RULE OF LAW IN RUINS:

Poland under the "December 13" Coalition

- Analysis of legal violations by Donald Tusk's government
- How to return to a lawful situation?

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(...) the chief strength of the wicked lies in the cowardice and weakness of good men. All the strength of Satan's reign is due to the easy-going weakness of Catholics.

St. Pius X

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Introduction

The idea of the rule of law is rooted in the exercise of power strictly within the limits prescribed by the Constitution and laws that are consistent with it both formally and substantively. The purpose of this exercise of power is to safeguard human dignity, justice, and legal certainty (E. Morawska, *Klauzula państwa prawnego w Konstytucji RP na tle orzecznictwa Trybunału Konstytucyjnego*, Toruń, 2003, p. 60). In Poland, the 2023 parliamentary election resulted in victory for the former opposition, which formed a government, while the incumbent ruling coalition transitioned to opposition. Such a political shift is a typical phenomenon in democratic legal states and should not undermine the constitutional order. Unfortunately, in Poland, this change of power resembled less a routine transfer of state authority and more a hasty "reclaiming" of institutions, marked by revenge and retribution.

Prime Minister Donald Tusk's speech at the conference "Ways out of the Constitutional Crisis" on September 10, 2024, exemplifies this shift. In his address, he effectively announced a break with the rule of law and the principle of legalism, stating: *Today, we need to stand for the Fighting Democracy. It is likely that we will make mistakes or do things that will be incompatible or not fully compliant with the provisions of the law, according to some legal experts, but we need to keep working and keep doing things every day* (https://www.gov.pl/web/primeminister/we-stand-for-the-fighting-democracy).

On December 13, 1981, communist general Wojciech Jaruzelski, a loyal servant of the Soviet Union, imposed martial law, extinguishing Poles' aspirations for freedom and independence for many years. Forty-two years later, on December 13, 2023, Donald Tusk's government assumed power in the Republic of Poland. This ruling coalition, led by Tusk, has been dubbed the "December 13 Coalition" by the public due to its methods of combating civil society and opposition, which starkly resemble those employed by the communists over four decades ago. The old Marxist strategies have even been refined by the Tusk government and its politicized prosecutors and judges, favoring the government and dependent on it, intent on directing their actions against state institutions that resist their destructive policies. These include, foremost, the President of the Republic of Poland, the Constitutional Tribunal, the Supreme Court, the National Council of the Judiciary, as well as prosecutors and independent judges of common courts.

This publication aims to illustrate, through selected examples, how the rule of law is being systematically violated in Poland today. The examples include instances of overt violations of the principle of legalism under the guise of "restoring the rule of law," such as replacing laws with decrees and legal opinions, manipulating the appearance of legality, and openly breaking the law. These are but a fraction of such occurrences. It is evident that intellectual concepts like "fighting democracy" or "transitional rule of law" serve merely to

justify violence and the deprivation of rights for citizens whose views deviate from those imposed by liberal-leftist or revolutionary elites. This degradation weakens Poland, which, as a nation positioned between Western Europe and the vast steppes of Asia, should play a crucial role as a bulwark of Latin civilization, contributing to the stabilization of global peace. The collapse of institutions and the rule of law leads to economic decline, cessation of investment, and the weakening of Poland's military strength. As patriots devoted to our homeland, we cannot remain indifferent.

Paweł Czubik, Konrad Wytrykowski
Warsaw, January 2025

Robert Hernand,
Tomasz Janeczek,
Michał Ostrowski,
Krzysztof Sierak
(Prosecutors, Deputy National Prosecutors)

Illegal Takeover of the Prosecutor's Office by Donald Tusk's Government on January 12, 2024

In Poland, the Public Prosecutor's Office is a state legal body responsible for prosecuting crimes and upholding the rule of law. Prosecutors, who are appointed to specific positions for an indefinite period, are irremovable. The institution operates hierarchically and is headed by the Prosecutor General, who also serves as the Minister of Justice. Reporting to the Prosecutor General, though to a limited extent, is the National Prosecutor, an independent authority who oversees prosecutors.

According to Article 14 § 1 of the Act on the Public Prosecutor's Office of January 28, 2016, the National Public Prosecutor as the Public Prosecutor General's first deputy, as well as the Public Prosecutor General's other deputies, are appointed from among public prosecutors of the National Public Prosecutor's Office and dismissed from their post by the President of the Council of Ministers upon a motion of the Public Prosecutor General. These appointments and dismissals require the opinion and written consent of the President of the Republic of Poland.

On March 18, 2022, following a positive opinion from the President of the Republic of Poland, Dariusz Barski was appointed Public Prosecutor General's first deputy – National Prosecutor by then-Prime Minister Mateusz Morawiecki.

On December 13, 2023, Andrzej Duda, President of the Republic of Poland, appointed Donald Tusk as Prime Minister. Subsequently, Tusk appointed Adam Bodnar as Minister of Justice, who also assumed the role of Prosecutor General.

Until January 12, 2024, Barski's authority in his role was undisputed.

Meanwhile, starting on December 20, 2023, the Minister of Justice and Prosecutor General, Adam Bodnar, repeatedly and unsuccessfully urged Barski to resign, thereby acknowledging Barski's status as the National Prosecutor. When these efforts failed, on January 12, 2024, at approximately 4 p.m., measures were initiated to forcibly remove Barski from his position, seize control of the National Prosecutor's Office, and implement further personnel

changes within the office and its subordinate prosecution units. On that day, Minister of Justice Adam Bodnar delivered a letter to National Prosecutor Dariusz Barski, asserting that Barski was no longer serving in his role. This action resulted in the unlawful removal of Barski from his position as National Prosecutor.

Upon delivering the documents to Barski, Bodnar simultaneously declared that Jacek Bilewicz would serve as the acting National Prosecutor. This decision was made by Prime Minister Donald Tusk. However, it was carried out without obtaining the required written consent of President Andrzej Duda, as mandated by law. The Prosecutor General did not even request this consent, thereby disregarding the constitutional powers of the President under Article 126 of the Constitution. These powers include the President's prerogative as the highest representative of the Republic of Poland to safeguard the Constitution and the security of the state.

These actions are, therefore, illegal in nature, representing a blatant violation of the legal order in force in Poland.

Following these events, immediately after January 12, 2024, the Deputy Prosecutors General filed a notice of offense under Article 231 of the Criminal Code, alleging abuse of authority by a public official to the detriment of the Polish State. Concurrently, citing the content of the letter handed to him by Minister of Justice Adam Bodnar and the lack of instructions on "how to appeal" the decision, Prosecutor Barski filed a constitutional complaint with the Constitutional Tribunal.

On January 15, 2024, President Andrzej Duda issued a statement asserting the illegality and ineffectiveness of the actions taken against Dariusz Barski, reaffirming that he remained the National Prosecutor. The President emphasized that Barski had not been lawfully dismissed, as such an action requires the written consent of the Head of State.

On the same day, January 15, 2024, the Constitutional Tribunal issued a provisional order requiring all state bodies to respect the legal status under which Dariusz Barski retained his role as National Prosecutor. Subsequently, on November 22, 2024, the Constitutional Tribunal delivered a final judgment declaring the removal of Dariusz Barski from his position as National Prosecutor unconstitutional.

On January 22, 2024, National Prosecutor Dariusz Barski was physically barred from accessing the headquarters of the National Prosecutor's Office in Warsaw. On this date, the unlawful "tenure" of prosecutor Jacek Bilewicz began. Acting as though he were the National Prosecutor, Bilewicz initiated unauthorized personnel changes. On January 29 and 30, 2024, without any legal authority, he "dismissed" the heads of all provincial prosecutors' offices and several regional prosecutors' offices. This process involved sending letters that purported to "dismiss" the heads of the respective units and blocking their access to information systems. Additionally, bank accounts held at the National Bank of Poland were illegally seized.

On March 14, 2024, Prime Minister Donald Tusk, acting at the request of Prosecutor General Adam Bodnar, appointed Dariusz Korneluk as National Prosecutor. However, this decision was also illegal, as Dariusz Barski had not been lawfully removed from his position. Furthermore, the appointment of Korneluk was made without obtaining the required opinion from the President of the Republic of Poland.

As a result of these unlawful actions, which effectively amounted to "forcible" personnel changes, individuals closely affiliated with the political environment of the ruling coalition led by Donald Tusk were installed in leadership positions within the National Prosecutor's Office and subordinate prosecution units.

It is notable that on September 27, 2024, the Supreme Court issued a resolution affirming that Dariusz Barski is the lawful National Prosecutor. However, the Minister of Justice and Prosecutor General Adam Bodnar, along with Prime Minister Donald Tusk, declared that the resolution held no legal significance for them. Such a statement is unprecedented in a democratic state, as it undermines the judiciary's authority by subjecting it to governmental dismissal.

Similarly, the current holders of the highest offices in the Republic of Poland have disregarded rulings of the Constitutional Tribunal. They have refused to publish the decisions of this constitutional body, including the aforementioned verdict of November 22, 2024, which affirmed the unconstitutionality of actions taken regarding the Prosecutor's Office.

In the wake of these developments, which persist to this day, numerous proceedings have been initiated in the National Prosecutor's Office and its subordinate units aimed at politically targeting MPs currently aligned with the opposition. Previously, until December 13, 2023, these individuals served in the Council of Ministers under the United Right government.

At the highest level of the Prosecutor's Office, the following appointments have been made:

- an Investigation Team was formed to examine the disbursement of funds from the Justice Ministry's Justice Fund. As part of this inquiry, charges were brought against MP Michał Woś for allegedly exceeding his authority in the purchase of the PEGASUS system – a surveillance tool for monitoring internet devices – from a specialized Israeli company. This system had been used, in compliance with legal provisions, to monitor the online activities of individuals suspected of espionage for the Russian Federation and those involved in terrorist activities, among others.

  During the course of the investigation conducted by this team, Marcin Romanowski, a sitting MP from the current political opposition in the Polish Sejm, was illegally deprived of liberty. Additionally, the residence of Zbigniew Ziobro, a former Prosecutor General and now an opposition MP, was ransacked during a search conducted in his absence while he was undergoing treatment for severe cancer.

– another Investigation Team was established to examine the use of the PEGASUS system by Polish civilian and military services. As previously noted, this system was acquired from an Israeli company specializing in software designed to monitor the activities of individuals engaged in espionage, terrorism, and similar activities. According to official statements from the Prosecutor's Office, the ongoing proceedings will classify individuals who were subjected to this surveillance as victims.
– an Investigation Team was also established to scrutinize the activities of the commission led by former Minister of National Defense Antoni Macierewicz, which investigated the causes of the April 10, 2010, crash at the Smolensk airport, which claimed the lives of the late President of the Republic of Poland, Lech Kaczyński, his wife Maria Kaczyńska, and 96 others. According to a communiqué from the National Prosecutor's Office, the team is tasked with investigating alleged "irregularities" and "abuses" that occurred during the commission's operations.

The current situation, resulting from the actions of individuals unlawfully exercising authority within the National Prosecutor's Office and subordinate common prosecution units, has had a significant impact on the activities of the "military division."

According to the Act on the Public Prosecutor's Office, cases of a military nature – including those indirectly involving soldiers from the United States and other NATO countries stationed in Poland – are handled by the Deputy Prosecutor General for Military Matters and the prosecutors under his authority in the Department for Military Matters, as well as in the military divisions and departments of universal prosecutorial bodies. A significant portion of these cases pertains to counterintelligence operations, particularly those conducted by the Military Counterintelligence Service to identify and counteract intelligence activities of the FSB and GRU connected with the presence of U.S. and NATO forces at locations such as the military base in Redzików and the war in Ukraine (Rzeszów-Jasionka airport).

The Prosecutor General removed these responsibilities from the Deputy Prosecutor General for Military Matters, prosecutor Tomasz Janeczek, who had been appointed by former Prime Minister Mateusz Morawiecki. Janeczek was stripped of his authority to oversee and provide opinions on operational inspections conducted by entities such as the Military Counterintelligence Service. This decision is significant, as these inspections form an essential component of the supervision of military affairs, and access to this knowledge is directly necessary for subsequent procedural activities.

This action resulted in unauthorized individuals gaining access to operational materials, including top-secret information, potentially concerning soldiers from the United States and other NATO countries stationed in Poland. Additionally, three other Deputy Prosecutors General – Krzysztof Sierak, Robert Hernand, and Michał Ostrowski – were similarly stripped of their powers. Furthermore, prosecutors Hernand and Ostrowski were physically

barred from accessing the headquarters of the National Prosecutor's Office, effectively preventing them from carrying out their duties.

Conclusions

The unlawful takeover of the National Prosecutor's Office, in direct violation of the constitutional powers of the President of the Republic of Poland, has unleashed chaos within the prosecutorial system with far-reaching and unpredictable consequences. A serious risk now exists that all decisions made by the so-called "neo-prosecutors," particularly those holding office unlawfully, may be rendered invalid.

For criminal prosecutions, this creates the alarming possibility that thousands of offenders, including individuals accused of murder, rape, and espionage, could evade justice. Moreover, this undermines the rights of victims, exacerbating their suffering, while plunging the state into legal chaos and anarchy.

The situation is further exacerbated by decisions such as the mass filing of motions to exclude judges who received appointments after 2018. This effectively sidelines nearly one-quarter of Poland's judiciary, causing widespread paralysis within the judicial system. The result is an environment of legal uncertainty and unpredictability that affects not only Polish citizens but also foreign entities and individuals residing or conducting business in Poland.

Compounding this turmoil is the executive branch's (the Council of Ministers) and legislative branch's (the Sejm and Senate) open rejection of the authority of the Constitutional Tribunal, the Supreme Court, and decisions made by the President of the Republic of Poland. Such actions threaten to destabilize the functioning of all state institutions.

The only viable solution to resolve this crisis in the prosecutor's office and restore order in subordinate law enforcement agencies is to reestablish the lawful state of affairs. This requires the removal of those unlawfully in office.

Appendix

Minister of Justice, Prosecutor General Adam Bodnar, by decisions from December 2024, transferred two Deputies of the Prosecutor General, i.e. prosecutor Krzysztof Sierak and prosecutor Robert Hernand, who from the beginning openly criticized the unlawful takeover of the National Prosecutor's Office and the removal of National Prosecutor Dariusz Barski from his duties, to other organizational units, thereby effectively removing them illegally from performing this function, without formally launching the procedure for their dismissal. The indicated Deputies of the Prosecutor General will actually be subordinate to prosecutors in relation to whom they are direct superiors. Such action violates the systemic position of these Deputies

of the Prosecutor General in the structure of the Prosecutor's Office units. The above events indicate a probability bordering on certainty that the same action will be taken for the same reasons against the third of the Deputies of the Prosecutor General, i.e. prosecutor Michał Ostrowski.

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

The Attack on Courts – The Case of the Court of Appeals in Warsaw

The actions of the executive branch intended to strip the President and Vice-Presidents of the Court of Appeals in Warsaw of their ability to perform their duties before the end of their terms represent a flagrant act of lawlessness, pursued and upheld for openly political reasons. This constitutes a stark interference in the independence of the Polish judiciary, with systemic consequences. By abandoning a principle of fundamental importance – judicial independence – the state has blatantly violated the Constitution of the Republic of Poland in a manner that is evident to the public. This unprecedented breach dismantles the safeguards that a democratic state governed by the rule of law erects against the overreach of political power.

The sequence of events unfolded as follows:

On February 20, 2024, by decision No. DKO-I.565.30.2024, the Minister of Justice dismissed Piotr Schab from his position as President of the Court of Appeals in Warsaw, despite the unanimous negative opinion expressed by the Court's College on January 18, 2024, regarding this dismissal. This action constituted a blatant violation of the provisions of the Act on the Organization of Common Courts of July 27, 2001, particularly Article 27, paragraph 5(a), which stipulates that when if opinion of the college of the court concerning the dismissal of its president or deputy president is negative, the Minister of Justice may present the planned dismissal and a written statement of the grounds to the National Council of the Judiciary (NCJ). A negative opinion from the NCJ is binding on the Minister of Justice if adopted by a two-thirds majority. While the NCJ's failure to issue an opinion within 30 days does not preclude dismissal, by disregarding these unambiguous legal requirements, the executive branch committed an unprecedented act of lawlessness in the history of free Poland, undermining judicial independence. Judge Piotr Schab was deprived of access to official documents and physically barred from entering his office by changing access codes and the lock on the office door.

