo-KRS";
- "the state's losses amount to millions of zlotys. We are publishing a detailed list of 42 neo-judges and the losses they have generated (...) Dr. Maria Szczepaniec – 52,500 euros (223,551.75 zlotys)";
- "the Supreme Court Chamber is blocking the prosecution of Ziobro's people (...) This decision was issued unilaterally by the defective neo-Supreme Court judge Maria Szczepaniec";
- "Szczepaniec failed to examine the merits of the case";
- "Neo-judge Maria Szczepaniec, ruling in the Professional Responsibility Chamber of the Supreme Court, challenged the appointment of pros-

ecutors and their legal acts in the immunity case involving neo-judge Piotr Schab (...) The Prosecutor's Office wants to recuse neo-judge Szczepaniec from immunity cases. She violated the principles of impartiality";
- "Neo-judge Maria Szczepaniec (...) while hearing the immunity case of Piotr Schab, questioned the authority of the prosecutors (...) I expect an escalation of the dispute surrounding the Prosecutor's Office in the Supreme Court. It is primarily the neo-judges who have an interest in destabilizing this institution";
- "Her decision to dismiss this case is a manifesto of her views and has nothing to do with applying the provisions of the Code of Criminal Procedure";
- "Before she joined the Supreme Court, she had never presided over cases in the lower courts of the common judiciary. For nearly three years, she worked as a lawyer, and that is her only experience in the practical application of law."
- Equally slanderous and deplorable attacks were directed against Supreme Court judge Maria Szczepaniec on X by obsequious journalists, judges from the politicized liberal-left association Iustitia, and militant left-wing activists:
- "Lawlessness in its purest form. Ms. Szczepaniec, the neo-judge who usurps the right to adjudicate in the Supreme Court, defends neo-judge Schab, zealously carrying out the vision of Zbigniew Z., who has now fled to Hungary";
- "It will be difficult and take time, but the careerist usurpers who have stormed into the Supreme Court will have to be removed from it";
- "Maria Szczepaniec is essentially a law professor who likes to dress in the robes of a Supreme Court judge. First and foremost, she is a faithful servant of PiS, a mercenary from Ziobro's team";
- "Neo-judge Maria Szczepaniec – if that is what PiS wants, she is always at their service";
- "Maria Szczepaniec works in the Supreme Court building as a 'neo-judge,' that is, as a person receiving a judge's salary and wearing a judge's robe, but who is not a legally appointed judge";
- "Unfortunately, there is no indication that she possesses the competence of a Supreme Court judge. She ended up there not because of her professional competence, but because of her willingness to validate the fraudulent elections."

The examples cited above represent only a fraction of the whole, yet they are sufficient to illustrate the unprecedented scale and defamatory intensity of the attacks launched against Supreme Court judge Maria Szczepaniec in an effort to discredit her.

V. Summary

The case of Supreme Court judge Maria Szczepaniec is the most striking example of the systematic harassment of judges of the highest court of the Republic of Poland by a state authority, namely the Prosecutor's Office. The scope of these actions is extremely broad. It began with the Prosecutor General's appointment, by Order No. 30/25 of September 12, 2025, of a special team of prosecutors within the National Prosecutor's Office who, by threatening criminal and recourse liability, exerted pressure on Supreme Court judges to cease adjudicating. It continued through unlawful actions by prosecutors in proceedings pending before the Supreme Court, consisting of the filing of motions for the "recusal" of members of adjudicating panels – motions unknown to Polish law, whether in criminal or civil procedure, and therefore filed without any legal basis and clearly intended to exert pressure on the judges. This culminated in threats to initiate criminal proceedings against Supreme Court judges solely for performing duties entrusted to them by the Republic of Poland. The use of the National Prosecutor's Office and other units of the public prosecutor's office subordinate to the Prosecutor General for political activities whose sole purpose is to influence the functioning of constitutional bodies of the Republic of Poland, including the Supreme Court, is undoubtedly characteristic of oppressive and undemocratic regimes, not of a democratic state governed by the rule of law.

The actions of this crypto-dictatorship are supported by compliant and subservient media, which operate in accordance with the tenets of classical Marxism-Leninism, namely that there is no such thing as objective information because all information is biased. Information is not a photograph or an image; rather, it is deliberately edited and selected material informing the recipient of what, from the rulers' perspective, should be conveyed. It is a tool of persuasion intended to shape views. This is nothing other than the deliberate manipulation of the audience's consciousness and the shaping of its attitudes – that is, a continuous and multi-vector process of controlling society. This manipulative and instrumental propaganda of the liberal-left, pro-government media thus plays a significant role in the exercise of political power. The false narrative concerning the allegedly "defective" judicial appointments after 2017 has been the principal weapon used in this process for the past eight years. Unfortunately, as Supreme Court judge Maria Szczepaniec aptly observed, many citizens have believed in this "greatest legal fraud of the century." The result is deplorable: we live in a schizophrenic media reality, polarized dichotomously in accordance with the intentions of the ruling December 13 Coalition.

