QUO VADIS, ŻUREK?

Between Madness and Totalitarianism: The Actions of Waldemar Żurek as the Alleged Minister of Justice

Editors: Paweł Czubik, Konrad Wytrykowski

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If you want to test a man's character, give him power.

Abraham Lincoln

Introduction

On September 10, 2025, Waldemar Żurek, serving as Prosecutor General, published a statement online declaring, among other things:

> I want to make it clear: we need a strong state, not anarchy. The strength of the state lies in the efficiency of its procedures, the unity of its institutions, and responsibility in its actions. [...] I also assure you that all actions are carried out in accordance with the law and in the interests of citizens' security. Poland is keeping a cool head, acting professionally and decisively. Our task is to defend the legal order and security of the state – and we are carrying out this task." (www.gov.pl/web/prokuratura-krajowa/oswiadczenie-prokuratora-generalnego)

The statement sounds lofty, appealing to the highest ideals and interests of the Republic of Poland.

It is unfortunate that it is false.

We are an association of lawyers committed to the rule of law and, at the same time, devoted to our Homeland – Poland. It is our duty to monitor those in power and to expose every violation of the law, from replacing statutes with decrees and legal opinions, to manipulating the appearance of legality, to the outright breach of law. As lawyers, we cannot remain indifferent to the open disregard for the rule of law and the principle of legality in public administration.

We are also deeply concerned by actions that undermine the interest of our Homeland – and these are precisely the policies pursued by Waldemar Żurek. Contrary to his declaration quoted above, Żurek's conduct does not strengthen the state – it destabilizes it. His actions, detailed in this report, directly erode the efficiency of legal procedures, the integrity of public institutions, and accountability in governance. As Sławomir Cenckiewicz, head of the National Security Bureau, recently reminded us, the dream of our nation's adversaries is for Polish state authorities to cease recognizing one another and to engage in mutual conflict. Żurek's conduct effectively serves this destructive goal. His assertion that he acts "in accordance with the law and in the interests of citizens' security" is a mockery of both the rule of law and the safety of Polish citizens.

In previous reports issued by the Prawnicy dla Polski / *Lawyers for Poland Association* (*Report on Violations of the Law by the Polish Government (Prime Minister Donald Tusk) – Testimonies of Judges and Prosecutors*; *Rule of Law in Ruins: Poland under the "December 13" Coalition*; *Cui prodest scelus, is fecit: Judges-Politicians at War Against Poland*; *Elections on Fire – The Course of the 2025 Presidential Elections in Poland*; *A Band of Robbers or a Shining City on a Hill? Dilemmas over the Collapse of the Rule of Law in Poland*), we criticized the former Minister of Justice, Adam Bodnar, for numerous legal

violations, including the use of criminal and disciplinary reprisals against independent judges and prosecutors, breaches in procedures for dismissing court presidents and disciplinary spokespeople, undermining the Chamber of Extraordinary Control and Public Affairs of the Supreme Court during the presidential election certification process, and replacing the National Prosecutor through the use of nonbinding legal opinions. However, Waldemar Żurek, who has held the office of Minister of Justice since July 24, 2025, has managed to exceed Bodnar's record of legal transgressions within just a few months. He openly disregards inconvenient statutory provisions, boasting about it publicly and announcing further destruction of the Polish legal order. Żurek's actions towards judges cry out to heaven for vengeance. This former judge – who in 2016 was even honored with the "*Golden Paragraph*" award by the editorial board of *Dziennik Gazeta Prawna* for the most outstanding figures in the legal community, in the category of "Best Judge" – now, as Prosecutor General, threatens judges with criminal liability for performing their official duties, appoints a team of compliant prosecutors to prosecute judges for issuing judgments, sends them written orders to cease adjudication, and threatens them with financial liability for continuing their work. Through such conduct, he is devastating the judicial process. Moreover, he has ordered the immediate break in the performance of professional duties of another judge, citing as justification an alleged violation of the law and the content of a judgment unfavorable to the prosecutor's office under his leadership (www.gov.pl/web/sprawiedliwosc/minister-sprawiedliwosci-zarzadzil-przerwe-w-czynnosciach-sluzbowych-sedziego-jakuba-iwanca), and issued a regulation blatantly contrary to the Constitution and statutory law, replacing the random assignment of cases to judges with manual allocation by court presidents. Żurek held a press conference to announce a plan to remove more than three thousand judges from office – judges who, under the Constitution, cannot be dismissed – declaring at the same time that he was bringing about "an end to lawlessness in the courts" (www.gov.pl/web/sprawiedliwosc/koniec-bezprawia-w-sadach---ministerstwo-sprawiedliwosci-przedstawia-ustawe-praworzadnosciowa).