In an interim order dated February 27, 2024 (ref. Ts 32/24), the Constitutional Tribunal suspended the validity of the Minister of Justice's decision to dismiss Piotr Schab, explicitly prohibiting any actions detrimental to the performance of the functions of the President of the Court of Appeals in Warsaw taken on the same or a similar legal basis.

The Minister of Justice, however, disregarded this ruling by the Constitutional Tribunal, asserting that the order lacked validity. This position was unequivocally communicated in letters dated March 4 and 5, 2024, wherein the Minister demanded the urgent convening of the General Assembly of Judges of the Court of Appeals in Warsaw to present candidates for a new president. Additionally, one of its vice-presidents was unlawfully tasked with "performing the functions" of the President of the Court of Appeals in Warsaw. The Ministry of Justice consistently treated Piotr Schab's actions as President as null and void. For instance, submissions falling within the scope of the Court president's authority – such as a request for the Minister of Justice's opinion on the continued entrustment of a judge as a visiting judge, dated February 14, 2024 – were returned without consideration on the grounds that they had been submitted by "an unauthorized person."

The aforementioned actions of the executive branch constitute a blatant violation of Article 190(1) of the Constitution of the Republic of Poland, which unequivocally states that the decisions of the Constitutional Tribunal are universally binding and final. In this context, the appointment of Dorota Markiewicz to the position of President of the Court of Appeals in Warsaw represents an egregious act of usurpation, undermining the constitutional foundations of the judiciary in a democratic state governed by the rule of law. Both the appointment itself and the assumption of management of the Court of Appeals in Warsaw following the unlawful deprivation of Piotr Schab's ability to perform his entrusted duties must be regarded as a flagrant abuse of public office and, above all, a direct violation of Article 7 of the Constitution of the Republic of Poland, which mandates that public authorities act strictly on the basis of and within the limits of the law. This political assault on the leadership of the Court of Appeals in Warsaw amounts to a *de facto* repudiation of Poland's constitutional order by the executive branch.

The state of lawlessness within the Court of Appeals in Warsaw, compounded by the dramatic collapse of the ability to ensure the fulfillment of its current tasks, continues to be perpetuated by further actions of the executive branch, which directly undermine the foundations of the legal order. It is important to emphasize that, by an interim order dated April 24, 2024, the Constitutional Tribunal, acting pursuant to Article 36 of the Act on the Organization and Proceedings Before the Constitutional Tribunal of November 30, 2016, in conjunction with Article 755 of the Act of November 17, 1964 – The Code of Civil Procedure, granted provisional relief on the application of the National Council of the Judiciary. The order required the Minister of Justice to refrain from any actions based on Article 27, paragraphs 5 and 5(a) of the Act on the Organization of Common Courts of July 27, 2001, in relation to the following: (1) the effect of a possible positive opinion issued by the college of the competent court; (2) the non-binding nature of a negative opinion issued by the National Council of the Judiciary, adopted by a simple majority of votes, on the dismissal of a president or vice-president of a court. This injunction

remains in force until the Constitutional Tribunal delivers its final ruling in case no. K 2/24. Consequently, the decision effectively halted the procedure for dismissing presidents or vice-presidents of courts. It bears repeating that, in accordance with Article 190(1) of the Constitution of the Republic of Poland, rulings of the Constitutional Tribunal are universally binding and final.

However, the Minister of Justice, in blatant violation of constitutional norms, persisted in efforts to dismiss the Vice-Presidents of the Court of Appeals in Warsaw, Edyta Dzielińska and Agnieszka Stachniak-Rogalska. These actions began with the Minister's request to the College of the Court of Appeals in Warsaw, dated April 10, 2024, seeking an opinion on their dismissal. Simultaneously, the Minister suspended both vice-presidents from their duties. Despite the interim decision of the Constitutional Tribunal on April 24, 2024, explicitly prohibiting such actions, Edyta Dzielińska and Agnieszka Stachniak-Rogalska were unlawfully dismissed from their positions on May 13, 2024. The so-called "opinion of the College of the Court of Appeals in Warsaw" obtained by the Minister as justification for these dismissals was illegitimate – judge Dorota Markiewicz, who usurps the title of President of the Court of Appeals in Warsaw, manages the Court illegally and, as a result, has no legal right to participate in the College. Furthermore, it was unlawfully declared that Michał Bukiewicz, President of the District Court Warsaw-Praga in Warsaw, had no right to sit on the College of the Court of Appeals in Warsaw. His rightful seat was instead assigned to another judge, aligned with the policies of the Ministry of Justice, under the pretext of this individual's seniority. This manipulation directly contradicts the clear stance of the Presidium of the National Council of the Judiciary, expressed on January 17, 2024, affirming the legal fact that a president of a court is a member of its college by virtue of their office until lawfully removed. The composition of this so-called "College of the Court of Appeals in Warsaw" was therefore unlawfully altered to include individuals favored by the executive branch, rendering its opinions devoid of legal authority. This starkly illustrates the scale of lawlessness undermining the judiciary in Warsaw.

Characteristic of the Ministry of Justice's political approach – implemented through open violations of the law – are the stated motives used to justify the dismissal of the President and Vice-Presidents of the Court of Appeals in Warsaw. To avoid engaging with outright falsehoods, it suffices to highlight the baseless personal attacks that disparage the professional accomplishments of these judges and demean their standing for openly declared political purposes. The manipulative nature of these actions, relying on such methods, compelled the judges who comprise the legal leadership of the Court of Appeals in Warsaw to resort to legal means of protection.

The outright violation of legal provisions also served as a mechanism for a political takeover of Poland's largest court – the Warsaw Circuit Court – and the district courts within its jurisdiction. Despite the universal applicability of the Constitutional Tribunal's interim order of April 24, 2024, referenced

above, the Minister of Justice initiated a procedure aimed at dismissing the management of the Warsaw District Court. This included requesting an opinion on the dismissal from the College of the Warsaw Circuit Court and suspending the court's president. The Ministry's plans, however, faced a setback. On June 18, 2024, the College issued a negative opinion on the Minister's proposals. This opinion appeared to force the Ministry to abandon its attempts to dismiss the President and Vice-Presidents of the Warsaw Circuit Court. Notably, the Ministry cited only the negative opinion of the College as the reason for halting the process. In response, the Ministry sought to restructure the College to align it with its political agenda. This involved suspending the presidents of district courts who were part of the College of the Warsaw Circuit Court. Shortly thereafter, the Minister of Justice renewed the request for the College of the Warsaw Circuit Court to express an opinion on the dismissal of the court's management. Concurrently, Judge Joanna Przanowska-Tomek, President of the Circuit Court, was suspended, and Judge Janusz Włodarczyk was unlawfully designated to perform her duties, allegedly due to his seniority in judicial service. The same rationale was employed in reconfiguring the composition of the illegitimate College of the Warsaw Circuit Court. There was, however, no legal basis for excluding Joanna Przanowska-Tomek or the suspended presidents of the district courts within the Warsaw district from participating in the College meetings. The restructured and unlawful College subsequently approved the dismissal of the President and Vice-Presidents of the Circuit Court in Warsaw, paving the way for the Minister of Justice to illegally appoint Judge Beata Najjar as the new President.

Judge Piotr Schab and other judges of the Court of Appeals in Warsaw, appointed by the President of the Republic of Poland under current legislation, are individuals from outside the post-communist judicial system – a system where judicial positions were often influenced by political connections. These judges have now been systematically marginalized, stripped of their ability to adjudicate almost all categories of cases. Instead, they are assigned only the least significant cases, in blatant violation of the legally mandated rules for the random assignment of cases. Case assignments in this court are now determined arbitrarily by individuals unlawfully controlling the court's operations. The legally defined scopes of authority for these boycotted judges, as established by competent bodies, are openly disregarded. The systematic exclusion of these judges from meaningful judicial work is dictated by directives from a politician – the Minister of Justice. The *de facto* takeover and ensuing disruption of the Court of Appeals in Warsaw have profound implications. This court handles some of the most significant cases in Poland, including those concerning the property interests and liabilities of major corporations, the accountability of organized crime groups, and, frequently, cases involving politicians. As a result, the criminal division of the Warsaw Court of Appeals has plunged into a state of deepening chaos and dysfunction, with only a small number of judges permitted to carry out their work.

This method of political control over Poland's largest courts – founded on lawlessness – may yield immediate effects, but its long-term consequences are dire. It is essential to recognize that public institutions must be shaped to align with legitimate public expectations. The ongoing attempt to dismantle the democratic rule of law reflects the short-sighted approach of those undermining their own state.

Conclusions

It is imperative to immediately reverse all unlawful personnel changes in Polish courts and reinstate those who have been unlawfully removed from their positions. A profound reform of the Polish judiciary is essential, requiring structural changes and a commitment to making the judiciary more accessible and responsive to the needs of the public. The entrenched system of hierarchies, networks, and dependencies that has dominated the judiciary since 1989 must be dismantled. Despite a brief period of reform between 2017 and 2023, these entrenched interests have once again regained control over Polish courts.

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judge of the District Court for the Capital City of Warsaw)

Assault on the Media

2023 witnessed an unprecedented and controversial event in the history of Polish broadcasting. The government undertook the liquidation of all public media companies in Poland, including Telewizja Polska S.A. (Polish Television), Polskie Radio S.A. (Polish Radio), its 17 regional radio stations, and Polska Agencja Prasowa S.A. (Polish Press Agency). The justification for this sweeping action appeared limited to subjective assessments of program quality, voiced predominantly by partisans of one political faction. No official documents or studies were presented to substantiate the decision to dismantle the public media sector.

On December 19, 2023, Minister of Culture and National Heritage Bartłomiej Sienkiewicz, exercising the ownership rights of the State Treasury – which holds 100% of the shares in these companies – acted pursuant to the provisions of the Commercial Companies Code to dismiss the sitting presidents of Telewizja Polska S.A., Polskie Radio S.A., and Polska Agencja Prasowa S.A. and their Supervisory Boards. Subsequently, the Minister appointed new Supervisory Boards, which in turn selected new Management Boards for the companies. These changes were executed during General Meetings of Shareholders, where the State Treasury, represented by the Minister, acted as the sole owner of the companies.

The changes in the governing bodies of public media companies occurred in direct defiance of a Constitutional Tribunal ruling that obligated the State Treasury to refrain from altering the boards of public broadcasting companies. On December 14, 2023, the Constitutional Tribunal issued a safeguard explicitly prohibiting any changes to these boards until the Court's ruling, scheduled for January 16, 2024.

The Minister's actions were based on a December 19, 2023, resolution of the Sejm of the Republic of Poland. However, such a resolution does not constitute a source of law in Poland and is therefore unlawful. Ostensibly aimed at "restoring legal order and ensuring the impartiality and integrity of the public media and the Polish Press Agency," the resolution lacked legal grounding.

By acting on this resolution, the Minister violated Article 87(1) of the Constitution of the Republic of Poland, which unequivocally establishes that the sources of universally binding law in Poland are the Constitution, laws, ratified international agreements, and regulations – not Sejm resolutions. Fur-

thermore, the Minister contravened Article 2(1) of the Act on the National Media Council of June 22, 2016, which grants the National Media Council exclusive authority over the appointment and dismissal of members of the governing bodies of public broadcasting companies and the Polish Press Agency.

The process of replacing the management of public media companies was executed in a forceful and unlawful manner, involving the use of hired bodyguards to seize the media headquarters. During the operation, a female deputy of the Polish Parliament sustained physical injuries, employees were forcibly removed from the premises, while others were blocked from entering the buildings to perform their duties. Television signals were shut down, news and current affairs programs were suspended, and advertisements were halted, resulting in substantial financial losses for Polish Television.

Subsequent investigations revealed irregularities in the notarial acts related to the appointment of the new boards of public media companies. Allegations have surfaced that falsehoods were certified concerning the time and place of the meetings of these companies' governing bodies. Despite these revelations, a prosecutor's order to file charges against the civil law notary involved has not yet been issued due to her absence from the country. Reports indicate that the notary first traveled to Dubai and then to South America.

Importantly, the President of the Republic of Poland publicly protested the assault on public media, as did the Presidium of the National Council of the Judiciary in a formal statement dated December 20, 2023 and numerous journalistic organizations.

Conclusions

It is imperative to immediately cease all unlawful actions undertaken by the Minister of Culture and National Heritage concerning public media. Looking ahead, it is essential to develop an optimal media system that critically evaluates the necessity of public media and establishes mechanisms to ensure their independence from shifting political influences.

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judge of the District Court for the Capital City of Warsaw)

Media Censorship

In recent months, the state administration has repeatedly denied journalists from the government-independent Telewizja Republika access to information, significantly restricting their participation in public life. These journalists are systematically excluded from press conferences held by government representatives, who appear to fear confrontation with uncomfortable questions. By blocking access to information about the actions of state bodies, the administration prevents journalists from fulfilling their fundamental role. These actions constitute ongoing violations of Article 14 of the Constitution, which guarantees that "the freedom to express opinions, to acquire and to disseminate information shall be ensured to everyone," and Article 54(2), which explicitly prohibits "preventive censorship of the means of social communication and the licensing of the press." Furthermore, they breach Article 4 of the Law on Access to Public Information, which mandates public authorities to provide access to information, and Article 18, which prohibits selective access to information. Additionally, these actions violate Article 6 of the Press Law, which forbids obstructing the press from gathering critical material or suppressing journalistic criticism in any form.

The government's attitude and approach towards independent media were starkly illustrated during an incident on November 7, 2024. At a press conference, a journalist from an independent outlet questioned Prime Minister Donald Tusk about a statement he allegedly made in March 2023 during a meeting with voters. The statement, reportedly recorded on tape, accused former U.S. President Donald Trump of having agent ties with the Russian Federation. The Prime Minister categorically denied the claim, stating: "No, I never made such suggestions." In response to this question, the journalist was permanently barred from attending press conferences at the Council of Ministers by the government representative responsible for media relations.

Conclusions

Those responsible for implementing censorship must be immediately removed from any position of influence over the media. Only a decisive and uncompromising response to individuals who enact totalitarian tendencies

and infringe on the public's right to information can guarantee that such violations will not be repeated in the future.

* *Appendix*

When unconfirmed information about the planned purchase of the Polish media station TVN from the American owner Warner Bros. Discovery by an investment group associated with the Czech Republic and Hungary appeared in the media at the beginning of December 2024, Prime Minister Donald Tusk announced on December 11, 2024, that he would enter the two television stations TVN and Polsat on the list of strategic companies by way of a regulation. In this way, according to Donald Tusk, they would be protected, for example, against an aggressive and dangerous takeover from the point of view of the state's interests, the sale could be blocked by the government. He directly suggested "eastern interest" in the takeover. Despite the fact that there is no legal basis for including these companies, especially TVN, on the list of strategic companies, as it may concern, among other things, telecommunications activities but not strictly media activities, which TVN conducts (see Article 4, Section 1 of the Act of 24 July 2015 on the control of certain investments (consolidated text, Journal of Laws of 2024, item 1459), the very possibility of the Company being taken over by capital, which does not guarantee, as it results from the opinion of the Prime Minister, the only media message accepted by the government and may strengthen media pluralism in Poland, gave this government an argument for blocking its purchase or possibly controlling its activities. Such action by the government constitutes a precedent in the 35-year history of Poland after liberation from Soviet occupation and must be considered a restriction of freedom of entrepreneurship and freedom of the media. This will also enable the owners and potential buyers of these companies to file court complaints. On the other hand, in the case of a jurisdiction other than the EU, e.g. the USA, the basis for the complaint may be a breach of the investment protection agreement.