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Łukasz Piebiak
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Attack on Academia: The Sopiński Case

The persistent harassment of the Rector-Commandant of the Academy of Justice, Dr. Michał Sopiński, by the current political authorities has been ongoing since December 13, 2023, and has manifested itself in a series of actions against him involving mobbing, stalking, harassment, and systematic persecution. Dr. Sopiński has been subjected to acts of harassment of varying severity, including the destruction of his private car by unknown perpetrators, as well as damage to his good name resulting from the order to initiate disciplinary proceedings against him for criticizing the legally questionable actions of the Minister of Justice. All of this – including the unlawful violation by the secret services of the territorial autonomy of the university he heads – was done solely to intimidate him and force him to resign from office. The current attempt to unlawfully dismiss the Rector-Commandant of the Academy of Justice is an example of political retaliation for the public engagement undertaken by its rector and academic instructor. Dr. Michał Sopiński received the letter notifying him of the initiation of the dismissal procedure on March 19, 2026 – one day after opposition MEP Patryk Jaki met with Academy students on March 18, 2026, as part of the "Change Our Mind" campaign. Rector Sopiński – unlike other rectors, including those of the University of Warsaw, Jagiellonian University, the University of Gdańsk, and the University of Warmia and Mazury – had consented to that meeting. The letter also came two weeks after he organized and personally led a series of constitutional debates at the Academy with independent judges running for the National Council of the Judiciary, including representatives of Sędziowie RP and Prawnicy dla Polski. This constituted political retaliation by Waldemar Żurek, continuing the repression initiated by Adam Bodnar. As a lawyer, Dr. Sopiński has repeatedly spoken publicly about the functioning of the judiciary in Poland, including the rule-of-law crisis, exercising his right – and indeed his duty – to speak on matters of public importance. These include the organization of the judiciary in Poland, the legality of judicial institutions, their legal basis, the principle of legality, and the constitutional system of the state. The attack on the Academy and its Rector is therefore also an attack on hundreds of young people – students – whose opportunities to acquire knowledge and practical skills are being restricted by the Minister of Justice. It undermines public safety, for

which the training of professional personnel is of paramount importance. It also disregards the fact that the Prison Service – the third-largest uniformed service in Poland – deserves its own university, just as the Police, Fire Service, and Border Guard do. The repressive measures taken against the Academy and its Rector-Commandant also set a dangerous precedent of political authorities infringing upon the autonomy of a higher education institution.

In response to the unlawful actions of the Minister of Justice, on March 25, 2026, the Senate of the Academy of Justice adopted a resolution concerning the exclusive authority and jurisdiction of the Senate of the Academy of Justice to appoint and dismiss the Rector-Commandant of the Academy of Justice.

The Senate's position rests on proper legal argumentation. Its central thesis – that Article 66a of the Prison Service Act constitutes *lex specialis* in relation to Article 439(1)–(6) of the Prison Service Act and excludes the jurisdiction of the Minister of Justice over the appointment and dismissal of the Rector-Commandant of the Academy of Justice – is legally sound and firmly grounded in the structure of conflict-of-law rules. It is crucial to interpret the referring provision in Article 439(7) of the Prison Service Act precisely as a provision making the Prison Service Act a comprehensive special regime for the Academy of Justice. Against the background of the clearly defined jurisdiction of the minister responsible for internal affairs under Article 439(6) of the Prison Service Act, the silence of the Prison Service Act as to analogous powers of the Minister of Justice is not a legal loophole, but a normative determination: *expressio unius est exclusio alterius*. It is also significant that the Senate invoked the principle of legality under Article 7 of the Constitution.

On April 27, 2026, the Minister of Justice, by supervisory decision, declared Resolution No. 255/26 of the Senate of the Academy of Justice dated March 25, 2026, invalid. The Senate of the Academy of Justice pointed out that the Minister's decision was issued in violation of law and constitutes an unlawful infringement of the institution's constitutional autonomy, as well as interference in the internal sphere of operation of a higher education institution. On May 8, 2026, the Academy of Justice filed a complaint against the Minister's decision with the administrative court, requesting a stay of enforcement and demonstrating the risk of significant harm or irreversible consequences.

University autonomy is a freedom guaranteed by Article 70(5) of the Constitution of the Republic of Poland, and its violation may constitute a breach of Article 31(3) of the Constitution (see M. Salamonowicz, in A. Jakubowski, ed., *Prawo o szkolnictwie wyższym i nauce* (Warsaw 2023), Article 3, n. 4). University autonomy consists, among other things, in the fact that "universities and their bodies are not subordinate, either organizationally or functionally, to any public administration body" (Supreme Administrative Court decision of February 8, 2012, I OSK 2207/11). As the Constitutional Tribunal has explained, university autonomy includes, among other things: "1) the right of the university's

governing bodies to determine the content and forms of instruction, 2) the subject matter and methods of scientific research, 3) study regulations determining the course of studies, and 4) the right of academic faculty, students, and non-teaching staff to elect the university's legislative and executive bodies" (Constitutional Tribunal judgment of October 5, 2005, SK 39/05).

Examples of Public Activity by Rector-Commandant Dr. Michał Sopiński in Defense of the Law and the Constitution of the Republic of Poland

Late December 2023: Dr. Michał Sopiński writes a letter to the Minister of Justice, pointing out that public media cannot be taken over by force (https:// dorzeczy.pl/ opinie/531693/zmiany-w-tvp-rektor-aws-napisal-list-do-bodnara.html).

Early January 2024: Dr. Sopiński points out to the government that the presidential pardon concerning MPs Mariusz Kamiński and Maciej Wąsik cannot be undermined (https:// dorzeczy.pl/opinie/534894/doprowadzenie-kaminskiego-i-wasika-dr-sopinski-dwa-porzadkiprawne.html).

January 12, 2024: Dr. Sopiński immediately and unequivocally informs the Minister of Justice that the National Prosecutor could not be removed from office (https://dorzeczy.pl/opinie/537003/dariusz-barski-jest-prokuratorem-krajowymdr-michal-sopinski-wyjasnia.html).

January 23, 2024: Dr. Sopiński, as Rector of the Academy of Justice, stresses that undermining the status of prosecutors can lead to total chaos in Poland (https://dorzeczy.pl/opinie/565614/spor-o-praworzadnosc-sopinskiprzestrzega-przed-dzialaniami-bodnara.html).

February 5, 2024: Dr. Sopiński states that the attack on the Constitutional Tribunal, including the withholding of funds for judges' salaries, is in essence an attack on the Constitution itself (https:// wnet.fm/2024/02/05/dr-michal-sopinski-atak-na-trybunal-konstytucyjny-jest-w-istocieatakiem-na-sama-ustawe-zasadnicza/).