Żurek's actions constitute not only violations of the law but also a blatant mockery of what we, as lawyers of the Republic of Poland, hold most dear: truth and justice. We will not allow Waldemar Żurek to persuade Poles, Europeans, Americans, or the international community that his conduct bears any resemblance to the restoration of the rule of law. The great Polish writer Józef Mackiewicz once wrote, "Only the truth is interesting." For this reason, we now present the truth about Waldemar Żurek's record as Minister of Justice.

We will omit discussion of his earlier history, including his well-documented attempts to obtain financial compensation from the State Treasury for teeth allegedly worn down from grinding them in anger at the previous government (https://radiogdansk.pl/wiadomosci/polska-swiat/2022/11/30/sedzia-zurek-chce-zeby-panstwo-oplacilo-mu-dentyste-mial-zetrzec-zeby-

pod-wplywem-stresu/), for being struck by a court vacuum cleaner (*https://wpolityce.pl/polityka/736137-przypominamy-sedzia-zurek-vs-maszyna-sprzatajaca*), and for supposed "repression" (in the form of dismissal from his post as press spokesman or transfer to another court division) to which he claimed to have been subjected. We will not address these matters here. Nor will we comment on the case of Waldemar Żurek's so-called "bilocation," widely covered by the media, in which he allegedly appeared simultaneously in Warsaw as a member of the National Council of the Judiciary, in Kyiv on an official visit, and in Kraków as a judge issuing rulings (*https://gpcodziennie.pl/831821-zurek-ma-dar-bilokacji-jest-sledztwo-w-sprawie-falszerstw.html*). We are likewise unconcerned with the reports that Żurek owned a predatory reptile from the crocodile family, the possession of which is prohibited under Polish law (*Jack Strong PL on X: "Minister Żurek and a bathtub with a crocodile! Minister Żurek's unusual hobby. No, this is not fake news. We reacted just like you. It's crazy! We checked with many sources. Some time ago, the minister decided to keep at home not a cat, not a dog – but... a crocodile!" https://t.co/BbS8YqsoDs*). Nor will we discuss Żurek's use of hate speech when he referred to Polish judges as "moldy parquet," "fences," and "bicycle thieves."

In this report, we focus exclusively on Waldemar Żurek in his capacity as Minister of Justice. It must be emphasized that the "achievements" outlined herein occurred within only three months of his taking the ministerial oath of office.

It is not coincidental that this report bears the title *Quo Vadis, Żurek? Between Madness and Totalitarianism.* Waldemar Żurek's figure bears a striking resemblance to the Roman Emperor Nero as portrayed in *Quo Vadis* – the Nobel Prize–winning novel by Polish author Henryk Sienkiewicz. In Sienkiewicz's narrative, Nero is a despotic madman who, despite his attempts to terrify all around him, provokes above all ridicule and embarrassment. Megalomania, delusions of grandeur, a drive to destroy others, a fascination with fire (Nero allegedly set Rome ablaze, while Żurek seems eager to ignite Poland's courts and prosecutor's offices), and a fondness for wild animals (Nero's arena spectacles and Żurek's alleged crocodile) are further traits linking the tragicomic Roman emperor with the current occupant of the Ministry of Justice.

Nevertheless, we must also acknowledge that Żurek's conduct primarily reveals a poor level of knowledge, profound legal ignorance, lack of cultural sophistication, and inability to cooperate with others. These qualities bring to mind Sienkiewicz's depiction of Nero, to whom the Roman patrician Petronius wrote: "The world reviles thee. I can blush for thee no longer, and I have no wish to do so" (H. Sienkiewicz, *Quo Vadis*).

We, too, as Poles, refuse to be shamed any longer by Waldemar Żurek. We have had enough of his buffoonery. Even Bartosz Pilitowski, president of the CourtWatch Foundation – an experienced observer of the judiciary and a longtime acquaintance of Żurek – has said of him: "He breaks the law better than Ziobro" (Minister of Justice, 2015–2023). When asked by a journalist

whether Żurek's conduct could be described as "pure fanaticism," Pilitowski did not deny it. He remarked that those holding public office should "respect the law, especially if they are judges or former judges," and concluded: "Out of pure revenge, he offers some disgusting justifications in public. Żurek spoke of 'contaminating the courts with neo-judges,' as if these people were some kind of vermin." (www.wiadomosci.gazeta.pl/polityka/7,198012,32324722,on-lamie-prawo-lepiej-niz-ziobro-czy-bac-sie-zurka-wywiady.html)

We do not consent to this disgraceful spectacle performed by the head of Poland's judiciary and prosecutorial service. We want the world to see the true record of Waldemar Żurek's tenure.