On December 18, 2024, it was announced that the government had resolved to enter, among others, Cyfrowy Polsat, TVN, Polsat Telewizja, into the list of entities subject to protection maintained pursuant to the regulation of the Council of Ministers of December 27, 2023 on the list of entities subject to protection and the competent control authorities for them (*https://www.polsatnews.pl/wiadomosc/2024-12-18/polsat-na-liscie-podmiotow-strategicznych-rzad-przyjal-rozporzadzenie/*)

Konrad Wytrykowski
(Doctor of Legal Sciences, retired Supreme Court judge)

Removal of Non-Removable Judges

Article 180 of the Constitution establishes the irremovability of judges, stipulating that a judge may only be removed from office, suspended, or transferred to another seat or position against their will by a court decision and solely in cases specified by law. These provisions constitute robust institutional guarantees of judicial independence. Equally significant is the process of judicial appointment – another safeguard of independence. Under Article 179 of the Constitution, judges are appointed by the President of the Republic on the motion of the National Council of the Judiciary, and they serve for an indefinite term.

Two bodies play a central role in the appointment of judges in Poland: the President of the Republic, who serves as the highest representative of the state and guarantor of the continuity of state power (Article 126 of the Constitution), and the National Council of the Judiciary (NCJ) – a unique body described in the Constitution, positioned structurally between the judiciary and the legislative and executive branches. It is important to highlight that the NCJ is neither part of the judiciary nor an element of judicial self-government. Its mixed composition, which includes representatives from the legislative, executive, and judicial powers, positions it as a body that ensures the balance and interaction of these powers. This structure allows the NCJ to serve as a forum where diverse perspectives and approaches to safeguarding judicial independence and the independence of judges can intersect. The NCJ is an independent, central state organ with a status comparable to other constitutional bodies. Its independence is integral to its function as a guarantor of judicial autonomy.

According to Article 187(1) of the Constitution, the National Council of the Judiciary consists of:

1) the First President of the Supreme Court, the Minister of Justice, the President of the Supreme Administrative Court and an individual appointed by the President of the Republic;
2) 15 judges chosen from amongst the judges of the Supreme Court, common courts, administrative courts and military courts;
3) 4 members chosen by the Sejm from amongst its Deputies and 2 members chosen by the Senate from amongst its Senators.

According to Article 187(4) of the Constitution, the organizational structure, the scope of activity and procedures for work of the National Council of the Judiciary, as well as the manner of choosing its members, shall be specified by statute.

It is evident that the Constitution does not explicitly state that the fifteen members of the NCJ chosen from among the judges (Article 187(1)(2)) must be selected by other judges or by judicial self-government bodies. The text of this provision intentionally leaves the method of selecting these members undefined, delegating the determination of the process to statutory laws.

The method of their selection underwent a significant change in 2017. Prior to 2018, judges themselves selected the members of the NCJ from among their peers. However, following the 2017 amendments, the selection process was altered, and the fifteen judicial members of the Council are now elected by the Sejm for a joint four-year term.

Although the 2017 reform replaced the previous method – where judges elected members of the NCJ from among themselves in a non-democratic manner – with a process where these members are elected by the Sejm, and despite the Constitutional Tribunal ruling of March 25, 2019 (K 12/18) affirming the constitutionality of this change, the reform has been the subject of persistent criticism coming primarily from politicians and certain legal professionals, especially judges, who argue that the new system undermines judicial independence. The critics claim that the NCJ, as restructured under the 2017 law, is no longer independent of the executive and legislative branches. They contend that this restructuring has transformed the NCJ into an entity that no longer fulfills the constitutional definition outlined in Article 187(1) of the Constitution. This view has been echoed in several judicial rulings, including decisions by the Supreme Court of March 14, 2024 (III KK 430/23, LEX no. 3715960), February 8, 2024 (III KK 471/23, LEX no. 3670345), and June 2, 2022 (I KZP 2/22, OSNK 2022, z. 6, item 22).

Challenging the status of the NCJ has far-reaching implications, particularly for judges appointed after 2018. Under the current ruling coalition, a clear trend has emerged not only of questioning the independence of these judges but even denying their legitimacy as judges.

A notable illustration of this trend occurred on September 6, 2024, when a meeting took place at the Prime Minister's office, attended by politicians, including the Prime Minister and the Minister of Justice, along with members of the legal community aligned with the government and openly declaring loyalty to it. Many of the participants at this meeting hold high-paying positions within the Ministry of Justice, serve on committees under the Prime Minister, or work at the National School of Judiciary and Public Prosecution, which is directly subordinate to the Minister of Justice. Notably absent were any lawyers critical of the government's policies, including members of organizations such as Prawnicy dla Polski, the Polish Judges Association, or Ad Vocem.

Following the meeting, the Minister of Justice and other participants unveiled proposals for further changes to the judiciary. It was concluded that the appointments of judges after 2018, carried out with the participation of the restructured NCJ and regarded as unconstitutional, were unlawful and with-

out legal force. Consequently, these appointments are not recognized as valid under Article 179 of the Polish Constitution. This led to the conclusion that so-called "neo-judges" should return to their previous positions (www.prawo.pl/prawnicy-sady/neo-sedziowie-propozycje-ministerstwa-sprawiedliwosci-i-komisji-kodyfikacyjnej,528962.html). As part of this process, a peculiar method of segregating judges was introduced. Judges appointed after 2017 were grouped separately, and within this category, three further subgroups were identified:

The first category consists of young judges who, after serving as assessors, became judges upon graduating from the National School of Judiciary and Public Prosecution. For this group, it was announced that "the law will provide that they have the status of judges appointed in accordance with the Constitution." In other words, despite acknowledging the defective nature of their appointments, a legal mechanism is to be introduced to "validate" these appointments.

The second category comprises individuals allegedly linked by a so-called "common enterprise" or "common design," described in vague and populist terms as participation in the "construction of a non-democratic order in Poland." Unofficially, it was suggested that this category includes approximately 500 individuals who would simply be removed from the judiciary.

The third category is made up of judges who "advanced in the judicial structure because they had the irresistible will to do so."

The latter two groups are to be given the opportunity to "return to their previously held positions," but only on the condition that they issue a formal statement referred to as "active regret." Individuals who, before their judicial appointment, practiced another legal profession, such as lawyers or legal counsel, were informed that there would be no possibility of returning to those professions. Instead, they were "magnanimously" offered temporary employment as assistant judges or court registrars.

Criminal repression has also been explicitly announced – according to the ministry's statement, "neo-judges" will face disciplinary liability simply for applying for vacant judicial positions.

The proposed measures blatantly violate the constitutional order of the Republic of Poland, disregarding constitutional provisions, particularly the principle of judges' irremovability. They fail to recognize that judges are appointed by a decision of the President of the Republic of Poland for an indefinite term and take an oath. Upon taking this oath, they acquire the status and authority to perform judicial functions, and it is inadmissible for any authority to question or evaluate the legality of their appointment or the powers conferred by it.

Under the current legal framework, judicial appointments are subject to neither judicial nor administrative review and cannot be revoked. The effectiveness and unquestionability of all judicial appointments made by the President of the Republic, as his exclusive and non-verifiable prerogative, are

well-established in the jurisprudence of the Constitutional Tribunal and domestic courts. No state organ has the authority to control or nullify an act of judicial appointment.

This raises a critical question: what is the intended outcome of further anarchization of the judiciary? It is worth reflecting on the fundamental purpose of courts and judges. Are they meant to serve themselves or the citizens, who value swift and fair trials over scrutinizing judges' résumés and indulging the personal ambitions of a few judges seeking retribution?

Conclusions

Any attempt to vet judges must be unequivocally abandoned. The Polish Constitution categorically prohibits the removal of judges from office, regardless of whether such actions are framed as "verification" or "review" of judicial appointments. Reforms to the judicial appointment system, including changes to the structure and method of electing members of the NCJ, can only apply prospectively and must not aim to undermine judicial appointments already made. It must be clearly communicated to those in power in Poland that judicial independence cannot coexist with a system where a judge's appointment can be revoked at any time.

Moreover, those responsible for attempting to systematically violate the Constitution by seeking to remove judges appointed prior to 2017 must be held criminally accountable for their actions.

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Depriving MPs of Their Immunity and Liberty

(a) *The Case of MPs Mariusz Kamiński and Maciej Wąsik*

Mariusz Kamiński and Maciej Wąsik, formerly deputies to the Sejm of the Republic of Poland, are now members of the European Parliament. In Poland, members of the Sejm are protected by parliamentary immunity. According to Article 105(5) of the Constitution of the Republic of Poland, they cannot, as a rule, be detained or arrested without the consent of the Sejm, nor can they be held criminally liable without such consent.

On March 30, 2015, the District Court for Warsaw-Śródmieście sentenced Mariusz Kamiński and Maciej Wąsik to three years' imprisonment each in case II K 784/10. These sentences were non-final.

The President of the Republic of Poland, by order of November 16, 2015, issued under Article 139 of the Constitution, exercised the right of clemency toward Mariusz Kamiński and Maciej Wąsik.

According to the cited provision of the Constitution, the right of clemency does not apply exclusively to individuals convicted by the Tribunal of State. Therefore, as was largely uncontested in legal scholarship at the time, the President was authorized to exercise the right of clemency, including individual abolition, for individuals who had been preliminarily convicted.

This interpretation was confirmed by the Polish Constitutional Tribunal in its rulings of July 17, 2018 (K 9/17), and June 2, 2023 (Kpt 1/17). It is important to note that, under Article 190(1) of the Constitution of the Republic of Poland, rulings of the Constitutional Tribunal, whether judgments or decisions, have the force of law and are final. Consequently, these rulings are binding on all Polish courts, including the Supreme Court, as well as on any other public authority, such as the Speaker of the Sejm.

In light of these rulings, the Warsaw Circuit Court, in its March 30, 2016 judgment in case X Ka 57/16, overturned the District Court's conviction and definitively discontinued the criminal proceedings against Mariusz Kamiński and Maciej Wąsik. However, attorneys representing the subsidiary prosecutors filed cassation appeals against this judgment with the Supreme Court.

Despite the Constitutional Tribunal's binding rulings, the Supreme Court, in its June 6, 2023 judgment in case II KK 96/23, unlawfully overturned the Circuit Court's decision. As a result, and also unlawfully, despite the valid exercise of the President of the Republic of Poland's right of clemency, the

Warsaw Circuit Court once again ruled against Mariusz Kamiński and Maciej Wąsik.

In its judgment of December 20, 2023, in case X Ka 613/23, the Circuit Court largely upheld the District Court for Warsaw-Śródmieście judgment of March 30, 2015, in case II K 784/10, making only minor modifications, including the reduction of the penalties to 2 years' imprisonment.

The Circuit Court panel consisted of judges Anna Bator-Ciesielska, Mariusz Iwaszko, and Grzegorz Miśkiewicz. Among them, only judge Mariusz Iwaszko opposed the illegal ruling, filing a dissenting opinion to express his objection. It should be noted that judges Anna Bator-Ciesielska and Grzegorz Miśkiewicz are affiliated with the politicized judges' association Iustitia.

The unlawful conviction of deputies Mariusz Kamiński and Maciej Wąsik was initially handled by the District Court for Warsaw-Śródmieście. The relevant documents were signed by judge Tomasz Trębicki, also affiliated with the Iustitia association.

Following the unlawful conviction, the Speaker of the Sejm, Szymon Hołownia, issued orders on December 21, 2023, declaring the expiration of the parliamentary mandates of Mariusz Kamiński and Maciej Wąsik. This action was taken in connection with the conviction described above.

The MPs appealed the Speaker's orders to the Supreme Court. Acting within its constitutional and statutory powers, the Supreme Court, in the Chamber of Extraordinary Control and Public Affairs, issued decisions on January 4, 2024, in case I NSW 1268/23, and January 5, 2024, in case I NSW 1267/23, overturning the Speaker's orders. The Court found the convictions of the MPs unlawful in light of the effective exercise of the right of clemency by the President of the Republic of Poland.

It should also be noted that an associate of the Speaker of the Sejm simultaneously submitted the MPs' appeals directly to the then President of the Supreme Court responsible for the Labor and Social Security Chamber, Supreme Court Judge Piotr Prusinowski, bypassing the proper official channels.

The Supreme Court's Labor and Social Security Chamber neither had nor has jurisdiction over the matter at hand. Nevertheless, it issued an unlawful decision, dismissing the appeal of MP Mariusz Kamiński against the Speaker of the Sejm's order declaring the expiration of his parliamentary mandate.

On January 9, 2024, MPs Mariusz Kamiński and Maciej Wąsik were unlawfully detained and deprived of their liberty by police officers who entered the premises of the President of the Republic of Poland to carry out the detention. They were subsequently transported to penitentiaries, effectively imprisoning them.

In response to the unlawful deprivation of liberty and for humanitarian reasons, the President of the Republic of Poland, on January 23, 2024, issued renewed acts of clemency. As a result, the deputies regained their freedom on the same day.

(b) The case of MP Marcin Romanowski

Marcin Romanowski serves as a member of the Sejm of the Republic of Poland, the lower house of the Polish parliament. Additionally, he holds the position of deputy representative of the Sejm and the Senate of the Republic of Poland to the Parliamentary Assembly of the Council of Europe (PACE).

In Poland, members of the Sejm are afforded parliamentary immunity. According to Article 105(5) of the Constitution of the Republic of Poland, they cannot, as a rule, be detained or arrested without the consent of the Sejm, nor can they be held criminally liable without such consent.

A member of the Sejm of the Republic of Poland who also serves as an alternate representative to the Parliamentary Assembly of the Council of Europe is additionally protected by international immunity. This protection is provided under Article 15 of the General Agreement on Privileges and Immunities of the Council of Europe, drawn up in Paris on September 2, 1949, whose scope mirrors that of Polish parliamentary immunity.

Consequently, the detention or arrest of an MP who also holds the position of Deputy Representative to the Parliamentary Assembly of the Council of Europe requires prior consent from the PACE in addition to that of the Sejm.

As detailed in the first chapter of this publication, the public prosecutor's office in Poland has been unlawfully taken over by political authorities. For purely political reasons, a prosecutor operating within the structure of the National Prosecutor's Office sought to bring criminal charges against MP Marcin Romanowski. The aim was to deprive him of his freedom through detention and temporary arrest.

Acting on these intentions, the prosecutor, through the Prosecutor General – who also serves as the Minister of Justice and is an active politician, Adam Bodnar – formally requested the Sejm of the Republic of Poland to approve the detention, temporary arrest, and prosecution of MP Marcin Romanowski. However, the prosecutor failed to make a corresponding request to the Parliamentary Assembly of the Council of Europe.

On July 12, 2024, the Sejm of the Republic of Poland, by resolution, approved the detention, temporary arrest, and prosecution of MP Marcin Romanowski. Consequently, on July 15, 2024, MP Marcin Romanowski was detained by officers of the Internal Security Agency, a Polish special service, acting on the prosecutor's orders. During the detention, the officers, following the prosecutor's instructions, conducted a search of the MP, stripping him naked.

Subsequently, the prosecutor petitioned the District Court for Warsaw-Mokotów to impose a preventive measure against MP Marcin Romanowski, requesting three months of temporary detention to further deprive him of his liberty.

Theodoros Rousopoulos, President of the Parliamentary Assembly of the Council of Europe, issued a letter dated July 16, 2024, reminding the Polish

authorities of MP Marcin Romanowski's status, including the international immunity that protects him. Despite this formal reminder, the prosecutor failed to release the MP from custody.

It was not until the District Court for Warsaw-Mokotów in Warsaw convened on the night of July 16, 2024, to hear the politically-motivated prosecutor's request for three months of temporary detention, that the court rejected the request. The court cited the immunity of MP Marcin Romanowski as a deputy representative to the PACE. Following this decision, MP Marcin Romanowski regained his freedom.

Nonetheless, the prosecutor appealed the District Court's decision by filing a complaint with the Circuit Court. A three-member panel of the Circuit Court was selected by lot, which included judge Przemysław Dziwański.

The prosecutor sought to remove judge Dziwański from the panel, attempting to exert undue influence over the composition of the court hearing the complaint. To this end, the prosecutor filed a motion to exclude judge Dziwański from the case, alleging defects in his appointment as a judge of the Circuit Court in Warsaw. However, the motion was not granted by the court, which proceeded in accordance with the law.

Despite this, judge Krzysztof Chmielewski, a member of the politicized judges' association Iustitia, acted outside his authority to orchestrate an illegal order excluding judge Dziwański from the panel hearing the prosecutor's complaint. This unlawful order was subsequently deemed ineffective by the Circuit Court of Warsaw, which was properly adjudicating the underlying case.