February 23, 2024: Dr. Sopiński coins the term "reversed principle of legality" in reference to Donald Tusk's government (https://dorzeczy.pl/opinie/555189/dr-sopinski-mocnoo-dzialaniach-tuska-i-bodnara.html)

March 6, 2024: Dr. Sopiński appeals to Minister Adam Bodnar following the brutal suppression of farmers' protests (https://dorzeczy.pl/kraj/558903/brutalnosc-policji-sopinski-apeluje-dowiacka-i-bodnara.html)

December 16, 2024: Dr. Sopiński states that the decision to revoke Law and Justice subsidies marks a "Black Monday" for the rule of law (https://dorzeczy.pl/kraj/669046/czarny-poniedzialekpraworzadnosci-burza-po-decyzji-pkw.html).

June 26, 2025: Dr. Sopiński states that the swearing-in of Polish President Dr. Karol Nawrocki cannot be blocked (https://wnet.fm/2025/06/26/dr-michal-sopinskizglaszane-przez-ministra-bodnara-zadanie-przeliczeniawszystkich-glosow-toczysta-uzurpacja/).

August 5, 2025: the Rector of the Academy of Justice speaks about hopes that President Karol Nawrocki will restore basic discipline within the judiciary (https://wnet.fm/2025/08/07/dr-michal-sopinski/).

January 22, 2026: the Academy of Justice files suit against Deputy Minister of Justice Maria Ejchart for infringement of personal rights (https://dorzeczy.pl/opinie/ 835628/wchodzimy-na-droge-sadowa-klopoty-wiceminister-ejchart.html). In addition, Dr. Sopiński maintains a popular account on X, where he shares current legal commentary on important public matters (https://x.com/michalsopinski 3).

Timeline and List of Harassment Against the Academy of Justice and Its Rector, Dr. Michał Sopiński, for Publicly Defending the Law and the Constitution

In response to the public actions of the Rector-Commandant of the Academy of Justice, Dr. Michał Sopiński, in defense of the law and the Constitution, the following measures were taken:

January 22, 2024: the Ministry of Justice initiates a politically motivated inspection at the Academy of Justice led by Dr. Sopiński, the sole purpose of which is to attack the institution and its Rector (https://dorzeczy.pl/kraj/540870/ kontrola-resortu-bodnara-w-aws-sopinski-komentuje.html).

January 28, 2024: unknown perpetrators vandalize Dr. Sopiński's car. The attack takes place in the very center of Warsaw. His car is the only one damaged. The investigation is closed because the perpetrators are not identified (https://dorzeczy.pl/ kraj/543261/warszawa-ktos-zdemolowal-auto-michala-sopinskiego.html).

July 15, 2024: the Academy's autonomy is unlawfully violated. Acting on behalf of the Minister of Justice and Prosecutor General, the Internal Security Agency, accompanied by a prosecutor, searches premises belonging to the Academy on the allegation that "the former Deputy Minister of Justice had visited the Academy of Justice on multiple occasions" (https://aws.edu.pl/rektor-sopinski-bezprawnenaruszenie-autonomii-uczelni-pod-kuriozalnym-pretekstem-w-uczelni-nie-byloani-tajnego-biura-ani-tajnych-dokumentow/)

August 2024: the Ministry of Justice cuts the Academy of Justice's 2025 budget by PLN 20 million and reduces the Academy's 2025 staffing plan by 70 Prison Service officer positions and 33 staff positions.

November 2024: the Ministry of Justice launches a politically motivated internal investigation, accusing the vice-rectors of the Academy of Justice of signing contracts for English-language classes for students.

December 6, 2024: the Ministry of Justice denies Rector-Commandant Dr. Sopiński permission to establish a new degree program in Management at the Academy of Justice.

December 13, 2024: the Ministry of Justice, together with a politicized Disciplinary Spokesman of its own choosing, initiates disciplinary proceedings

against the Rector-Commandant of the Academy of Justice, Dr. Sopiński, for his activities in defense of the law. One of the official charges against him is his statement that Dariusz Barski is the National Prosecutor (https://wpolityce.pl/ polityka/715626-bodnarowcy-scigaja-sopinskiego-powodem-slowa-o-pk).

June 2025: the Ministry of Justice drafts a bill to liquidate the entire academy in order to remove the inconvenient Rector-Commandant, Dr. Sopiński, and the Academy Senate (https://wpolityce.pl/polityka/733498-napisali-ustawe-tylkopo-to-aby-odwolac-rektora-uczelni). More than 1,000 citizens and hundreds of lawyers sign a petition in defense of the Academy (https://aws.edu.pl/oswiadczenie/). The bill is vetoed on August 5 by the President of the Republic of Poland as entirely unconstitutional. See the President's motion of August 5, 2025, to the Marshal of the Sejm expressing refusal to sign the bill of June 25, 2025, together with the statement of reasons for that refusal, Document No. 1243.

February 2026: the Ministry of Justice suspends recruitment of students for the Prison Service candidate program for five years, despite protests by the student government and the "Solidarity" Prison Service trade unions (https://aws.edu.pl/w-dniu-29- stycznia-2026-r-rektor-komendant-akademii-wymiaru-sprawiedliwosci-dr-michal-sopinskiprzedstawil-zwiazkomzawodowym-uwagi-formalno-prawne-dotyczace-rozporzadzeniaministerstwa-sprawiedliwos/)

March 2026: the Ministry of Justice stops paying the housing allowance to which officers serving at the university are entitled by law.

March 19, 2026: the Ministry of Justice initiates an unlawful dismissal procedure against Rector-Commandant Dr. Michał Sopiński (https://dorzeczy.pl/opinie/ 862771/zurek-uderza-w-sopinskiego-przyklad-politycznej-zemsty.html).