Of course, Waldemar Żurek is not an independent political actor. As a former judge, neither is he a politician – or, at best, a very inexperienced one. He is a puppet in the hands of the man who truly directs Polish politics, including the current course of the justice system – Donald Tusk. When dismissing Minister Bodnar, Tusk reportedly struggled to find a replacement. The damage caused by Bodnar's eighteen months in office was so severe that no one wished to share responsibility for it. Fortunately for Tusk, Waldemar Żurek appeared. Tusk made no secret of what he expected from his new minister or what kind of person he was. He admitted that he had appointed Żurek precisely because he could not "reform" the judiciary by civilized means. Thus, Żurek was appointed Minister of Justice to act unlawfully – something Tusk has not even attempted to conceal (*https://niezalezna.pl/polityka/tusk-przyznal-to-wprost-to-dlatego-wymyslili-waldemara-zurka-zamiast-bodnara/554528*).

That is why this report has been prepared.

We deeply appreciate the efforts of our Association's foreign friends – especially Mike Calamus, who continues to work tirelessly to disseminate our reports and to inform policymakers and the American public about the situation in Poland. On behalf of our country, we extend our sincere gratitude to him.

We trust that this report, like our previous ones, will attract serious attention on both sides of the Atlantic.

Paweł Czubik, Konrad Wytrykowski
Warsaw, November 2025

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

Doubts Concerning the Effective Appointment of the Minister of Justice on July 24, 2025

On July 24 at 3:30 p.m., President Andrzej Duda (still in office at the time, with the President-elect, Karol Nawrocki, assuming office on August 6, 2025) appointed the new Minister of Justice presented by Prime Minister Donald Tusk. Although the replacement of the previous minister had been anticipated for some time, the nomination of judge Waldemar Żurek came as a surprise to many. This was not solely because his name had not been publicly discussed, but rather because few expected that Waldemar Żurek would choose to relinquish his judicial status.

However, from the very moment of his appointment, serious legal doubts arose concerning its validity – doubts that may have significant implications for the future legal assessment of all actions taken by Waldemar Żurek in his capacity as Minister of Justice.

It appears that Żurek's appointment came as a complete surprise even to himself. Once he learned that the Prime Minister intended to submit his candidacy to the President, he faced a double dilemma. First, he was uncertain whether President Andrzej Duda would agree to appoint him. Given Żurek's prior political conduct and public controversies, a refusal from the President could not be ruled out. Pursuant to Article 161 of the Constitution, the President of the Republic of Poland makes changes to the composition of the Council of Ministers at the request of the Prime Minister. Legal doctrine holds that, although the President does not possess the power to appoint his own candidates to ministerial positions, he may refuse to appoint a candidate proposed by the Prime Minister (see *https://www.mariuszmuszynski.pl/2025/07/08/co-bedzie-jak-prezydent-nie-powola-nowych-ministrow/*). Second, under the provisions of the Act of July 27, 2001, on Common Courts Organization (Article 98 § 2), the appointment of a judge to a ministerial post requires the judge's immediate resignation from office. This created an additional ideological and procedural problem. The ruling coalition and left-leaning judicial circles have consistently refused to recognize the National Council of the Judiciary – a constitutionally established body – as lawfully constituted (due to the composition of its current membership, appointed during the tenure of the conservative Law and Justice government). Nonetheless, the procedure required the outgoing Minister of Justice to notify the National Council of the Judiciary of Żurek's resignation from the judiciary.

Thus, Żurek found himself in a complicated position. It was evident that the President would not appoint him Minister of Justice without receiving proof of his resignation as a judge, yet Żurek could not be certain that the appointment would actually take place. Ultimately, he resorted to a rather ingenious maneuver. At 9:00 a.m. on July 24, 2025, the National Council of the Judiciary received notice from then–Minister of Justice Adam Bodnar that Waldemar Żurek had submitted his resignation from judicial office "effective at the end of the day" (i.e., at midnight) (*https://wpolityce.pl/polityka/735886-zurek-zrzekl-sie-urzedu-sedziego-informacja-wplynela-do-krs*). At 3:30 p.m. the same day, Żurek received his ministerial appointment from President Duda.