Additionally, the prosecutor submitted a request to judge Beata Najjar, the *de facto* acting president of the Circuit Court in Warsaw, seeking an administrative reassignment of the case to a different judge. This request was so clearly unfounded and illegal that even judge Najjar, despite her alignment with political power, declined to grant it.

It is important to note that judge Beata Najjar holds her position unlawfully. She could not have been effectively appointed as President of the Circuit Court in Warsaw by the Minister of Justice, Adam Bodnar, because the Minister's attempt to dismiss judge Joanna Przanowska-Tomaszek, the legitimate President of the Circuit Court, was unlawful and therefore invalid (see Chapter Two).

On September 27, 2024, a session of the Circuit Court in Warsaw, including judge Przemysław Dziwański, who had been duly designated by lot, took place. The Circuit Court upheld the earlier decision of the District Court for Warsaw-Mokotów, reaffirming the baselessness of the prosecutor's complaint. The Court also confirmed that MP Marcin Romanowski enjoys immunity as a deputy representative to the Parliamentary Assembly of the Council of Europe.

Subsequently, the District Court for Warsaw-Mokotów, in a decision dated November 21, 2024, ruled that both the detention of MP Marcin Romanowski and the search conducted during his detention were illegal.

(c) *Summary*

Mariusz Kamiński and Maciej Wąsik, as members of the Sejm of the Republic of Poland, were protected by parliamentary immunity. Nevertheless, they were unlawfully detained and subsequently placed in penitentiaries, effectively prisons, resulting in their illegal deprivation of liberty from January 9 to January 23, 2024. This occurred despite the fact that the President of the Republic of Poland had effectively exercised the right of clemency for both individuals in a decision dated November 16, 2015.

Similarly, Marcin Romanowski, a member of the Sejm of the Republic of Poland and a deputy representative of the Sejm and Senate of the Republic of Poland to the Parliamentary Assembly of the Council of Europe, is protected not only by parliamentary immunity but also by immunity of an international nature. For the lawful deprivation of liberty of MP Marcin Romanowski, it is therefore required to obtain prior consent from both the Sejm of the Republic of Poland and the Parliamentary Assembly of the Council of Europe.

Despite the absence of even an application to the Parliamentary Assembly of the Council of Europe, MP Marcin Romanowski was unlawfully detained on the order of the prosecutor, resulting in the illegal deprivation of his freedom. The prosecutor subsequently submitted a request to the court seeking further unlawful deprivation of liberty by imposing a three-month temporary arrest.

Conclusions

The unlawful deprivation of liberty of MPs protected by immunity, carried out by public officials, including judges and prosecutors, constitutes not only a blatant disciplinary offense but also a serious criminal act. Such public officials, who disregard the legal protections afforded to MPs, should face both disciplinary measures and criminal responsibility for their conduct.

* *Appendix*

After obtaining the consent of the Parliamentary Assembly of the Council of Europe to prosecute and temporarily detain Marcin Romanowski, the prosecutor's office, based on the same evidence, charged him with committing several crimes and again filed a motion to the court to temporarily detain the MP. On December 9, 2024, the District Court for Warsaw-Mokotów in Warsaw issued a decision to apply temporary detention to Marcin Romanowski for a period of 3 months from the date of detention, despite the presentation by the defense attorney of medical documentation illustrating the serious health condition of the MP after a recent surgery.

Immediately after the court session, Marcin Romanowski's defense attorney commented on the decision to detain him: "If we are dealing with

a situation where, five months after his detention in July, when he familiarized himself with the case files, he did not destabilize any course of proceedings, did not influence or contact any persons, then what is the point of locking a person up in a penitentiary."

(www.polsatnews.pl/wiadomosc/2024-12-09/sprawa-aresztu-marcina-romanowskiego-jest-decyzja-sadu-09-12/; www.niezalezna.pl/polska/marcin-romanowski-areszt-decyzja/532987)

Since December 9, 2024, Marcin Romanowski has been wanted by the entire Polish Police. On December 12, 2024, the prosecutor decided to initiate the search for Marcin Romanowski with an arrest warrant.

On December 18, 2024, the prosecutor filed a motion with the Circuit Court in Warsaw to issue a European Arrest Warrant against Marcin Romanowski and sent a motion to the National Bureau of Interpol in Warsaw at the Police Headquarters to initiate an international search for Marcin Romanowski (the so-called search under the Interpol red notice), along with a motion to publish an Interpol red notice.

On December 19, 2024, the Hungarian government granted Marcin Romanowski international protection in the form of asylum in Hungary due to the actions taken by the Polish government and the National Prosecutor's Office subordinate to it that violated his rights and freedoms, as well as due to the direct interference and influence of politicians from the current ruling majority in Poland on the ongoing investigation. As Marcin Romanowski's defense attorney reported, Marcin Romanowski indicated in his motion that he cannot count on a fair trial in Poland due to the political involvement of some judges who openly support the current Minister of Justice Adam Bodnar, as well as publicly declaring the need to make so-called 'settlements', and therefore convict politicians of the largest opposition party in Poland.

(https://www.polsatnews.pl/wiadomosc/2024-12-19/azyl-na-wegrzech-dla-marcina-romanowskiego-prokuratura-zabrala-glos/)

Konrad Wytrykowski
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Attack on Christianity – Violation of the Concordat

Attempts to capture MP Marcin Romanowski resulted in an attack on the Catholic Church and a violation of the concordat between Poland and the Vatican. On December 19, 2024, on the order of the National Prosecutor's Office, the Police conducted a search of the Dominican monastery of St. Stanislaus in Lublin. According to official documentation, the search was carried out in connection with the suspicion of hiding in the monastery of MP Marcin Romanowski, who is wanted by an appointment letter.

The Polish constitution ensures the inviolability of the home. It stipulates that "a search of a home, premises or vehicle may be carried out only in cases specified in a law and in the manner prescribed therein" (Article 50 of the Constitution).

Polish law permits the search of premises and other places for the purpose of detaining a suspect (Article 219 of the Code of Criminal Procedure), but it is permissible only if there are reasonable grounds to believe that the suspect is in the room or place to be searched. The decision to search cannot be based solely on slander or rumor.

It should be emphasized that on December 19, 2024, media outlets favorable to political power reported as a certainty that MP Marcin Romanowski was abroad – Spain and Hungary were indicated (*www.polskieradio24.pl/artykul/3461127,romanowski-ukrywa-sie-w-hiszpanii-nieoficjalne-ustalenia-mediow*). Moreover, the day before, on December 18, 2024, the prosecutor filed a motion with the Circuit Court in Warsaw to issue a European Arrest Warrant against Marcin Romanowski and sent a motion to the National Bureau of Interpol in Warsaw at the Police Headquarters to initiate an international search for Marcin Romanowski (the so-called search under the Interpol red notice), along with a motion to publish an Interpol red notice.

In these letters, the prosecutor showed that MP Marcin Romanowski was outside Poland.

In turn, on December 19, 2024, the Hungarian government granted Marcin Romanowski international protection in the form of asylum in Hungary due to the actions taken by the Polish government and the National Prosecutor's Office subordinate to it that violated his rights and freedoms, as well as due to the direct interference and influence of politicians from the current ruling majority in Poland on the ongoing investigation.

Also noteworthy is the manner in which the search was carried out, appropriate in dealing with dangerous criminals but not with monks, as was the case here. The search was carried out by six police officers wearing balaclavas covering their faces. During the search, the monastery's rooms, including the monks' cells, were photographed. All of these rooms are places of religious worship. At the time, police drones were flying over the monastery.

The action of the prosecutor's office flagrantly violated the norm of Article 8(3) of the Concordat between the Holy See and the Republic of Poland signed in Warsaw on July 28, 1993 (Journal of Laws 1998.51.318), according to which the Polish State guarantees inviolability to places designated by the competent ecclesiastical authority for worship. A search of such a place may take place only for good reasons and with the consent of the competent ecclesiastical authority, while necessary actions in places designated for worship without prior notification of the ecclesiastical authority may be carried out only if it is necessary to protect life, health or property.

It is clear that the search conducted on December 19, 2024 at the Dominican monastery in Lublin was not justified by the need to protect life, health or property.

It should be emphasized that the body that ordered the search – the National Prosecutor's Office, since January 12, 2024 as a result of the illegal takeover of this institution by politician Adam Bodnar and the law-breaking prosecutors carrying out his orders (look: the Supreme Court in its resolution I KZP 3/24; the Constitutional Court in its judgment SK 13/24) has been under the control of the executive power and blindly carries out the orders of its representatives. Illegal changes in the leadership of the National Prosecutor's Office and regional, circuit and district prosecutors' offices have left the entire Polish prosecutor's office today in a state of anarchy and inertia. This makes one criticize the legality of any procedural activities conducted on the orders of the National Prosecutor's Office.

In this situation, carrying out a search in a sacred place intended for religious worship must be evaluated solely as an attempt to humiliate Christians and as an element of the fight against the Catholic Church.

This is the implementation of the action announced by the MP from the current ruling coalition and a minister of the current government – Slawomir Nitras to "saw Catholics from privileges" (*www.polsatnews.pl/wiadomosc/2021-08-29/musimy-was-opilowac-z-pewnych-przywilejow-oburzenia-po-slowach-slawomira-nitrasa/*).

Slawomir Nitras used these words during the so-called "Campus of the Future" organized by another Civic Platform politician Rafał Trzaskowski in August 2021 (immediately after the Campus, questions arose about its sponsorship by German foundations linked to the CDU party – *www.polskieradio24.pl/artykul/3231883,campus-polska-finansowany-przez-niemiecka-fundacje-wiceszef-msz-do-czego-zobowiazali-sie-organizatorzy*). At the time, he also announced that Catholics would face "fair punishment" for their alleged guilt.

The search of the Dominican monastery in Lublin was illegal because it is in violation of the Criminal Procedure Code Act and the Concordat ensuring the inviolability of places designated by the competent ecclesiastical authority for worship. The search is also part of the broader context of the anti-Catholic policy of the Polish authorities. We are also seeing an attack on religious instruction in school, on the right to a conscience clause, as well as the ideologization of education and financial blackmail against the Church.

In response to the search of the monastery revealed on Christmas Eve, the Lawyers for Poland Association issued a communiqué calling on ruling politicians to come to their senses. "Each further violation of the law distances us from the ranks of civilized countries and leads Poland towards the precipice of authoritarianism. We demand the immediate punishment of those responsible and the restoration of respect for the law and ethical norms in the actions of the state" (*www.rp.pl/przestepczosc/art41624801-romanowski-szukany-po-omacku-byl-nalot-na-klasztor-jest-zazalenie-do-sadu*).

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Criminal Charges Against Judges and the Forcible Entry Into the National Council of the Judiciary

According to Article 180 of the Constitution, judges are irremovable, and their removal from office, suspension, or transfer to another seat or position against their will can occur only by court decision and solely in cases specified by law.

Since taking control of the Polish Prosecutor's Office (see Chapter One), the ruling politicians, led by the Minister of Justice, who also serves as Prosecutor General, have sought to weaponize it against judges. Specifically targeted are those judges who, between 2016 and 2023, worked for the Ministry of Justice, the National Council of the Judiciary, or served as court presidents or disciplinary spokesmen. These judges now face politically motivated, strikingly baseless charges in criminal proceedings. It is evident that criminal law is being misused to create a chilling effect on the judiciary.

This tactic is aimed not only to threaten these judges with removal from the profession but also to publicly discredit them by insinuating criminal behavior. The mere initiation of such proceedings exerts significant pressure, as judges are left in prolonged uncertainty. This undermines their ability to perform their duties effectively, as they face prosecution for enforcing generally applicable laws. Such actions erode judicial independence as a whole. A judge must be free to focus entirely on administering justice, without the looming threat of political reprisal or criminal proceedings.

The status of the National Council of the Judiciary (NCJ) is being systematically undermined. Members of the NCJ who are judges have been pressured to resign and abandon their duties through a resolution of the Sejm. On June 11, 2024, following a denunciation by the politicized and government-aligned judges' association Iustitia, the Prosecutor's Office initiated an investigation into allegations of exceeding powers and acting to the detriment of the public interest for personal gain by judges serving as NCJ members since 2017.

The investigation targets 20 judges whose sole "offense" was the application of laws valid in Poland – laws whose constitutionality was upheld by the country's highest court, the Constitutional Tribunal. These laws, however, are disliked by politicized judges affiliated with associations that function more like appendages of the ruling parties. They are equally unwelcome by those currently in power, who lack the democratic mandate to amend them. Instead,

the government seeks to undermine the existing legal order by attempting to enforce decrees and resolutions that lack normative force under Polish law (*www.prawo.pl/prawnicy-sady/prokuratura-krajowa-sledztwo-w-sprawie-sedziowczlonkow-krs,526136.html#:~:text=Wydział%20spraw%20wewnętrznych%20Prokuratury%20Krajowej%20wszczął*). Attempts to intimidate the First President of the Supreme Court with criminal proceedings for applying the law are also emblematic of the ongoing erosion of judicial independence in Poland. (*www.rp.pl/sady-i-trybunaly/art41014981-prokuratura-wszczela-trzecie-sledztwo-ws-pierwszej-prezes-sadu-najwyzszego#:~:text=Prokuratura%20Krajowa%20wszczęła%20śledztwo%20w%20sprawie; www.oko.press/sledztwo-ws-manowskiej-z-sn-za-zablokowanie-pozwow*).

The Prosecutor's Office has also submitted a series of baseless requests to revoke the immunity of judges it has deemed adversaries, primarily because these judges have remained faithful to their judicial oath and committed to fulfilling their official duties. Under the Polish Constitution, the imposition of criminal liability on a judge, as well as their deprivation of liberty, requires prior approval from a court specified by law. A disciplinary court may issue a resolution authorizing the prosecution of a judge only if there is a sufficiently justified suspicion that the judge has committed a crime.

To date, motions have been filed to revoke the immunity of judges including Jakub Iwaniec, Łukasz Piebiak, Przemysław Radzik, Michał Lasota, and Piotr Schab (*www.gov.pl/web/prokuratura-krajowa/wnioski-o-uchylenie-immunitetow-sedziowskich-w-tzw-aferze-hejterskiej*). These motions lack sufficient justification, bearing clear signs of political repression and constituting an attack on judicial independence. Their underlying purpose appears to be the intimidation and punishment of judges who have had the courage to uphold the rule of law.

On June 4, 2024, the prosecutor's office submitted a request to the Supreme Court seeking authorization to prosecute judge Jakub Iwaniec. It is worth noting that cases of this nature are typically pursued through private complaints filed by the alleged victim. However, in this instance, the prosecutor stepped in to act on behalf of the aggrieved party – an influential judge closely tied to those currently in power. This judge had previously been appointed as a deputy director at the National School of Judiciary and Public Prosecution by the ruling authorities.

The charge against judge Iwaniec concerns an alleged insult made on the X platform via an anonymous account. The evidence supporting this accusation is notably weak. The prosecution's case hinges on the opinion of a linguistics expert, who speculated that judge Iwaniec is the author of the posts based on tenuous factors, such as being of a similar age to the anonymous account holder, having a similar educational background, and sharing an interest in cinema (!).

Further motions were filed on June 28, 2024, in connection with the so-called "hate scandal" – a narrative concocted by segments of the Polish media

and amplified by the then-opposition (now the ruling party) before the 2019 parliamentary elections. The affair alleged the existence of a group of judges, reportedly led by Deputy Minister of Justice Łukasz Piebiak, who oversaw networks of online trolls and haters targeting judges from certain associations. After nearly five years of investigation, during which unprecedented surveillance measures were employed against judges – including Łukasz Piebiak – prosecutors claimed to have gathered substantial evidence. These measures included securing laptops, phones, and private correspondence, as well as accessing emails without court approval. The prosecution has even boasted about seizing more than 200,000 emails.

On June 28, 2024, the results of this extensive investigation were revealed when the prosecution submitted motions to the Supreme Court seeking permission to prosecute several judges, including Łukasz Piebiak, Jakub Iwaniec, and Przemysław Radzik. The central claim of these motions is that the judges acted "in an organized criminal group, with Judge Łukasz Piebiak directing its activities." The group's alleged activities included actions against judges, particularly those affiliated with the Iustitia Association of Polish Judges. The specific accusations revolve around the "unauthorized processing of judges' personal data" and the disclosure of information obtained about those judges among members of the group. A further purpose of this alleged "criminal activity" was to publicly criticize the targeted judges!