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An Attack on Freedom of Speech: The Harassment of Independent Journalists

1. The Pursuit of MP Zbigniew Ziobro

On November 7, 2025, the Sejm of the Republic of Poland adopted a resolution authorizing the criminal prosecution of MP Zbigniew Ziobro, as well as his arrest and pretrial detention. On the same day, the prosecutor issued an order to present charges and to detain and forcibly bring Zbigniew Ziobro to the headquarters of the National Prosecutor's Office. At that time, Zbigniew Ziobro was already in Hungary, which had granted him asylum as a person persecuted for political reasons.

On February 5, 2026, the District Court for Warsaw-Mokotów in Warsaw issued an order placing Zbigniew Ziobro in pretrial detention for three months from the date of his arrest.

On February 6, 2026, the prosecutor issued a warrant for Zbigniew Ziobro's arrest.

On February 10, 2026, the prosecutor filed a motion with the Circuit Court in Warsaw to issue a European Arrest Warrant for Zbigniew Ziobro. That motion, however, has not yet been considered. Without a European Arrest Warrant, it is not possible to initiate an international search and arrest a suspect residing within the European Union.

To date, the defense attorneys' appeal against the court's order imposing pretrial detention on Zbigniew Ziobro has also not been considered. The court has scheduled a hearing on that matter for September 8, 2026 (https://www.gov.pl/web/prokuratura-krajowa/dzialania-prokuratury-krajowej-wobec-podejrzanych-zbigniewa-ziobry-i-marcina-romanowskiego).

2. Ziobro in the United States? Find Someone to Blame!

Meanwhile, media reports indicate that MP Zbigniew Ziobro – who had previously been granted asylum in Hungary – left for the United States on May 9, 2026, on a journalist visa and began working there as a commentator for one of Poland's largest television stations, Telewizja Republika.

The MP's departure for the United States caused panic in government circles. A frantic search for the culprit followed. It did not take long for the Prosecutor's Office, headed by Prosecutor General Waldemar Żurek, to respond. As announced, beginning May 10, 2026, the National Prosecutor's Office

conducted procedural acts aimed at determining whether other individuals had assisted the suspect, Zbigniew Ziobro, in "escaping and evading criminal liability, thereby obstructing the investigation." It was also reported that Article 239 § 1 of the Criminal Code provides for a penalty of up to five years' imprisonment for obstructing or thwarting criminal proceedings by helping an offender evade criminal liability. (https://www.gov.pl/web/prokuratura-krajowa/dzialania-prokuratury-krajowej-wobec-podejrzanych-zbigniewa-ziobry-i-marcina-romanowskiego; www.wiadomosci.wp.pl/posiadamy-juz-oficjalna-informacje-prokuratura-krajowa-o-ziobrze-7287918221613216a)

3. Plan A: Criminal Prosecution of the Head of Telewizja Republika

This information was quickly clarified by prosecutor Dariusz Korneluk, who had usurped the position of National Prosecutor (See Hernand, Janeczek, Ostrowski, Sierak, "Illegal Takeover of the Prosecutor's Office by Donald Tusk's Government on January 12, 2024," in *Rule of Law in Ruins: Poland under the 'December 13' Coalition*, eds. P. Czubik and K. Wytrykowski, www.prawnicydla.pl/prawo-w-czasach-koalicji-z-13-grudnia/). As Korneluk stated on May 11, 2026, the Prosecutor's Office contacted the U.S. Embassy in Poland and the Polish Ministry of Foreign Affairs to "verify all media reports regarding whether the suspect Zbigniew Ziobro had indeed left Hungary and is in the United States." He also reported that "overnight, Mr. Zbigniew Ziobro was hired by Telewizja Republika. [...] For this reason, prosecutors decided to summon the editor-in-chief of Telewizja Republika – journalist Tomasz Sakiewicz – for questioning as a witness" (https://wiadomosci.onet.pl/kraj/tv-republika-pomogla-zbigniewowi-ziobrze-dariusz-korneluk-komentuje/ksy37rf).

In a resolution dated May 15, 2026, Prawnicy dla Polski Association expressed its opposition to the manner in which the National Prosecutor's Office conducted procedural acts concerning the summons of editor Tomasz Sakiewicz, as well as to public statements by representatives of the prosecutor's office suggesting the possibility of holding him criminally liable even before any charges had been brought. The situation in which a state authority, possessing exceptionally powerful instruments of procedural coercion, uses media coverage to create an atmosphere of suspicion and social stigmatization toward a citizen, while formally summoning him only as a witness, was deemed particularly shocking and dangerous for the standards of a democratic state governed by the rule of law. Public statements by a representative of the National Prosecutor's Office suggesting a possible link between journalistic activity and an offense under Article 239 of the Criminal Code must be assessed as extremely irresponsible and contrary to the fundamental principles of criminal procedure, in particular the presumption of innocence, due process, and the obligation to respect the rights and freedoms guaranteed by the Constitution of the Republic of Poland and the European Convention on Human Rights. As noted,

> it is impossible not to see that such actions have a chilling effect on the journalistic community and may be perceived as an attempt to intimidate media outlets that present views not accepted by the current government. A democratic state governed by the rule of law cannot tolerate a situation in which the Prosecutor's Office – instead of limiting itself to the diligent performance of its statutory duties – becomes a participant in a media spectacle aimed at publicly stigmatizing specific individuals.