Naturally, in this case, the ruling coalition's prior denial of the National Council of the Judiciary's legitimacy proved irrelevant – the required information had been duly transmitted to the Council in accordance with the statutory procedure. Politicians from the governing coalition have long accustomed the public to their selective approach: they deny the legitimacy of the National Council of the Judiciary and the judges appointed by it when it serves their political agenda, but when their private interests – particularly financial, promotional, or personal matters – are at stake, they readily acknowledge the Council's authority and cooperate with it without objection (*https://wpolityce.pl/polityka/708149-im-neosedziowie-nie-przeszkadzali-sprawy-zurka-i-innych*).

The fact that outgoing Minister Adam Bodnar transmitted a document to the National Council of the Judiciary concerning his successor Waldemar Żurek's resignation from judicial office – effectively at the last possible moment before Żurek's ministerial nomination – was most likely the result of political calculation. Żurek's resignation took effect at the end of the same day on which he received his appointment. Had the President refused to appoint him (which, regrettably, did not occur – President Duda, wishing to avoid escalating political tensions before the inauguration of the new President of the Republic of Poland, approved all ministerial nominations presented to him), Żurek would still have had the opportunity to withdraw his resignation and remain within the judiciary.

Nevertheless, this sequence of events raised serious doubts regarding the effectiveness of his appointment – particularly given that, under Polish law, the Minister of Justice simultaneously serves as the Prosecutor General.

From the perspective of Article 98 of the Act on Common Courts Organization, a judge is required to resign from office upon assuming a position within state institutions. Article 98 §2 provides:

> A judge who was appointed, designated or selected to perform a function in state authorities, self-governmental bodies, diplomatic or consular service or bodies of international or supranational organisations acting under international agreements ratified by the Republic of Poland shall immediately resign from their office, unless the judge retires.

Resigning from judicial office entails a tangible loss for the individual concerned, as it results in the forfeiture of judicial retirement privileges – which are significantly more favorable than those available in other areas of the public sector. Articles 98 §§3–5 of the same Act provide for the possibility of returning to the judiciary following completion of a term in public office. However, this is contingent on the National Council of the Judiciary recommending the candidate to the President, who retains full discretion to refuse reappointment without providing justification. Article 98 §6 stipulates one limited exception: resignation is not required in the case of appointment to the position of Deputy Minister (Undersecretary of State) in the Ministry of Justice, as such an appointment is treated as a temporary delegation of judicial duties. Waldemar Żurek, however, was appointed Minister of Justice, and thus resignation from office was mandatory.

Regarding the wording of Article 98 §2 itself, it must be noted that the statute allows resignation from judicial office to occur *after* appointment. Therefore, a resignation submitted following the act of appointment as Minister of Justice cannot, strictly speaking, be deemed a violation of this provision (contrary to some erroneous claims, e.g. *https://www.youtube.com/watch?v=FvwHpisRyxE*). Nevertheless, previous practice – such as that of Judge Barbara Piwnik (Minister of Justice, 2001–2002) and Judge Andrzej Kryże (Secretary of State, Ministry of Justice, 2005–2006) – indicates that judicial resignation should occur prior to the appointment, ensuring that the nominee is no longer formally a judge at the moment of assuming ministerial office.

However, there exists a far more serious normative issue that calls into question the legality of Waldemar Żurek's assumption of office. Pursuant to Article 75 §2 of the Act of January 28, 2016, on the *Public Prosecutor's Office*:

> The Prosecutor General is the head of the public prosecutor's office. The office of Prosecutor General is held by the Minister of Justice. The Prosecutor General must meet the conditions specified in Article 75 §1 points 1–3 and 8.

Under Polish law, the offices of judge and prosecutor (including the office of Prosecutor General) are entirely incompatible. It is legally impossible to hold both functions concurrently. A sitting judge cannot, under any circumstances, effectively perform the duties of a prosecutor or assume the office of Prosecutor General. Since the positions of Minister of Justice and Prosecutor General are inseparable – the current Minister of Justice automatically serves as Prosecutor General – it follows that the appointment of a sitting judge to the ministerial position is legally problematic. At the moment President Andrzej Duda appointed Waldemar Żurek (3:30 p.m. on July 24, 2025), Żurek was still a sitting judge. Consequently, he was legally barred from assuming the prosecutorial functions inherent in the office. He therefore could not effectively become Prosecutor General.