A total of 44 alleged crimes have been attributed to individual judges. These charges consist exclusively of acts involving the unauthorized processing of personal data or the exchange of unclassified information about judges affiliated with associations aligned with the current Minister of Justice. It is worth noting that the accused judges held positions within the Ministry of Justice, as well as roles such as court presidents and disciplinary spokesmen. These roles inherently required them to enforce compliance with the law among judges, making internal communication between them both routine and necessary.

The very notion of attributing participation in a criminal group to judges flies in the face of established case law and legal doctrine. Incredibly, the prosecutor's allegations limit the supposed activities of this fabricated group to the alleged violation of privacy laws concerning a handful of judges – public figures – affiliated with associations closely tied to the ruling parties. With similar ingenuity, the prosecutor could just as well have posited the existence of an organized crime group conspiring to "cross the road against a red light."

Simultaneously, the Prosecutor's Office denied the accused judges access to the case file and attempted to withhold any evidence to substantiate the allegations against them. This conduct was ultimately curtailed by the Supreme Court, which ruled that the accused judges and their defense attorneys must be granted access to the case materials. In addition, the Prosecutor's Office sought to obstruct proceedings before the Supreme Court by filing successive motions against the same judges. It also attempted to prevent one of the ac-

cused judges from retaining counsel of his choice – a Supreme Court judge, whom the prosecutor threatened with criminal charges (*www.niezalezna.pl/polska/prokuratura-torpeduje-wlasne-sledztwo-najpierw-odkryli-grupe-przestepcza-teraz-unikaja-starcia-w-sadzie/527357*). At the same time, another defense attorney representing the same accused judge became a target of apparent reprisal, having his salary illegally reduced, in violation of constitutional protections for judicial remuneration (*https://niezalezna.pl/polityka/dzisiaj-posiedzenie-sn-a-kolejny-obronca-iwanca-ofiara-represji/527418*).

On July 3, 2024, the police and prosecutors forcibly entered the premises of the National Council of the Judiciary. The action, involving 30 police officers, was conducted in a manner that violated fundamental legal procedures. Witnesses were prevented from observing the search, and no attempt was made to request the voluntary surrender of belongings. Instead, locks were broken, and judges' cabinets were forcibly opened to seize case files held by disciplinary spokesmen. This operation caused damage estimated at approximately PLN 60,000 and blatantly disregarded basic provisions of criminal procedure governing search and seizure.

Following strong media criticism of the forcible action – reminiscent of practices associated with totalitarian regimes – and public demonstrations protesting the ruling party's attempt to control the NCJ, the Minister of Justice and his prosecutors sought to justify their actions. On July 9, 2024, the National Prosecutor's Office announced that it had filed motions with the Supreme Court seeking permission to hold judges Piotr Schab, Michał Lasota, Przemysław Radzik, and Jakub Iwaniec criminally liable. The charges alleged that they concealed disciplinary case files they were handling, which purportedly constituted a failure to fulfill their official duties.

It is important to note that all the judges targeted are disciplinary spokesmen at various levels. As part of their official duties, they oversee specific proceedings concerning disciplinary infractions committed by judges. Some of these proceedings involved judges closely aligned with the current government. To shield these individuals from accountability, Minister of Justice Adam Bodnar appointed so-called *ad hoc* disciplinary spokesmen to take over these files and discontinue the proceedings.

A legal dispute then arose between the statutory spokesmen and the minister-appointed *ad hoc* spokesmen over jurisdiction to handle these cases. Rather than resolving this dispute through lawful means, the authorities resorted to deploying the repressive apparatus of the state, including armed police and prosecutors, to intervene. The motions to revoke the immunity of the targeted judges serve no legitimate legal purpose but are instead a calculated effort to oppress them, discredit them publicly, and tarnish their reputations.

Conclusions

It is imperative to immediately review all cases filed by or against judges to ensure that they are not being used as tools of harassment. Such misuse of criminal proceedings not only contravenes the fundamental purpose of the justice system but also poses a grave threat to judicial independence. Furthermore, those responsible for the unlawful repression of judges must be held criminally accountable.

Appendix

In December 2024, the prosecutor's office filed further unfounded motions to lift the immunities of judges.

On December 9, 2024, the National Prosecutor's Office filed a motion to the Supreme Court to adopt a resolution authorizing the criminal prosecution of the judge of the District Court in Olsztyn – Maciej Nawacki for allegedly damaging documents during the Meeting of Judges of the District Court in Olsztyn, which he had no right to dispose of, in the form of a motion to extend the agenda of the Meeting.

On December 17, 2024, the National Prosecutor's Office filed motions to the Supreme Court to adopt resolutions authorizing the criminal prosecution of the judge of the Court of Appeal in Warsaw Piotr Schab and of the judge of the Court of Appeal in Warsaw Przemysław Radzik for, among others things, executing final judgments of the Supreme Court and preventing a judge suspended from his duties from adjudicating.

Konrad Wytrykowski
(Doctor of legal sciences, retired Supreme Court judge)

Passing Flawed Legislation

Under Article 87(1) of the Constitution of the Republic of Poland, the sources of universally binding law are explicitly defined as: the Constitution, statutes, ratified international agreements, and regulations. The primary means of regulating social relations remains statutes, whose content is heavily influenced by the political party that has secured parliamentary dominance following elections and managed to take control of legislative bodies.

The Constitution designates the Sejm and Senate as the legislative bodies responsible for lawmaking (Article 10(2): "Legislative power shall be vested in the Sejm and the Senate, executive power shall be vested in the President of the Republic of Poland and the Council of Ministers, and the judicial power shall be vested in courts and tribunals." Article 95(1): "Legislative power in the Republic of Poland shall be exercised by the Sejm and the Senate."). However, a critical question arises: if either house of parliament operates in an unconstitutional composition, does this undermine the principle of legalism enshrined in Article 7 of the Constitution? Does such a breach render the laws passed under these circumstances unconstitutional?

The events of recent months compel serious reflection on whether such situations constitute violations of constitutional principles, particularly when:

- the Sejm deliberates without the participation of duly elected and sworn-in deputies who have been unlawfully barred from attending its sessions, or
- an individual who is not a senator participates in and votes during a Senate meeting.

The first scenario pertains to the unlawful decision of the Speaker of the Sejm to prevent two MPs, convicted by court judgment but subsequently pardoned by the President of the Republic of Poland, from participating in Sejm proceedings. This decision was made despite the Supreme Court's final refusal to declare the expiration of their mandates (Supreme Court decision of January 4, 2024, I NSW 1268/23; Supreme Court decision of January 5, 2024, I NSW 1267/23). (For further discussion, see Chapter Six.)

These deputies – Mariusz Kamiński and Maciej Wąsik (see Chapter Six) – were prevented from participating in Sejm proceedings, including voting on bills, through technical measures ordered by Sejm Speaker Szymon Hołownia, such as deactivating their voting cards and denying them access to Sejm buildings.

The second case arises when an elected and sworn-in senator assumes the role of prosecutor. The Polish Constitution explicitly prohibits combin-

ing the mandate of a senator with the position of prosecutor (Article 103(2) in conjunction with Article 108 of the Constitution). Such an impermissible combination of roles may occur, for example, when a senator who also holds the position of Minister of Justice and Prosecutor General makes a procedural decision in a specific investigation – a function reserved exclusively for prosecutors conducting pre-trial proceedings. In doing so, the senator effectively acts as a prosecutor within the meaning of the Constitution.

Such a situation occurred in Poland when on July 26, 2024, Senator and Prosecutor General Adam Bodnar personally issued a procedural decision during an investigation, recognizing a request to exclude another prosecutor. Typically, the Prosecutor General does not possess standard procedural powers. While he can issue instructions to prosecutors, his specific powers in the context of pre-trial proceedings are very limited. There is a clear distinction between the role of the politically accountable Minister of Justice-Prosecutor General (a political figure) and that of active prosecutors, including the National Prosecutor, who has authority over personnel policy and the power to undertake procedural actions. The established practice of previous Ministers of Justice-Prosecutors General demonstrates that they consistently refrained from making procedural decisions reserved exclusively for active prosecutors.

Both of these situations lead to the conclusion that the Sejm and Senate was improperly constituted when enacting specific laws. This raises the critical question of the impact such irregularities may have on the validity of the enacted laws. This renders such legislation incompatible with the principle of legalism enshrined in Article 7 of the Constitution.

In the situation at hand, the Sejm enacted a law without the participation of all 460 deputies due to arbitrary actions by the Speaker of the Sejm – actions that lack any basis in the legal framework of the Republic of Poland. A similar approach should be applied when a person whose mandate has expired participates in the legislative process as a senator.

The former scenario – passing a law in the absence of deputies who were unlawfully barred from participating in Sejm proceedings – was reviewed by the Constitutional Tribunal. On June 19, 2024, in case K 7/24, the Tribunal ruled that a law enacted by the Sejm under such circumstances, where two deputies were unlawfully prevented from participating due to the Speaker's actions, was inconsistent with the Polish Constitution, in particular with Article 7, which establishes the principle of legalism.

The Tribunal found that the Speaker's actions were unlawful, violating not only applicable law but also the Supreme Court's final rulings of January 4 and 5, 2024 (see Chapter Six). According to the Tribunal, it is the Speaker of the Sejm's duty to ensure conditions that enable deputies to effectively perform their functions and protect their rights. The Speaker's actions must not result in the unlawful differentiation of the legal status of individual deputies.

Each of the 460 deputies, elected by the Nation through universal suffrage, acquires the full ability to exercise parliamentary rights upon assuming their

mandate. This includes the right to participate in voting and the equal status, rights, and duties shared with other deputies. However, the unlawful actions of the Speaker of the Sejm resulted in the permanent exclusion of specific individuals from participating in the Sejm's work. This created a *de facto* category of deputies unable to exercise their mandates – an arrangement not recognized by the Constitution. As a result, the Sejm operated with a composition that violated constitutional requirements. Consequently, this body cannot be considered the Sejm in the constitutional sense. Laws enacted by a body formed in such an unconstitutional manner are inherently unconstitutional.

In the Tribunal's view, when any MP is unlawfully prevented from participating in the legislative process on a particular law, the law remains legally defective, even if a quorum is maintained and the required majority for its passage is achieved. Such a law violates the principle of legalism because it is enacted by a body that fails to meet the constitutional requirements for representing the Nation through its MPs. This is due to the unlawful actions of the Speaker of the Sejm, which effectively nullified the will of the group of voters who elected the excluded deputies as their representatives in the Nation's legislature.

Since these individuals were MPs at the time the contested law was being processed by the Sejm, they were entitled to exercise the full rights of MPs, including the fundamental right and duty to actively participate in the work of the Sejm. This right derives from the constitutional principle that power is exercised by the Nation through its representatives – the MPs. According to the Tribunal, preventing the realization of this right and duty undermines the integrity of the legislative process in which the contested law was enacted.

As a result of the Speaker of the Sejm's actions, which exceeded the bounds of the law in force in the Republic of Poland, these deputies were effectively deprived of the opportunity to exercise their mandates during the legislative proceedings on the contested law. This also deprived them of their ability to exercise power on behalf of the Nation as its representatives. Consequently, the legislative process was rendered defective due to the improper composition of the Sejm. In light of these circumstances, the Tribunal ruled that the contested law was incompatible with Article 7, in conjunction with Article 4(2), Article 104(1), and Article 96(1) of the Constitution. Following the Tribunal's ruling, the law has been invalidated and is no longer in effect.

This ruling of the Tribunal raises significant questions about the legitimacy of other laws passed by the Sejm during sessions where deputies were unlawfully prevented from participating in them. This issue is particularly pressing given that one of the affected laws is the Budget Law for 2024. According to the Constitution, failure to pass the Budget Law within the constitutionally mandated time frame grants the President the authority to dissolve the Sejm. Article 225 of the Constitution states: "If, after 4 months from the day of submission of a draft Budget to the Sejm, it has not been adopted or presented to the President of the Republic for signature, the President of the

Republic may, within the following of 14 days, order the shortening of the Sejm's term of office."

Conclusions

The situation must be immediately remedied by restoring the proper constitutional composition of the Sejm and Senate. In a well-functioning state, this responsibility lies with the Speakers of the Sejm and Senate. However, the problem arises when these roles are performed by individuals who prioritize party interests over the public good and lack a sense of state responsibility. Such individuals deliberately introduce anarchy into the functioning of the Republic's principal legislative bodies, causing chaos and weakening the state.

It is imperative to reassure citizens, businesses, and investors that the legislative process is conducted by properly constituted bodies and that laws possess all the attributes of legality.

Immediate action is necessary to establish general deterrence. The conduct of the two Speakers, along with the senator who continues to participate in Senate proceedings despite losing their mandate, constitute official misconduct and the abuse of official authority. Holding those responsible for improperly constituting the Sejm and Senate criminally accountable is essential to demonstrate that such actions, which harm the state, do not go unpunished. A swift and proportionate criminal response would serve as a strong deterrent and reaffirm the rule of law.

Andrzej Skowron
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"Starving" Key Judicial Institutions – The Constitutional Tribunal, the National Council of the Judiciary, and the Supreme Court

A fundamental systemic principle, universally recognized by civilized states, is the balance of legislative, executive, and judicial power. This principle becomes particularly critical when the executive branch is supported by the legislature, and even more so when the legislature acts as an extension of the executive, carrying out its directives. Such a scenario creates fertile ground for the transformation of a state into a dictatorship – a development that can only be prevented by a strong and fully independent judiciary.

The government of Donald Tusk, having consolidated control over the executive branch, is now seeking to weaken or even eliminate the judiciary's ability to act independently, perceiving it as the principal obstacle to its plans. This effort primarily targets the Constitutional Tribunal and the Supreme Court.

In October 2024, the Parliamentary Committee on Justice and Human Rights, dominated by representatives of the ruling majority, issued a negative opinion to the Public Finance Committee regarding the draft budget law for 2025. Specifically, it opposed the proposed funding levels for key judicial and constitutional institutions, including the Supreme Court, the Constitutional Tribunal, the National Council of the Judiciary, and the Institute of National Remembrance. This move aligns with the government's apparent strategy of "starving" the Constitutional Tribunal and the National Council of the Judiciary, as articulated by members of the ruling coalition.

Maciej Berek, head of the Council of Ministers' Standing Committee, justified these cuts by stating that funding institutions whose legitimacy has been questioned by international tribunals is unwarranted. He further emphasized that the government recommends "adjusting" the budgets of the Constitutional Tribunal and the National Council of the Judiciary during parliamentary deliberations on the budget. This approach constitutes a direct attack on the foundations of a democratic state.

These actions were echoed by Finance Minister Andrzej Domański, who framed the budget cuts as part of an effort to "save on public spending." However, this justification rings hollow in light of the government's willingness

to allocate substantial funds for projects linked to the fulfillment of election promises to groups supporting the liberal-left coalition.

On December 6, 2024, the Sejm approved the budget law in the version described above, effectively “starving” the Constitutional Tribunal, the National Council of the Judiciary, and the Supreme Court.

Conclusions

The shape of the planned 2025 budget is scandalous and must be viewed through the lens of the criminal and constitutional responsibility of all those involved in its adoption. Looking forward, to safeguard the independence of institutions that are inherently meant to operate autonomously and serve as checks on the government, it is imperative to establish a constitutional principle. This principle should mandate that the budget allocations for institutions such as the Constitutional Tribunal, the National Council of the Judiciary, and the Supreme Court be approved in the version proposed by these institutions themselves, without allowing for any modifications.

Michał Skwarzyński
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Using the Prosecutor's Office for Political Purposes – The Case of Father Michał Olszewski

At the outset, it should be noted that, as indicated elsewhere in the study (see Chapter One), the National Prosecutor is Dariusz Barski. This carries significant practical importance, particularly in relation to the case of Catholic priest Michał Olszewski, which was handled by a politicized Prosecutor's Office.