The Association noted that, in accordance with established constitutional standards and the case law of the European Court of Human Rights, state authorities are obligated to exercise particular restraint when publicly commenting on criminal proceedings. In the matter at hand, however, a representative of the Prosecutor's Office publicly considered the possibility of changing a witness's procedural status and suggested potential criminal liability for professional activities connected with journalistic duties. Such actions have nothing to do with the standard of impartiality expected of law enforcement agencies. It is especially alarming that representatives of law enforcement agencies are creating a public narrative under which journalistic contacts, editorial activities, or reporting on events may themselves constitute grounds for criminal suspicion. Such practices are characteristic of states moving away from the standards of liberal democracy and lead to the undermining of the foundations of freedom of speech. The Association emphasized that the Prosecutor's Office cannot be an instrument of political struggle or a tool for exerting pressure on the media. Any attempt to use the authority of the state to achieve propaganda or extrajudicial effects poses a serious threat to civil rights and to citizens' trust in the justice system (https://x.com/i/status/2055267187670069680).

3. Plan B: Hybrid Attacks on Telewizja Republika

On May 15, 2026, police arrived at the apartment of Tomasz Sakiewicz, editor-in-chief of Telewizja Republika. The reason for the intervention was reportedly an anonymous tip that a child in the apartment was attempting to commit suicide. At the time, Tomasz Sakiewicz, his family, and his assistant were in the apartment.

Tomasz Sakiewicz's assistant opened the door for the police. She was handcuffed, after which the officers searched the apartment. They did not find any child there. As Tomasz Sakiewicz later reported, the officers refused to show identification and did not present any warrant.

In an interview with Telewizja wPolsce24, Tomasz Sakiewicz stated: "When my assistant asked them to identify themselves, she was handcuffed on the pretext of obstructing procedural acts. She simply asked them to show their police IDs" ((https://tvn24.pl/polska/policja-u-szefa-tv-republika-tomasza-sakiewicza-policja-i-prokuratura-o-publikacji-nagran-st9054169; www.wpolityce.pl/media/760342-policja-w-domu-sakiewicza-nie-mieli-nakazu).

It should be emphasized that this was not the first anonymous tip concerning employees of Telewizja Republika. A number of journalists had been harassed in a similar manner by police responding to "anonymous tips." For several days, a campaign of harassment against Republika journalists had been underway, using state authorities for that purpose. The pattern was similar: the police received calls concerning serious matters, arrived at the scene, and then found that, instead of a drastic situation, they had encountered a Republika journalist or his family (https://x.com/i/status/2055723981404074101; https://x.com/i/status/2055644752289185948).

Shortly after the incident, the Warsaw II District Police Headquarters stated that "the information gathered by officers and the verification of the situation on the scene allow us to conclude that the report of a threat to someone's life was false and was most likely intended to mislead the recipient and emergency services. After conducting the necessary investigations, the police concluded their intervention. No one was arrested" (https://x.com/i/status/2055274420780867755). It remains puzzling what line of reasoning led to the conclusion that handcuffing a person did not constitute an arrest.

Furthermore, the Government Security Center classified reports of bombs and suicides in journalists' apartments and at Telewizja Republika's headquarters as "cascading" information of "very low credibility" that did not require evacuation. According to reports, 14 such cases were recorded (www.wpolityce.pl/media/760342-policja-w-domu-sakiewicza-nie-mieli-nakazu).

As politicians and commentators noted, the authorities should track down the perpetrator as soon as possible, cooperating with the victims – that is, the journalists of Republika. Instead, "we have public disregard, mockery, and insults directed at journalists from the largest opposition media outlet. Instead of demanding an explanation of the situation, politicians from the ruling party are making fun of the victims. And the matter is, after all, very serious. We are witnessing an organized campaign of harassment against journalists in their homes" (https://x.com/i/status/2055723981404074101; https://x.com/i/status/2055644752289185948).

A report concerning the possibility that a crime had been committed by the police officers who intervened at Tomasz Sakiewicz's apartment was filed, among others, by MP Bartosz Kownacki (https://x.com/i/status/2055951879679426780).

4. Plan C: Ridicule the Victims

The reaction of the media, journalists associated with the ruling coalition, and politicians of the December 13 Coalition themselves, is puzzling. As politicians and journalists described it, "we have political acceptance, even applause and joy at the suffering of the victims at the hands of those responsible for our safety." As one commentator noted:

> The politicians' reaction to the scandal surrounding Republika is astonishingly brazen – even by Polish standards. [...] I understand that the police can be misled by a "prankster." But one can be misled once or twice, not five or six times – the latter implies a disgrace for the uniformed services, a failure to take real action, and a lack of cooperation with the community targeted by this "prankster," if such a person exists, and that should be a priority. Treating the victims of these "jokes" rudely, handcuffing them, communicating in a surly manner – all of this shows a lack of professionalism, a lack of any reflection, and perhaps even suggests that this "prankster," if he exists, fell from the sky and provided an opportunity to harass unpopular people. I have not come across a single professional statement from a ruling-party politician, not a single professional communiqué, not a single professional declaration. Instead, every spoken or written word reeks of either satisfaction or trivialization. Unbelievable (https://x.com/i/status/2055536167144083523; https://x.com/i/status/2055723981404074101; https://x.com/i/status/2055644752289185948).

After attempts to intimidate, harass, and ridicule the journalists of Telewizja Republika, there was an attack on the person perceived as the weakest link: a woman, Tomasz Sakiewicz's assistant. Politicians from the ruling coalition and media figures supporting them tried to suggest that she was Tomasz Sakiewicz's mistress, that she had been dragged out of bed, that she was half-naked, and that the arrest occurred at night.