The individuals involved – Jacek Bilewicz, Marzena Kowalska, and Dariusz Korneluk – had never been validly appointed as prosecutors of the National Prosecutor's Office. As a result, all decisions related to the case, including the presentation of charges, the extension of the investigation, procedural actions, and requests for arrest, were issued by unauthorized persons, rendering these actions legally questionable.

Father Michał Olszewski has not been effectively charged, as the charges were brought by individuals who were not legally appointed prosecutors but rather usurpers. Consequently, his arrest was applied without him having the legal status of a suspect, and the detention order was also signed by an unauthorized individual. The extension of the investigation was authorized by usurpers – a term that aptly describes individuals claiming positions without a legal basis. Prosecutors Jacek Bilewicz and Dariusz Korneluk were not appointed in accordance with the law and held their positions unlawfully, making the use of such strong terminology justified in this context.

If there is no legitimate prosecutor, there is no valid investigation, and thus no lawful basis for an arrest. Requests for pre-trial detention signed by usurpers rather than legally appointed prosecutors mean that courts issued decisions on pre-trial detention without a proper motion from an authorized prosecutor. This effectively amounts to courts acting *ex officio*, which exceeds their constitutional authority.

Similarly, the purported appointment of prosecutor Marzena Kowalska to the National Prosecutor's Office, who issued the decision on March 21, 2024, to bring charges in this case, cannot be deemed legitimate. Nor can the "appointment" or "delegation" of prosecutor Ryszard Pęgal to the National Prosecutor's Office be considered lawful. As an unappointed prosecutor, Pęgal issued the prosecutor's order dated April 9, 2024, refusing to accept a complaint and made several other procedural decisions, none of which were

valid. These actions were conducted by individuals appointed at the request of Jacek Bilewicz, who himself was not a legally appointed prosecutor of the National Prosecutor's Office. Consequently, he could not lawfully serve as the acting National Prosecutor or make requests for such appointments.

A resolution of the Supreme Court (case number I KZP 3/24) and a judgment of the Constitutional Tribunal (case SK 13/24) confirm that Dariusz Barski is the National Prosecutor.

Father Michał Olszewski is a suspect in a politically charged trial, where his guilt has been prejudged in public statements made by the Prime Minister, the Minister of Justice, the individual claiming to be the National Prosecutor, Dariusz Korneluk, and other prominent politicians from the ruling coalition. In the course of this case, Father Michał Olszewski was subjected to torture, a matter that will lead to a complaint being filed with the Committees against Torture and the European Court of Human Rights (ECtHR) once all judicial remedies in Poland have been exhausted.

Under Articles 41 and 31 of the Polish Constitution, deprivation of liberty can only be executed in accordance with procedures established by law. Since neither Dariusz Korneluk nor Jacek Bilewicz are legally appointed National Prosecutors or acting National Prosecutors, the procedure employed in this case does not meet statutory requirements.

The Venice Commission Report (*www.venice.coe.int/webforms/documents/?opinion=1206§year=all*) highlights concerns about judicial appointments, particularly questioning their legitimacy (see items 38 *et seq.* and 53). However, it emphasizes that the status of the so-called "neo-judges" (judges appointed by President Duda since 2018) cannot be challenged (items 48–51), as they have been formally appointed by the President and are considered irremovable (item 30). Additionally, item 52 of the Report underscores the exclusion of any system allowing judges to return to their former positions and reapply through a competitive process.

While the Venice Commission addresses concerns about the Prosecutor's Office, it notably refrains from explicitly recognizing Dariusz Korneluk as the National Prosecutor. This silence is significant, particularly given the Commission's known engagement with the Government during the preparation of the Report and its apparent inclination to align with governmental positions. The absence of a direct statement on this issue is particularly striking, suggesting an awareness of the severe legal violations surrounding the matter.

Prosecutors investigating the Justice Fund are in conflict with former Justice Minister Zbigniew Ziobro and Deputy Justice Minister Marcin Romanowski – it is a fact that justifies their exclusion from the case. The case itself is notable for its peculiarities, particularly as it relies on the testimony of the so-called "small crown witness," Tomasz M., who is represented by Roman Giertych – a prominent deputy of the ruling party – as his defense attorney. What is particularly striking is that Tomasz M., in his role as director of the Justice Fund, was obligated to act in strict accordance with the law. In instanc-

es of doubt, he should have categorically refused to perform any action that risked breaching legal standards. However, evidence disclosed to the media reveals that he not only failed to do so but also provided suggestions on what actions should be taken and how they should be executed.

The case remains under the secrecy of the investigation, with the suspects' defense attorneys barred from making media statements. Meanwhile, Prime Minister Tusk publicly threatens these defenders with court action (*https://kresy.pl/wydarzenia/rzad-komentuje-doniesienia-o-torturowaniu-ksiedza-olszewskiego*). At the same time, materials from the investigation, including witness testimonies, are being disclosed by the opposing side. Numerous reports from the media and public figures, including statements by the "crown witness," suspect Tomasz M., in the Sejm, as well as remarks by MP and Deputy Minister of Justice (now MEP) Krzysztof Śmiszek and lawyer and MP Roman Giertych, cast doubt on the prosecutor's claim of potential obstruction by the imprisoned Michał Olszewski. These statements suggest that any risk of interference has been eliminated, as the evidence in the case has already been collected and secured. Therefore, the suspect has no ability to unlawfully influence the proceedings or the evidence. (In an interview on May 23, 2024, with RMF24, Krzysztof Śmiszek stated: "The Prosecutor's Office has the documents, it has the testimonies, it also has the evidence, which is in the resources of the Ministry of Justice" – *https://www.rmf24.pl/tylko-w-rmf24/popoludniowa-rozmowa/news-smiszek-o-sprawie-funduszu-sprawiedliwosci-na-dniach-beda-wn,nId,7529133#crp_state=1*; the following day, in another interview, Śmiszek reiterated: "This documentation is probably already being completed (...)" – *https://www.polskieradio.pl/6/129/Artykul/3382563,sprawa-funduszu-sprawiedliwosci-wiceszef-ms-beda-wnioski-o-uchylenie-immunitetu*).

The defense attorney for suspect Michał Olszewski learned about the existence of recordings of witness Tomasz M. through media reports, as he was denied access to these materials by the Prosecutor's Office (*https://natemat.pl/557201,fundusz-sprawiedliwosci-prokuratura-mowi-o-tomaszu-mrazie*). Despite the lack of any genuine concerns about obstruction of the proceedings or obstruction of justice, Father Olszewski was held in custody for seven months. The proceedings in this case are primarily documentary in nature, further undermining the claim of obstruction. It would have been impossible for Father Olszewski to obstruct evidence already secured and collected. This point is supported by statements from Prime Minister Donald Tusk, who publicly referred to testimonies and materials that had already been provided to the Prosecutor's Office (*https://businessinsider.com.pl/wiadomosci/tusk-o-aferze-w-funduszu-sprawiedliwosci-zorganizowana-grupa-przestepcza/mf1qjgf*).

In this case, it is evident that there is an "assault on the Prosecutor's Office," with Father Olszewski serving as the victim of a political vendetta. Furthermore, commentators from both sides of the political spectrum assert that Father Olszewski, along with the detained officials – two former Justice Ministry employees, Urszula D. and Karolina K., who were also held in pre-trial

detention for seven months – are being treated as hostages in this case. Even media outlets generally aligned with the government, such as the daily Gazeta Wyborcza, have acknowledged the problematic nature of these proceedings.

The charges against Michał Olszewski are also contrary to European Union law. They center on claims that the Profeto Foundation, led by Father Olszewski, failed to meet competition requirements due to the absence of a “provision in the statute” and “lack of experience.” These allegations reflect a fundamental misunderstanding of the principles governing EU-funded competitions and the disbursement of EU funds. Under EU law, using “lack of experience” as a disqualifying criterion is expressly prohibited, as is interpreting the absence of a specific provision in an organization’s statute to its disadvantage. Such practices would effectively limit competition to pre-established entities, fostering corruption and violating the principles of competitiveness (see the judgment of the Court of Justice of the European Union of January 24, 2008 (Case C-532/06): “it must be held that, in a tendering procedure, a contracting authority is precluded by Articles 23(1), 32 and 36(1) of Directive 92/50 from taking into account as ‘award criteria’ rather than as ‘qualitative selection criteria’ the tenderers’ experience, manpower and equipment, or their ability to perform the contract by the anticipated deadline” (paragraph 32).

Therefore, the Profeto Foundation’s application could not have been rejected on these grounds. Lack of experience and absence of a specific statutory provision are not valid criteria for determining ineligibility; at most, they may factor into an evaluation system, such as a points-based assessment. In this case, the prosecution’s reliance on such disqualifications runs afoul of established EU rules.

The prohibition against using experience as a disqualifying criterion was emphasized as early as 2005 when the European Commission explicitly banned this practice in EU grants. This principle was later codified in Regulation (EU, Euratom) 2018/1046 of July 18, 2018, on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012. Articles 149(2) and 154(2) of this regulation reinforce the principle of non-discrimination.

The conditions currently being applied to grants by Adam Bodnar as Minister of Justice do not differ at all from those underpinning the charges in this case. For example, his responses to questions regarding public tenders present a different stance than the basis of the accusations (*https://wpolityce.pl/polityka/704037-siedza-za-to-w-areszcie-bodnar-sam-nie-ma-z-tym-problemu*). It appears that as National Prosecutor, Adam Bodnar adopts positions that contradict his statements as Minister of Justice, despite the fact that in Poland, these two roles are held by the same individual.

What is more, when examining the training courses for public procurement officials published on the websites of the Office and various Ministries, it becomes evident that the experience criterion can be applied to roles such as cooks or construction managers, but not to applicants for grants: *https://www.uzp.gov.pl/__data/assets/pdf_file/0026/45719/Kryteria-oceny-ofert.pdf*;

https://www.google.pl/url?sa=t§source=web§rct=j§opi=89978449§url=https://www.gov.pl/attachment/14f5be27-55f5-49d1-9bc5-e3617127984e§ved=2ahUKEwjDycqDweeGAxWjQfEDHb1zCZMQFnoECBsQAQ§usg=AOvVaw0zFBH-JyQkkvmSK5Zh0e9O

This approach also contradicts the Polish Public Procurement Act. The interpretation provided by the Ministry of Infrastructure and Development in its letter dated April 11, 2013 (DZF-IV-82202-170-IK/13) clarifies that conditions of participation or criteria for evaluating bids in a public procurement procedure should focus on the entity's experience in delivering services that demonstrate its capability to perform the contract in accordance with generally accepted standards and the contracting authority's expectations. For example, contractors may be required to prove their experience in executing similar contracts, considering factors such as the size, complexity, and functions performed during the service delivery. However, according to the Ministry, imposing an experience condition tied to projects or services co-financed with EU funds does not pertain to the actual conditions necessary for executing the contract. This is because such a requirement relates solely to the source of funding for the contract rather than the knowledge, competence, or potential necessary to implement it. Consequently, the use of such conditions of participation or evaluation criteria in public procurement procedures violates the rules outlined in the Guidelines for preparing and conducting procurement procedures. These rules emphasize maintaining fair competition and ensuring the equal treatment of contractors.

It is worth noting that, if the Prosecutor's Office's theory of an Organized Criminal Group were to hold, it would necessarily implicate Adam Bodnar himself. On May 29, 2024, a competition was announced from the Justice Fund for the establishment of Children's Aid Centers. The competition explicitly acknowledged that the experience requirement could pose a "difficult barrier for bidders to overcome," particularly since it involved the creation of new centers. When a potential bidder asked whether the statute of the bidding entity needed to explicitly state that it could run a children's aid center, the Ministry responded: "It is not necessary to write it explicitly, but the statute must not exclude the possibility of running a center." This response was published in the Public Information Bulletin.

It is astonishing that Father Michał Olszewski is being charged with involvement in a criminal group. There is no evidence to support such a connection, particularly concerning the suspect's actions in submitting a grant application. The lack of experience and the absence of a specific provision in the statute do not disqualify an application under EU law, as evidenced by

the practices of Adam Bodnar, who, as Minister of Justice, announces similar grants from the Justice Fund under the same conditions. For instance, other initiatives, such as the Akogo Foundation, which supports individuals in comas, were developed in a similar manner, adhering to the same legal standards. Yet, in these analogous cases, no allegations have been made.

Classic torture was used against Father Michał Olszewski – this fact is now under investigation by the court, following the admission of the Head of the Internal Security Agency (see open letter to Minister Bodnar – *https://www.radiomaryja.pl/informacje/mec-michal-skwarzynski-wystosowal-list-otwarty-do-ministra-sprawiedliwosci-w-zwiazku-z-przyznaniem-sie-przez-szefa-abw-do-naruszenia-art-3-europejskiej-konwencji-praw-czlowieka-wobec-kaplana/*).

There were false media leaks in the case suggesting that Michał Olszewski, a Catholic priest, was detained with a woman in a hotel. While this adds a layer of context to the case, the issue is also normatively broader, as it involves the obstruction of defense attorneys in performing their duties. Defense attorneys were prevented from meeting with their client immediately after his arrest and detention. As early as March 28, 2024, I, as defense counsel, filed a request to visit the detained priest. This request was to be acknowledged and granted immediately. Despite authorizing a second defense attorney to collect the visitation consent and engaging in extensive correspondence with the Prosecutor's Office, I had not received the consent by April 2, 2024. Given the high-profile nature of the case, I publicly reported the prosecutor's failure to provide the consent. On April 4, 2024, I drafted and published a legal opinion highlighting the obstruction, and on April 10, 2024, I renewed my request for visitation. Only after the case gained further public attention did I receive a phone call from the Prosecutor's Office explaining that I had not been sent the consent because "they are not sent, but await collection."

As a defense attorney, I was unable to meet with the detained Father Michał Olszewski until around two weeks after his detention. This delay significantly impacted my ability to effectively challenge the detention. At the time, I had no knowledge of the torture he had endured, although I formally objected to the detention. Furthermore, I was granted only 20 minutes to review the case files before the detention request was heard. I was also denied access to the detention file before filing a complaint against the temporary detention. Despite submitting a formal request and receiving consent for access, I was not provided with a digitized version of the arrest file, even though the Prosecutor's Office had already digitized it.

Accessing the arrest file only after the deadlines for filing the arrest request and submitting a complaint effectively nullifies the right to a defense. Furthermore, the prosecutor questioned the second defense attorney in the case, Dr. Krzysztof Wąsowski, as a witness. Despite my presence at the Prosecutor's Office on that day, I was not allowed to participate in this activity. This action was clearly intended to disqualify Dr. Wąsowski from serving as a defense attorney by designating him as an alleged witness in the case. I was

prevented from formally protesting this situation. I also submitted a request to be informed of all investigative activities, particularly evidentiary proceedings. However, the prosecutor refused to disclose what evidence would be collected and when, preventing me from participating. Without such information from the prosecutor, a defense attorney cannot take part in activities such as witness questioning. In Poland, this procedural right is typically respected, and defense attorneys are customarily informed of the dates and nature of investigative activities.

Further complicating the case was the unusual configuration of judicial staff compositions in the courts, where, “by chance,” the drawn judges included individuals who had personal conflicts with the previous leadership of the Ministry of Justice. These judges were associated with the highly politicized Iustitia Association or were former ministers in Donald Tusk’s government (*https://niezalezna.pl/polska/sedzia-z-iustitii-przedluza-areszt-dla-ks-olszewskiego-zaczyna-to-wygladac-na-pewien-zbieg-okolicznosci/520604; https://wpolityce.pl/kraj/690255-sprawa-ks-olszewskiego-sadze-ze-decyzja-zapadnie-dzis*).

These cases do not follow the standard draw procedures under the case reference system but are instead handled through a separate reference system. This allows for the potential arrangement of cases, as has occurred in the past, based on “so-called influence,” enabling manipulation of the judicial draw process.

Judges, under questionable circumstances, have excluded themselves from the case, sought promotions, and failed to comply with the directives of higher courts (*https://www.niedziela.pl/artykul/104711/Przedluzyla-areszt-ks-Olszewskiemu*). Meanwhile, the defense attorney is not informed about the filing of new charges against the client, is denied access to the file, and remains uninformed about procedural activities.