Another journalist drew attention to the collapse of public debate, commenting on a distasteful joke by a *Gazeta Wyborcza* columnist who suggested a sexual relationship between editor Tomasz Sakiewicz and his assistant and accompanied the post with a movie scene depicting an intoxicated woman from the margins of society caught cheating on her husband with a random man. Dawid Wildstein wrote:

> *Wyborcza* is a cesspool. Seriously, you shouldn't shake these people's hands. This post, suggesting that Sakiewicz's handcuffed assistant is some kind of bum/mistress, and dressed up in the most idiotic, boorish, sexist, and violent way possible, is [...] the work of that lowlife Wieliński, deputy editor-in-chief of Gazeta Wyborcza. [...] This is applauding actions that strike at freedom of speech and the most disgusting brown-nosing of Tusk. [...] This is typical of a provocation by the intelligence services. Because in reality, the victim of this prank is not Republika or even Sakiewicz – but this woman. It is her they want to destroy and humiliate, seeing her as the weak link. It is her they are suggesting is a bum, a slut, and implying sexual relations. [...] And this woman has a family; she has a husband (https://x.com/i/status/2055951879679426780, https://x.com/i/status/2056381978287452372).

Another act in the embarrassing spectacle of the attack on Telewizja Republika journalists was an attempt to publicly ridicule its editor-in-chief, Tomasz Sakiewicz.

After the Prosecutor's Office received reports of a possible crime committed by police officers who intervened at Sakiewicz's apartment, it announced that it was considering releasing footage from the officers' body cameras. As reported by TVN24, Piotr Antoni Skiba, spokesman for the District Prosecutor's Office in Warsaw, noted that "the problem lies in the need to pixelate a significant number of frames, from the neck up and from the waist down, as one of the individuals was partially undressed." According to TVN24, Tomasz Sakiewicz was reportedly without pants.

In response to this provocation, Tomasz Sakiewicz stated that "there is no problem whatsoever with publishing these recordings in their original form." He admitted that he was "wearing a T-shirt and boxer shorts at the time of the forced entry into [...] the apartment. Unfortunately, the individuals who broke into my office – my apartment in Warsaw – did not give me time to change" (https://x.com/i/status/2056463743786090904, https://tvn24.pl/polska/policja-u-szefa-tv-republika-tomasza-sakiewicza-policja-i-prokuratura-o-publikacji-nagran-st9054169).

It must be emphasized that an authority which, under the guise of assisting a citizen, simultaneously violates that citizen's personal rights by disclosing sensitive information that could portray him negatively acts solely in the interest of partisan objectives, contrary to the interests of the state and contrary to the Constitution, which guarantees the protection of human dignity.

5. The Government's Credibility

Provocations of a similar nature, such as those directed against editor Tomasz Sakiewicz and other journalists of Telewizja Republika, were also repeated against another independent television station, wPolsce24. On May 18, 2026, following an anonymous tip, a police unit arrived at the station's building, claiming that "dangerous materials were reportedly found in the garage. After a quick verification and full cooperation from the station's team, the report proved false" (www.wpolityce.pl/media/760574-tylko-u-nas-prowokacja-policja-na-terenie-tv-wpolsce24).

A false threat report constitutes a deliberate attempt to mislead state authorities by reporting a non-existent danger. The purpose of such conduct may be to disrupt the work of public institutions, cause panic, play a prank, or simply make a foolish joke. The consequences, however, are very serious. So are the legal consequences: pursuant to Article 224a of the Criminal Code, anyone who, knowing that the threat does not exist, reports an incident threatening the life or health of many people or property on a significant scale is subject to imprisonment for a term of six months to eight years. If the perpetrator acts in a particularly persistent manner, for example by making multiple reports, the court may impose a sentence ranging from two to as many as 15 years' imprisonment.

Case law confirms this approach. In a ruling of the Circuit Court in Warsaw dated May 12, 2022, case no. VIII K 242/21, the court sentenced the defendant to six years' imprisonment for repeatedly making false bomb threats concerning public transportation, finding the conduct "particularly socially harmful" (www.legaartis.com/falszywy-alarm-to-nie-zart-grozi-nawet-15-lat-wiezienia/).

This raises a question. Why, despite the widespread practice of harassing journalists through false reports, were the perpetrators not immediately identified? What explains the callousness that leads politicians of the ruling coalition and the journalists supporting them to mock the victims? Is it a coincidence that shortly after MP Ziobro's departure for the United States as a commentator for Telewizja Republika, journalists from that station began to be harassed with public threats, summonses for questioning, law-enforcement interventions based on unreliable anonymous reports, and finally attempts to ridicule them by mocking a random woman or a journalist's informal clothing?

The politicians currently in power from the December 13 Coalition will eventually have to answer these questions. But they will not be the only ones. So too will the prosecutors and police officers who harassed the victims instead of helping them.

Reporting false alarms to emergency services is not only irresponsible, but also a serious threat to public safety. No serious state can allow journalists from an editorial office disliked by the government to be treated in this manner. Those who make distasteful jokes about their plight should be permanently removed from public discourse.

***Appendix**

Shortly after this article went to press, reality added a sad epilogue to the sequence of events described above. As Rafał Leśkiewicz, press secretary to Karol Nawrocki, President of the Republic of Poland, announced on May 24, 2026, there had been "another false report made via the 112 emergency number." This time, it concerned the President's family home in Gdańsk. In the absence of the residents, the authorities forced open the door and entered the apartment. For more than a dozen days, the authorities have been paralyzed by false reports targeting journalists and public figures associated with the right. For more than a dozen days, those in power have been unable to respond appropriately. Today, public figures are under attack; in a moment, this threat may affect anyone. That is why a decisive response is needed. All these cases must be investigated (https://x.com/i/status/2058271024987132278).

This situation dramatically illustrates that, in Poland under the rule of the December 13 Coalition, no one can feel safe if even the highest representative of the Republic is exposed to this kind of harassment.

Piotr Schab
(judge and President of the Court of Appeals in Warsaw,
Disciplinary Spokesman of the Judges of Common Courts)

State Repression Against Attorneys Michał Skwarzyński and Krzysztof Wąsowski

Since late 2023, two closely connected phenomena have become visible in Poland's legal sphere. Both are directly linked to the post-election change in the composition of executive bodies responsible for the justice system. Together, they justify the conclusion that short-term political interests have acquired excessive influence over individual rights and interests, including the professional autonomy of persons performing legal functions. In practice, the treatment of such persons increasingly appears to depend on whether they have actually or allegedly supported the political views of the former governing camp or those of the current centers of power.

In direct temporal connection with personnel changes at the highest levels of state administration, state authorities began taking personally targeted actions involving the criminal prosecution of numerous individuals who had previously held senior administrative or judicial positions. The scale of this phenomenon, as well as the intensity and severity of the methods used, is both shocking and compromising. Immediately after the change of power at the end of 2023, a pattern emerged of initiating criminal proceedings and promptly bringing prosecutorial charges against persons grouped into alleged criminal structures: from the former Minister of Justice, through ministry officials, to ordinary employees and local-level personnel. At the same time, the Prosecutor's Office began targeting other selected individuals with charges and indictments. These were persons who had been appointed under the previous administration, held senior public offices, and expressed beliefs or views incompatible with the current government's approach to legal, ethical, moral, cultural, and social norms. Moreover, the measures most frequently used by the Prosecutor's Office to restrict the liberty of suspects identified in this way – detention and pretrial custody – amount in practice to deprivation of liberty. They have been applied with a repressive intensity not justified by the nature of the cases or the needs of the proceedings.

This phenomenon gives rise to a second development that starkly contradicts the standards associated with a democratic state governed by the rule of law. A series of media and procedural events has undermined the seemingly settled belief that fundamental civilizational achievements in the application of law, including criminal law with its inherent mechanisms of state coercion and interference with human and civil rights, can actually be exercised in

practice. The literal wording of a number of official documents indicates that the adversarial principle and the right to defense in criminal proceedings have become increasingly illusory – applied selectively, instrumentally, or in a manner inconsistent with their status as legal and constitutional axioms. A whole series of individual criminal cases now function as peculiar media spectacles. They are deliberately accompanied by broad and clearly defined narratives, interpreted for political purposes as part of a need to exact revenge on everything associated with the functioning of the previous governing coalition.

The nature and gravity of such criminal cases, often involving the use of isolating and controversial preventive measures, create an obvious need to exercise the constitutional right to defense. This, in turn, has led to the participation in these proceedings of attorneys who perform their professional duties by defending suspects and defendants, especially those who, for political reasons, are inconvenient to the current ruling establishment.

Among those undertaking such defenses are attorneys Michał Skwarzyński and Krzysztof Wąsowski.

Michał Skwarzyński, Doctor of Laws, is an attorney, an assistant professor in the Department of Human Rights and Humanitarian Law at the John Paul II Catholic University of Lublin, a member of the university's expert team, and the author of opinions and analyses prepared for public entities. His research concerns human rights, including conscientious objection, the right to property, freedom of thought, conscience, and religion, freedom of expression, and the right to defense. He is the author of dozens of scholarly publications frequently cited in legal doctrine and case law. He is a member of the Polish Society for Religious Law, the Prawo na Drodze Association, the Polish Group of the International Law Association, and the Catholic University of Lublin Scientific Society. He was also a candidate for judge of the Constitutional Tribunal. He acts as defense counsel or legal representative for judges in disciplinary and immunity cases, as well as for activists and public figures, including Fr. Michał Olszewski, judge Jakub Iwaniec, judge Kamila Borszowska-Moszowska, and Cardinal Stanisław Dziwisz.

Krzysztof Wąsowski also holds a doctorate in law. He is an attorney and the founder of the Wisdom–Law–People Center for Legal Thought. He is a member of the Warsaw Seminar on the Axiology of Administration, a research fellow at the Academic Center for Cybersecurity Policy, a member of the Program Council of the Center for Research on the Legal Aspects of Blockchain Technology at the University of Warsaw, and a member of the Order of the Knights of St. John Paul II the Great, the Polish Society of Legislation, and the Polish Association for Economic Analysis of Law. He is the author of dozens of scholarly publications in the field of public law. He acts as defense counsel or legal representative, among others, for defendants in the Government Agency for Strategic Reserves case – Anna Wójcik, Paweł Kleszczewski, and Dominik Basior; defendants in the Justice Fund case – Fr. Michał Olszewski, Urszula Dubejko, and Karolina Kucharska; Robert Bąkiewicz, leader of

the Border Defense Movement; prosecutor Iwona Tryfon-Wilkoszewska in the case concerning her unlawful suspension; former Border Guard spokesperson Anna Michalska; Stanisław Żaryn; and Alwin Gajadhur. He also acts as counsel in the case seeking to waive the immunity of Prosecutor General Waldemar Żurek in connection with the defamation of another attorney.

Both the active defense of their clients and the courageous public statements made by attorneys Michał Skwarzyński and Krzysztof Wąsowski, in which they challenged legally questionable actions by state authorities carried out through the Prosecutor's Office, resulted – for the first time since the fall of communism in Poland – in personal actions by state authorities against attorneys acting as defense counsel for specific individuals.

On April 8, 2026, Prime Minister Donald Tusk, referring to media reports concerning alleged irregularities in the operation of a cryptocurrency exchange, stated that its president had allegedly deposited money into the account of one of the foundations and that part of those funds had been allocated to the defense attorneys of Fr. Michał Olszewski. This was clearly false. Attorney Michał Skwarzyński does not charge any fees for defending Fr. Michał Olszewski, while attorney Krzysztof Wąsowski's fees are paid by Fr. Olszewski's family and the Congregation of the Priests of the Sacred Heart of Jesus. Both of Fr. Michał Olszewski's defense attorneys called on the Prime Minister to retract those statements immediately. When he failed to respond, they announced that they would bring a lawsuit against him.