Recently, the prosecutor initially issued an order to close the investigation and release the case file. However, after this decision, the prosecutor began seeking additional evidence, such as the construction log at the Profeto Foundation, which is already included in the file, and subsequently, he canceled the review of the file (*https://wpolityce.pl/polityka/714184-nasz-news-bodnarowcy-znow-uzyli-abw-ws-ks-olszewskiego*; *https://wpolityce.pl/polityka/714358-nasz-news-zwrot-ws-sledztwa-ks-olszewskiego*).

In the Justice Fund case, there was a clear violation of the immunity of Marcin Romanowski, a Member of the Parliamentary Assembly of the Council of Europe (PACE). Without the consent of the PACE, Romanowski was subjected to degrading treatment, including being stripped naked, handcuffed, publicly humiliated, and detained in a cell. Following a letter from the President of the PACE, Romanowski was released, a decision subsequently upheld by Polish courts (see Chapter Six), approved by the international opinion (*https://strasbourgobservers.com/2024/09/10/should-the-polish-authorities-request-the-coe-parliamentary-assembly-to-lift-mp-marcin-romanowskis-*

immunity/) and international experts (Prof. Anca Ailincai of Université Grenoble Alpes, a member of l'Institut universitaire de France (IUF), highlighted the mishandling of Romanowski's immunity, see her post shared by @ PACE_News). Prof. Ailincai analyzed whether Polish authorities should have sought PACE's consent to lift Romanowski's immunity before initiating criminal proceedings, discussing the nuances of the legal framework governing such cases, referencing Polish professors' legal opinions (see @PK_GOV_EN) and critiquing the interpretation of applicable laws. Her conclusion was unequivocal: the Polish authorities were obligated to request PACE to lift Romanowski's immunity. She argues this step is essential to maintain the integrity of PACE's immunity protections, ensuring that the system is neither exploited for personal or politically motivated purposes nor undermined by ignoring procedural obligations to target political opponents unfairly. The handling of Marcin Romanowski's case, along with the broader actions of Investigative Team No. 2, demonstrates that these measures are primarily political in origin and intent.

All of this results in a violation of the right to a court and the right to a fair trial, both of which require a fair and impartial prosecutor. In this proceeding, however, Investigation Team No. 2 is purely political in nature, specifically targeting the former Minister of Justice, Zbigniew Ziobro, and his deputy, Marcin Romanowski. Additionally, the selection criterion for working in this team appears to be conflict and personal resentment against the former Minister of Justice, which directly violates the principle of legalism as set out in Article 7 of the Polish Constitution in conjunction with Article 45(1) of the Constitution, which guarantees the human right to a fair trial and access to a court, and nullifies the right to a defense under Article 42(2). Furthermore, it disproportionately deprives individuals of the right to have their case reviewed by a court in two instances, in violation of Article 31(3) and Article 2 of the Constitution. As a result, the right to have a criminal case heard by an impartial body at the pre-trial stage – particularly regarding what one is accused of – becomes a façade. A key element in maintaining the independence of the judiciary is ensuring the independence of prosecutors as well, as emphasized by the European Court of Human Rights in *Kövesi v. Romania* (May 5, 2020, Chamber (Section IV), Application no. 3594/19, para. 208).

The scale of irregularities in this case reveals a profound political corruption within the National Prosecutor's Office. This malignancy is personified by Dariusz Korneluk and Investigation Team No. 2, who operate not as prosecutors but as politicians in judicial robes. Their actions lack legal validity and are guided by political motives rather than substantive legal considerations.

Conclusions

As outlined in Chapter One, it is imperative to address and heal the dysfunction within the Prosecutor's Office. This can only be achieved by restoring a state of lawfulness, which necessitates the removal of all individuals unlawfully occupying their positions. Looking ahead, it is essential to implement systemic reforms to the Prosecutor's Office to safeguard its independence and prevent the politicization of ongoing proceedings.

Andrzej Skowron
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Attacks on the Constitutional Tribunal

A characteristic institution of the European political system is the Constitutional Tribunal, which serves as a "court over the law." In the American system, this role is fulfilled by the Supreme Court, whose judicial review is essentially unchallenged. In Poland, however, as President Andrzej Duda noted in one of his letters to the participants of a conference held at the Constitutional Tribunal headquarters, "We are currently witnessing an unprecedented, ruthless attack on the Constitutional Tribunal – which poses a direct threat to the legal security of citizens, as the questioning, non-publication, and non-implementation of the Tribunal's judgments have a devastating impact on the standards of fundamental human rights protection in Poland."

On March 6, 2024, the Sejm adopted a resolution aimed at addressing the effects of the constitutional crisis of 2015–2023. The resolution declared that "taking into account by public authorities of the decisions of the Constitutional Tribunal issued in violation of the law may be considered a violation of the principle of legalism by these authorities." Since its adoption, the judgments of the Constitutional Tribunal have not been published in the Official Gazette. State officials responsible for these omissions are violating the Constitution with the full backing of the ruling coalition. This resolution directly contradicts the Constitution, which, as the Constitutional Tribunal itself has ruled, remains the supreme source of law.

A bill currently under consideration in the Sejm claims to aim at restoring the proper functioning of the Constitutional Tribunal. However, it contains several unconstitutional provisions. One particularly concerning idea is the assertion that any rulings made, as the bill phrases it, "by a panel of judges in which a person who is not authorized to rule has sat," are invalid and do not carry the effects specified in the Constitution. Through this mechanism, the legislature assumes the authority to define who is an "unauthorized" person – effectively deciding who qualifies as a judge of the Constitutional Tribunal and whether a ruling issued by the Court qualifies as a legitimate judgment. The Constitution does not grant the Sejm the authority to question the adjudicatory competence of Constitutional Tribunal judges or to undermine the universality of the Tribunal's judgments. These are matters strictly reserved for constitutional regulation. The Sejm's intrusion into this domain flagrantly violates the constitutional provisions that delineate the limits of its legislative competence

"In a democratic state governed by the rule of law, no authority, including the Sejm, can usurp the right to declare Constitutional Tribunal rulings

non-existent. The actions of the executive branch in refusing to publish the judgments of the Constitutional Tribunal must be considered unlawful – especially when these judgments directly concern the rights and freedoms of citizens," stated President Andrzej Duda. Unlike the President of the United States, whose role includes substantial executive powers, the Polish President operates within a parliamentary-cabinet system and serves primarily as an arbiter in political disputes. Consequently, President Duda cannot directly intervene when the Constitution is violated by the executive or legislative branches.

President Duda's position was further weakened on January 9, 2024, shortly after the ruling coalition took over the ministries responsible for the military and law enforcement. On that day, police entered the Presidential Palace and arrested Sejm deputies Mariusz Kamiński and Maciej Wąsik. At the time, the President was meeting with a representative of the Belarusian opposition. The deputies – who had been invited to the Presidential Palace for a ceremony of appointing advisors – were arrested despite their parliamentary immunity (see Chapter Six). This incident stemmed from the President's earlier use of the right of clemency for the two deputies, who had been convicted in a politically charged trial. The clemency decision faced strong opposition from the left-wing faction of parliament.

In an effort to restore his authority, President Duda has taken a firm stand against actions that, in his view, are driving Poland toward a totalitarian state under the liberal-left government led by Donald Tusk. One key area of contention is the status of judges appointed after the reforms of the National Council of the Judiciary (NCJ) in 2018. These reforms, initiated by the right-wing government from 2015 to 2023, broke with the previous practice of staffing the NCJ with judges tied to communist-era networks. The changes were met with strong resistance from the left-wing establishment within Poland, as well as from the European Union, which included like-minded politicians critical of the judiciary reforms.

This opposition has been compounded by attacks from some judges, often associated with pre-1989 communist structures, on judges appointed under the reformed system after 2018. The Ministry of Justice, now headed by Adam Bodnar, has also challenged the legitimacy and effectiveness of these judicial appointments, particularly when sentences by such judges conflict with the interests of the ruling camp. This has resulted in significant legal uncertainty and chaos in Poland's judicial system. The parliamentary majority supporting these destabilizing actions has announced plans to conduct a vetting process that could result in the removal of judges appointed under the 2018 reforms. President Duda has categorically opposed such measures, viewing them as an attack on judicial independence. However, the prospect of these actions being carried out remains high, especially if the liberal-left political bloc consolidates its power (see Chapter Five).

Conclusions

Attacks on the Constitutional Tribunal must cease immediately. All state organs are constitutionally obligated to recognize and implement its verdicts. Looking ahead, consideration could be given to reforming the system for constitutional review. This could involve transferring the authority to review the constitutionality of laws to the courts (e.g., a newly structured Supreme Court) or fundamentally overhauling the process for appointing Constitutional Tribunal judges to strengthen guarantees of their independence.

Paweł Czubik
(law professor, Supreme Court judge)

Plans to Contest Poland's 2025 Presidential Election

1. The 2025 presidential election and the issue of the legal status of the Public Affairs Emergency Control Chamber of the Supreme Court

At the end of 2024, some politicians affiliated with the left-liberal camp in power in Poland today began to formulate public statements from which there seems to emerge an announcement that next year's presidential elections will be contested. Namely, it follows that the President-elect, elected by the Nation in a general election, will not be allowed to take office when the term of the incumbent head of state, Andrzej Duda, expires, thus triggering a replacement procedure involving the temporary assumption of presidential duties by the speaker of the first chamber of parliament – the Sejm. In this way, presidential power will be in the hands of left-liberal politicians (the President of the first chamber is elected by them), even if the election result proves victorious for the opposition right.

Underlying these opinions is the belief that in the current state of the law there is no way to legally establish the election. This is because, as their authors point out, the Chamber of the Supreme Court – the Chamber of Extraordinary Control and Public Affairs, which is obliged by law to perform this task, is not a court and its decisions cannot be considered binding.

The high risk of such a scenario becoming a reality is vividly evidenced by the turmoil surrounding the issue of the State Election Commission (an election administration body) revoking funding for the largest opposition party, Law and Justice. What is happening in this regard can be taken as a harbinger of future actions.

To understand this issue, it is worth recalling a few facts. In August 2024, the State Election Commission passed a resolution rejecting the Law and Justice committee's financial report on the parliamentary elections (in Poland, any political party that achieves at least 3% support in the elections is entitled to a subsidy from the state budget for election expenses). In September, the Law and Justice committee, acting in accordance with the law, filed a complaint with the Supreme Court – the Chamber for Extraordinary Control and Public Affairs – demanding the repeal of the resolution unfavourable to it. In December 2024, the Supreme Court upheld the complaint (i.e., it agreed with Law and Justice) and forwarded its decision to the State Election Commission. However, this one, despite its obligation under the law to implement the

Supreme Court's ruling, decided to postpone implementation of the ruling (it did so, incidentally, without any legal basis, as the Election Code requires that the State Election Commission implement the ruling immediately). The majority of its composition (specifically, five members elected by the Sejm against four judges sitting by virtue of their judicial positions) concluded that the Extraordinary Control Chamber is a body formed in a defective manner, as a result of which – without regulating its legal status – its rulings cannot be considered binding.

At this point, it should be emphasized that the argumentation used by the members of the State Election Commission, who are representatives of Poland's ruling political groups, referred primarily to the case law of European courts (the European Court of Human Rights and the Court of Justice of the European Union), which, in several cases, questioned the status of the Chamber of Extraordinary Control and Public Affairs as a court (such rulings, it should be noted, are binding only in specific cases and are not a source of law in member states, so they do not result in the removal of this institution from the Polish system of government, and can at most be treated as an impetus for carrying out changes in Polish law in accordance with the Constitution). In its light, the decision of the Public Affairs Extraordinary Control Chamber could not be implemented, since this chamber – formed through the 2018 reforms of the Polish judiciary. – met with such an assessment from European bodies.

It is interesting to note that this position of the State Election Commission was unprecedented. This is because previously the State Election Commission had repeatedly taken into account the judgements of the Supreme Court's Chamber of Extraordinary Control and Public Affairs, including in cases involving other parties' reports on the 2023 parliamentary elections. The problem emerged only – and this is particularly telling – in the case of the judgement related to the report of Poland's largest opposition force, ruling Poland in 2015–2023, Law and Justice.

It is obvious that a challenge to the judgement of the Chamber of Extraordinary Control and Public Affairs in the case at hand means an automatic challenge in the future to the chamber's resolution on the validity of the 2025 presidential election. A serious risk is on the horizon that the winning candidate will not be able to take office, and as a result – to exercise power by the will of the Nation.

2. Presidential elections in 2025 and the assumption of presidential duties by the President of the first chamber of the polish parliament – the Speaker of the Sejm

The above-described action of the State Election Commission can be considered a deliberate action, aimed at preparing the ground for preventing the winning right-wing candidate from taking over the office of President (hypothetically assuming that the latter wins). This is because, as already in-

dicated in this study, accepting the concept that in 2025 the validity of the elections held cannot be determined, will result in the Speaker of the Sejm of the country taking over the duties of the head of state, and thus handing over presidential power to a representative of the left-liberal camp. If this option comes to fruition, Poland will face a profound constitutional crisis, signifying, in fact, a conscious and deliberate deprivation by the ruling camp of the state of a legitimate and democratically elected President.

It should be recalled that in Poland, elections for the office of President are by popular vote, which means that the office is filled by a democratic vote by the Nation. The solution conceived in this way gives the President a very strong legal legitimacy and makes him the "holder of the will of the Nation." This is one of the cornerstones of the Third Republic's political system and also one of the key provisions of the current Constitution.

According to the Constitution, the President holds office for a five-year term and can be re-elected only once. The election of the President of the Republic is ordered by the President of the Sejm on the day falling no earlier than 100 days and no later than 75 days before the expiration of the term of office of the incumbent President of the Republic, and in the event of the vacancy of the office of the President of the Republic – no later than the fourteenth day after the vacancy of the office, setting the date of the election on a holiday falling within 60 days of the date on which the election is ordered. The validity of the election of the President of the Republic shall be determined by the Supreme Court. If the election of the President of the Republic is declared invalid, new elections shall be held. The President of the Republic takes office after taking the oath of office before the National Assembly (the combined chambers of the Sejm and the Senate). The performance of this act, taking place on the last day of the term of the incumbent President, is thus the moment when the newly elected President enters office.

Knowledge of the regulations cited above allows one to understand the plan of the left-liberal camp ruling Poland today. It follows, namely, that the State Election Commission – dominated by representatives of this camp – will not recognize the decision of the Supreme Court – the Chamber of Extraordinary Control and Public Affairs – to declare the validity of the elections and thus "block" the possibility of the President-elect taking office. This, in turn, will open the way for the Head of the First Chamber of Parliament: Speaker of the Sejm to perform the substitution of the head of state (considering that the term of the "old" President will expire, while the "new" President will not take the office). This will be possible thanks to a proper – otherwise erroneous and legally impermissible – interpretation of Article 131(2)(3) of the Constitution, which regulates the institution of presidential substitution (pro tempore President). According to it, the Speaker of the Sejm obtains the right to deputize the head of state due to the impossibility of determining the validity of elections caused by the lack of a properly formed body capable of issuing a ruling in this matter. The indicated provision reads in full as follows: The

Speaker of the Sejm shall temporarily, until the election of a new President of the Republic, perform the duties of the President of the Republic in the event of: 1) the death of the President of the Republic, 2) the resignation of the President of the Republic from office, 3) the annulment of the election of the President of the Republic or other reasons for not taking office after the election, 4) the recognition by the National Assembly of the permanent incapacity of the President of the Republic to hold office due to health, by a resolution adopted by a majority of at least 2/3 of the statutory number of members of the National Assembly, 5) the deposition of the President of the Republic from office by a ruling of the State Tribunal.

As an aside, it is worth pointing out that the intentions described above, striking at the Polish constitutional order and signifying, in essence, a rejection of the democratic nature of the Polish state system, are aimed at a temporary and complete seizure of power by the left-liberal camp. This is because if this scenario comes to pass, this camp – thanks to the removal of the obstacle of the presidential veto of laws – will gain the opportunity to carry out statutory changes in matters it particularly cares about. It can be thought that it will primarily seek to pass laws that will give the opportunity to remove from office judges appointed in Poland after the 2017 reform.