After Michał Skwarzyński publicly accused Prime Minister Donald Tusk of making false statements, the Disciplinary Ombudsman of the Bar Association in Lublin initiated a series of procedural acts against him as the first stage of disciplinary proceedings.

Meanwhile, on July 8, 2025, Krzysztof Wąsowski – defense counsel for three suspects in the case concerning alleged irregularities at the Government Agency for Strategic Reserves during the COVID-19 pandemic – was charged with offenses under Article 299 § 1 and § 5 of the Criminal Code and Article 18 § 3 of the Criminal Code in conjunction with Article 300 § 2 of the Criminal Code. The alleged conduct consisted of accepting into a bank account funds in the amount of PLN 2,281,900, allegedly derived from proceeds connected with a prohibited act committed by another person, and thereby allegedly assisting in the concealment of assets at risk of seizure in the pending pretrial proceedings. Non-custodial preventive measures were also imposed on him: a financial surety in the amount of PLN 50,000, police supervision, and a prohibition on contacting his former client, Paweł Szopa, who is also a suspect in the case.

It should be emphasized that the payment of funds into a defense attorney's account is consistent with the Act of March 1, 2018, on Counteracting Money Laundering and Terrorist Financing, insofar as it concerns the provision of legal assistance, as well as with Resolution No. 64/2022 of the Supreme Bar Council of September 9, 2022.

Such actions by the Prosecutor's Office suggest that its purpose may be to force attorney Krzysztof Wąsowski to disclose information obtained from his client in the course of providing legal defense, or to exert pressure limiting the defense's ability to act, ultimately even removing him from the proceedings. Moreover, bringing charges against the attorney may discredit him within the legal community and among potential clients as an untrustworthy and immoral person.

The cases described above are contrary to the legal and ethical principles, as well as to the professional standards, established by contemporary practice and the ethos of the attorney as an active defense counsel in criminal cases. Until recently, a defense attorney representing persons suspected or accused of crimes, including acts widely condemned by society or attributed to individuals or groups carrying clearly negative associations, enjoyed special protection. Owing both to procedural and substantive safeguards, and to societal acceptance of the unique nature of the defense attorney's role, counsel was not subjected to pressure, restrictions, or – above all – legal and social reprisals. This reflected the well-established significance of national and international legal guarantees. These obvious points must be recalled because, on the basis of the actions of state authorities described above, persons currently holding relevant functions within the justice apparatus established after 2023 – acting in execution of orders or in fulfillment of the expectations of politically empowered executive bodies – are taking specific procedural actions in ongoing individual cases not only against suspects, but also against their defense attorneys. This procedurally documented reality reflects a repressive and lawless state. It is unacceptable that, in specific cases, a defense attorney acting on behalf of an accused person becomes the subject of investigative scrutiny by law enforcement authorities in connection with the very defense he is conducting. Evidence is gathered and confirmed through court records and the circulation of procedural documents showing facts that obstruct the exercise of the right to defense and the preservation of attorney-client privilege: the prosecutor brings criminal charges against the attorney while simultaneously imposing preventive measures on him – financial surety, police supervision, and a prohibition on contacting a person who until recently was his client.

As a result, the attorney cannot perform the function of defense counsel. If he does so, he risks a motion based on noncompliance with already imposed preventive measures, including potentially pretrial detention. Disciplinary proceedings may likewise be sufficient to suspend him from acting as defense counsel, even where they are triggered merely by the criminal charge itself or by a public denial of defamatory statements made by one of the most important figures in the state. The picture of this procedural reality becomes even more dramatic when one examines the actual circumstances that triggered these legal actions. It is reasonable to conclude that media statements by certain politicians provoked procedural responses entirely incompatible

with the functioning of a state governed by the rule of law. Yet, in light of the public disclosure of information purporting to confirm the guilt attributed to the suspects, the defense attorneys were themselves obligated and justified in making public statements within the bounds of protecting their clients' interests.

It was precisely the public presentation by attorneys Michał Skwarzyński and Krzysztof Wąsowski of their views regarding the substantive weakness and political motivation of the criminal proceedings being constructed – and above all their courage in opposing such actions through legally prescribed defense measures – that triggered a reaction functionally aimed at punishing them and preventing the efficient and effective defense of persons placed in the media spotlight and "destined" for conviction because of positions they had previously held or prerogatives they had exercised under the previous executive branch.

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PDP Prawnicy dla Polski

The Association **Prawnicy dla Polski** (PDP, „Lawyers for Poland") is a nationwide non-profit organization uniting representatives of all legal professions operating within the justice system. The primary objectives of the Association are as follows:

1. to protect and promote the values enshrined in constitutional principles, including the rule of law, social justice, democracy, the balance of powers, the separation of public authority, the Republic of Poland as a shared good, and the principle of subsidiarity;
2. to promote and safeguard human and civil rights and freedoms in accordance with international standards;
3. to strengthen judicial independence and the impartiality of judges, ensuring full adherence to principles derived from European legal heritage, including the right to a fair trial;
4. to represent and advocate for the views of the legal community on issues impacting its members and Poland's legal culture;
5. to enhance the professional qualifications of the Association's members;
6. to foster collaboration between legal organizations;
7. to promote the integration of the legal profession in Poland;
8. to ensure adherence to constitutional and statutory ethical and legal standards within the legal professions, in a manner that guarantees citizens the right to a fair trial;
9. to increase public awareness of the role and significance of various legal professions in Poland;
10. to advance public legal awareness and culture.

Currently, PDP is engaged in a non-partisan campaign to disseminate accurate information regarding the state of Poland's legal system, particularly the judiciary and prosecution, following the recent change in political leadership. Official government media have been presenting a distorted portrayal of reality, aimed at misinforming the international community by obscuring the actions of Poland's ruling coalition since December 13, 2023, under the leadership of Donald Tusk.

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