Paweł Czubik
(law professor, Supreme Court judge)

Violating the Constitutional Principle of Inter-Institutional Cooperation in Ambassadorial Appointments

(a) *Legal basis for the appointment of Polish heads of diplomatic missions*

Under customary international law, the appointment of heads of diplomatic missions, specifically those with the rank of ambassador, occurs through an exchange between heads of state. Once preliminary approval for a particular ambassadorial candidate is secured, the head of the sending state issues letters of credentials. These letters are then presented by the candidate to the head of the receiving state. This principle is codified in the Vienna Convention on Diplomatic Relations of April 18, 1961 [UNTS 1965, vol. 500, No. 7310, p. 95–222]. Article 14, paragraph 1, of the Convention establishes the classification of heads of diplomatic missions and clearly embodies the aforementioned accreditation process: "Heads of mission are divided into three classes, namely: (a) That of ambassadors or nuncios accredited to Heads of State, and other heads of mission of equivalent rank; (b) That of envoys, ministers and internuncios accredited to Heads of State (…)."

In the Polish constitutional system, the aforementioned principles of international law find clear reflection. Article 133 of the Constitution of the Republic of Poland [Polish official promulgator of legal acts: Journal of Laws No. 78, item 483, as amended] establishes that the President represents the State in external relations:

1. The President of the Republic, as the representative of the State in external relations, shall: (…)
   2) appoint and dismiss the plenipotentiary representatives of the Republic of Poland to other states and to international organizations; (…)
   3) receive the Letters of Credence and recall of diplomatic representatives of other states and international organizations accredited to him. (…)
3. The President of the Republic shall cooperate with the Prime Minister and the appropriate minister in respect of foreign policy.

Under this provision, the President is responsible for, among other duties, appointing and recalling ambassadors to other states and international organizations, as well as accepting the letters of credence from foreign am-

bassadors accredited to Poland. However, while the Constitution obliges the President to cooperate with the Prime Minister and the relevant minister in matters of foreign policy, legal doctrine emphasizes that this requirement of cooperation cannot be used as a basis to limit the President's constitutional autonomy in exercising his foreign policy powers – particularly in the appointment and dismissal of ambassadors. This is precisely the situation we are currently witnessing [see P. Czarny, *Artykuł 133,* in: P. Tuleja (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz,* Warsaw 2019, p. 399].

The general control in foreign relations and the conduct of the State's foreign policy fall within the competence of the Council of Ministers, as stipulated in Article 146, paragraph 1 and paragraph 4, item 9 of the Constitution. Article 146 of the Polish Constitution states:

1. The Council of Ministers shall conduct the internal affairs and foreign policy of the Republic of Poland.
2. The Council of Ministers shall conduct the affairs of State not reserved to other State organs or local government.
3. The Council of Ministers shall manage the government administration.
4. To the extent and in accordance with the principles specified by the Constitution and statutes, the Council of Ministers, in particular, shall: (...)
9. Exercise general control in the field of relations with other States and international organizations;

In accordance with the Constitution, the Council of Ministers oversees the government administration; this includes the Minister of Foreign Affairs, who leads the foreign service of the state, functioning within the Ministry of Foreign Affairs and at foreign missions (Article 8 of the Act on the Foreign Service of January 21, 2021 [i.e., Journal of Laws 2024, item 1691]). While it is clear that the government is responsible for implementing the state's foreign policy, including the selection of its personnel, this must be carried out in accordance with Article 146, paragraph 4 of the Constitution, which requires the government, in matters such as nominating ambassadors, to respect the constitutional competencies of other state bodies with which it is obliged to cooperate. The constitutional norm in Article 146, paragraph 4, item 9, which refers broadly to the "general control in the field of foreign policy," is not a competence provision *per se* [see P. Czarny, *Artykuł 146,* in: P. Tuleja (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz,* Warsaw 2019, p. 441]. Rather, it reflects the necessity to account for the competencies of other constitutional bodies – primarily the President of the Republic of Poland – as specified in Article 133 of the Constitution.

Notwithstanding the explicit reference to Article 146(4) of the Constitution of the Republic of Poland, this interpretation is further reinforced by the constitutional principle of cooperation between state authorities. As stated in the Preamble to the Constitution, the organs of the Republic of Poland are obliged to be guided by the principle of "cooperation between the public powers."

This principle of cooperation is also echoed in lower-level legal acts. For instance, Article 7b of the Code of Administrative Procedure (Act of June 14, 1960 – Code of Administrative Procedure [i.e., Journal of Laws of 2024, item 572]) enshrines the principle of concerted cooperation between state bodies. While the Code of Administrative Procedure does not directly apply to constitutional matters, it nonetheless reflects the general direction of law application in Poland.

The international and constitutional principles outlined above are codified in detail in the Act on Foreign Service, which, if properly executed, is designed to ensure the effective conduct of foreign affairs by the Republic of Poland and its diplomatic missions. Article 39 of the Act on Foreign Service states:

1. The Ambassador shall be appointed and dismissed by the President of the Republic of Poland on the proposal of the Minister in charge of foreign affairs, approved by the Prime Minister.
2. The Permanent Representative of the Republic of Poland to the European Union shall be appointed and dismissed by the President of the Republic of Poland on the joint motion of the minister responsible for foreign affairs and the minister responsible for the Republic of Poland's membership in the European Union, approved by the Prime Minister.

2a. Appointment of the Ambassador or Permanent Representative of the Republic of Poland to the European Union shall be made after consultation with the authority competent under the Rules of Procedure of the Sejm.

3. The ambassador shall be under the authority of the minister responsible for foreign affairs.

Regrettably, the government of Prime Minister Donald Tusk, formed at the end of 2023, has undermined the very foundation of these constitutional and legal safeguards. Throughout 2024, Radosław Sikorski, the Minister of Foreign Affairs under Tusk's leadership, orchestrated actions that blatantly violated the binding rules of constitutional law and long-standing diplomatic practice, weakening Poland's standing and influence on the international stage.

*(**b**) **Facts – violations of diplomatic law and practice in 2024***

In 2024, the Polish government undertook a number of actions to effectively remove dozens of ambassadors from their posts. In March 2024, the Minister of Foreign Affairs in the Tusk government announced plans to address the status of 50 ambassadors appointed by the previous ruling party (*www.pap.pl/aktualnosci/rzecznik-msz-trwaja-procedury-dotyczace-rotacji-na-stanowiskach-ambasadorow*). To date, the Minister of Foreign Affairs has recalled more than twenty ambassadors accredited to foreign states and international organiza-

tions. He did so without obtaining the required approval from the President of Poland. This creates a formal contradiction: while the ambassadors remain accredited in the receiving state, they are unable to physically fulfill their duties due to the recall. As a result, the ambassadors theoretically retain their official title and employment relationship but are effectively barred from performing their functions. Under Article 41(3) of the Foreign Service Law, "The ambassador's employment relationship expires on the date of dismissal," and under Article 41(2), "The ambassador's dismissal by the President of the Republic of Poland is tantamount to dismissal within the meaning of the labor law." However, owing to their subordination to the Minister of Foreign Affairs, no formal dismissal can occur without presidential approval, which leaves the ambassador in an ambiguous legal and professional status.

In diplomatic practice, the permanent absence of an appointed ambassador working in the receiving state necessitates the use of a chargé d'affaires ad interim. The Vienna Convention on Diplomatic Relations (1961) specifies in Article 19(1):

> If the post of head of the mission is vacant, or if the head of the mission is unable to perform his functions, a chargé d'affaires ad interim shall act provisionally as head of the mission. The name of the chargé d'affaires ad interim shall be notified, either by the head of the mission or, in case he is unable to do so, by the Ministry for Foreign Affairs of the sending State to the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

Accordingly, the chargé d'affaires ad interim is appointed by the Ministry of Foreign Affairs of the sending state and accredited to the Ministry of Foreign Affairs of the receiving state (hence presidential approval is not required in this case). In the analyzed case, President Andrzej Duda did not consent to the recall of ambassadors, who, therefore, formally remain appointed but are physically present in Poland. Consequently, he also refused to approve the appointment of new ambassadors from among the candidates proposed by the Tusk government, asserting that the positions had already been properly filled. As a result, the heads of missions designated by the Tusk government are serving only in the capacity of chargé d'affaires ad interim.

In addition, it is worth noting that 2024 has witnessed ongoing violations of parliamentary law during the proceedings of the Foreign Affairs Committee of the Polish Parliament regarding its review of candidates for ambassadorial positions. These candidates, due to the lack of approval from President Duda, ultimately serve abroad only as chargés d'affaires. According to the law, a candidate who fails to secure the support of the committee is disqualified from consideration. However, in practice, the committee's chair – affiliated with Tusk's party – continues the voting process until the candidate achieves a majority (an example of this situation occurred on September 26, 2024, see: *www.pap.pl/aktualnosci/burzliwe-posiedzenie-komisji-spraw-zagranicznych-poslowie-pis-opuscili-sale*).

Moreover, the composition of the committee has been unlawfully altered by increasing the number of members from Tusk's party. This adjustment ensures that votes on even the least qualified candidates for the foreign service result in favorable outcomes for the Tusk government. In response, President Duda has consistently refused to nominate candidates whose approval was obtained through procedures that violate legal norms.

A specific instance of the controversy surrounding ambassadorial appointments in 2024 involves Donald Tusk's nomination of Bogdan Klich as the candidate for ambassador to the United States. This followed the unauthorized recall of former ambassador Marek Magierowski to Poland without the consent of President Andrzej Duda. Lacking presidential approval, Klich was sent to the United States as chargé d'affaires ad interim. Klich's appointment is deemed highly unacceptable by President Duda. The President considers him politically responsible for the Smolensk tragedy on April 10, 2010, when Klich served as Minister of Defense. Furthermore, Klich's prior conduct – specifically his derogatory remarks about President Donald Trump – raises concerns that his presence in Washington could damage Polish-American relations. Such comments may render him *persona non grata*, a status defined under Article 9 of the Vienna Convention on Diplomatic Relations (1961) in the following way:

1. The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is persona non grata or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared non grata or not acceptable before arriving in the territory of the receiving State..
2. If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this Article, the receiving State may refuse to recognize the person concerned as a member of the mission.

According to diplomatic law, the receiving state is not obligated to justify such a decision ([E. Denza, *Diplomatic Law. Commentary on Vienna Convention on Diplomatic Relations*, 4th ed., Oxford, 2016, p. 62]). However, in Klich's case, the grounds for such action would appear evident, given the inflammatory nature of his past statements. For instance, in June 2022, Klich, then a Civic Platform politician, described Trump on the X platform (formerly Twitter) as "unbalanced and disrespectful of democracy," writing:

> The testimony before Congress that Trump wanted to join the rebels occupying the Capitol is frightening, but not surprising. Let's remember that according to Law and Justice, friendship with this unbalanced and disrespectful of democracy politician was supposed to guarantee Poland's security [*https://wpolityce.pl/polityka/698879-klich-do-usa-nazwal-trumpa-niezrownowazonym-politykiem*].

Politicians opposing Donald Tusk unequivocally demanded that Bogdan Klich not be appointed to the post, arguing that his appointment would fail to enhance Poland's position or bolster Polish security in the United States:

> Klich has spoken about the future US president in an insulting manner, far beyond the framework of diplomatic formulations (...). For such a person, who is supposed to represent Polish interests, in many places the door is simply closed. Therefore, it is urgent and absolutely necessary that a decision be made (...) in view of the results of the US elections, and this is what we are calling for, to withdraw Bogdan Klich's candidacy for Polish ambassador to Washington (*www.wpolsce24.tv/polska/polski-rzad-brnie-w--wysylanie-klicha-do-usa,4115*).

Despite these objections, Donald Tusk proceeded with Klich's appointment, a move seen by some as a deliberate provocation against President Trump. Klich assumed the role of chargé d'affaires ad interim at the Polish Embassy in Washington, D.C., in mid-November 2024, and remains in office as of the time of this publication.

It is important to recall that the actions described above are not the first instance of a violation of diplomatic protocols by a government led by Donald Tusk. A similar situation arose during his earlier tenure, although the breaches at that time were less overt. During Tusk's previous government, conflicts were sparked while President Lech Kaczyński was in office (he passed away in the Smolensk tragedy on April 10, 2010). At that time, established procedures requiring prior agreement on ambassadorial candidates with the President – before seeking the consent of the receiving state – were disregarded. In 2009, then-Foreign Minister Radosław Sikorski (notably, he has held the same position since December 13, 2023, and is responsible for the current violations) violated these standards. Sikorski sought and obtained agrément from the foreign government for ambassadorial candidates before consulting the Polish President. As a result, by the time the President was asked to approve a candidate, the foreign state had already expressed its agreement to the appointment. This approach placed the Polish President in a precarious position: rejecting the nomination risked damaging relations with the receiving country, which might interpret the refusal as dismissing its expressed position (*www.prezydent.pl/kancelaria/archiwum/archiwum-bronislawa-komorowskiego/aktualnosci/wydarzenia/prezydent-ws-nominacji-ambasadorow-zlamane-zostaly-wypracowane-reguly,13164,archive*). The Ministry of Foreign Affairs' actions in 2009 appeared aimed at undermining the President's constitutional prerogatives, forcing him to act contrary to his own judgment. These practices often weakened Poland's international standing, particularly when the President raised legitimate objections to certain candidates already approved by foreign states.

Currently, Tusk's actions seem driven by similar motives, though their consequences are arguably more severe. Posts managed by chargés d'affaires lack the prestige associated with ambassadors and are inherently limited in fulfilling both substantive and representational functions.

(c) Consequences of the violations of diplomatic law and practice

Poland is currently facing a significant diplomatic crisis due to the actions of the left-liberal government led by Donald Tusk. As a result of Tusk's unauthorized recall of ambassadors and the subsequent refusal of President Andrzej Duda to nominate replacements, many foreign missions remain without properly appointed heads. Instead, these missions are temporarily managed by individuals serving as chargés d'affaires ad interim, who lack the official authority and recognition afforded to ambassadors.

The situation is particularly troubling in the United States, where Bogdan Klich has been designated as chargé d'affaires ad interim. Klich is widely regarded as unfit to perform any diplomatic functions. His appointment by the Tusk government is perceived as a deliberate provocation toward the administration of President Donald Trump.

This state of affairs has significantly weakened Poland's influence on the international stage. It has rendered Poland increasingly impotent and inactive in the global arena, creating opportunities for external powers – particularly Brussels, Moscow, and Berlin – to exploit its diminished presence.

Conclusions

For the U.S. government and NATO allies that take their shared defense responsibilities seriously, it is crucial that Poland maintains a functioning and effective foreign service capable of continuously supporting defense-related activities, including in the political sphere. To ensure that allied nations can rely on Polish diplomats, the selection of ambassadorial candidates must involve the participation of the administration of President Andrzej Duda (and, after August 2025, the newly elected Polish President), with full respect for the constitutional authority of the President to nominate ambassadors. The actions of Donald Tusk's government, which constitute violations of law, should be explicitly condemned by law-abiding governments, particularly that of the United States. It is imperative for the U.S. government to advocate for a return to adherence to proper legal procedures, as this is the only path to restoring stability and integrity to Poland's foreign service.

In the specific case of Bogdan Klich, currently serving as Poland's chargé d'affaires ad interim in Washington, his prior conduct and offensive remarks targeting President Donald Trump unequivocally warrant action under Article 9 of the Vienna Convention on Diplomatic Relations. Upon President Trump's swearing-in, the U.S. government should urgently consider invoking this mechanism to declare Klich *persona non grata* (see J. Salmon, *Manuel de droit diplomatique*, Brussels, 1994, pp. 490–492). Klich's appointment was a clear provocation by the Tusk government – directed both at President Andrzej Duda and, more significantly, at President Trump. Diplomatic law and practice have consistently shown that offensive statements made by a dip-

lomat of the sending state toward the head of the receiving state warrant an appropriate response (see E. Satow, *A Guide to Diplomatic Practice*, New York, 1922, pp. 203–215). In this case, international diplomatic practice supports the application of Article 9 of the Vienna Convention to address Klich's status. Declaring him persona non grata would promptly resolve the situation and pave the way for a renewed era of U.S.-Polish cooperation. Crucially, this cooperation must rest on lawful practices from the Polish side – practices that respect the constitutional authority of the President of the Republic of Poland and honor the dignity of the President of the United States.

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