This raises a fundamental question: could he lawfully assume the office of Minister of Justice at all, given that Polish law explicitly fuses that position

with the office of Prosecutor General? Alternatively, if Żurek did become Minister of Justice, did the prosecutorial functions transfer temporarily to Deputy Prosecutors General appointed through separate procedures – since, formally, he could not perform them himself? (*https://niezalezna.pl/polityka/zurek-zostal-ministrem-ale-nie-prokuratorem-generalnym-on-tej-funkcji-nie-objal-bo-objac-nie-mogl/548292*). The fact that Żurek ceased to be a judge only at midnight on July 24, 2025, is decisive. At the moment of his appointment – 3:30 p.m. that day – he remained an active judge and was therefore legally incapable of assuming any prosecutorial function, including that of Prosecutor General. Whether he lawfully assumed the ministerial office, which is inseparably linked to the prosecutorial function, remains a matter of legal dispute.

The consequences of this situation are far-reaching. All actions undertaken by Waldemar Żurek in his capacity as Prosecutor General – and potentially even those taken as Minister of Justice – may be deemed unlawful. In the event of a political transition, this could necessitate a comprehensive review of the Ministry of Justice's activities to identify and annul defective decisions and their resulting legal effects.

A separate but related issue concerns Waldemar Żurek's potential criminal liability for presenting himself as a public official. It should be noted that, upon resigning from judicial office, Żurek forfeited his judicial immunity.

Konrad Wytrykowski
(Doctor of Law, retired judge of the Supreme Court)

Minister Żurek Justifies Breaking the Law with the "Radbruch Formula"

1. Żurek Invokes the "Radbruch Formula"

On October 8, 2025, *Dziennik Gazeta Prawna* published an interview with Waldemar Żurek, Minister of Justice in Donald Tusk's government. In it, Żurek invoked the "Radbruch formula," which, in his view, justified his refusal to comply with laws enacted under previous governments (in 2015–2023, Poland was governed by the United Right coalition) (www.serwisy.gazetaprawna.pl/orzeczenia/artykuly/10489937,minister-sprawiedliwosci-badz-ostrozny-neosedzio.html). Żurek used this argument to defend his intention to take extra-legal actions against certain judges following President Karol Nawrocki's veto of proposed legislation. When the interviewer objected that "the Radbruch formula referred to Nazism" and that "the situation is not analogous," Żurek replied:

> The Radbruch formula concerned the establishment of authoritarian rule. It is universal. It is about opposing the attempts of contemporary dictators. I am not convinced by the thesis that contemporary authoritarianism cannot be compared to Nazism. **The fact that people were murdered then and not today does not change anything.** This formula applies to any system that transforms from democracy to authoritarianism.

Żurek's statements were immediately met with strong public criticism. Commentators condemned the comparison as an "unprecedented scandal" – equating contemporary Poland and postwar Germany, and likening the United Right government to the totalitarian regime of the NSDAP and Adolf Hitler. Critics argued that Żurek's claim was not only "utter nonsense" but also an affront "to millions of descendants of victims of World War II and of National Socialist and Communist totalitarianisms." Attorney Dr. Bartosz Lewandowski addressed Żurek directly on the social media platform X, writing:

> You – a politician and government minister, as well as a lawyer and former judge – are *disgustingly* comparing and equating provisions that violate human *dignity* with statutory regulations concerning the selection of judges to the @KRS_RP or establishing the duties of court colleges!? I think you have got something wrong, and I appeal to you – as a descendant of prisoner no. 34145, who was murdered in the German camp Gross-Rosen – to finally stop using this type of narrative to justify your violation of the law.

Other commentators declared that invoking the Radbruch formula in the context of a democratic legal standard constituted not only a distortion of its meaning but also "Soviet-style propaganda of falsehoods." (www.msn.com/pl-pl/wiadomosci/polska/żurek-próbuje-usprawiedliwiać-bezprawie-formułą-radbrucha-dr-wytrykowski-niebywały-skandal/ar-AA1O8PwY?ocid=BingNewsSerp; https://x.com/BartoszLewand20/status/1976918890568450503?t=_fTrhUc5E0odKECeHxh0eA&s=08; https://x.com/BartoszLewand20/status/1977028617080033590?t=zV1YMcqPLAIUX33CcULdsA&s=08; https://x.com/Zaradkiewicz_K/status/1977065015535616062?t=zw-Le4HERLGrQzdbm5wHcg&s=08).

2. What Is the "Radbruch Formula"?

To understand the scandalous nature of Waldemar Żurek's reference, it is essential to explain what the Radbruch formula is, under what historical circumstances it arose, and what it actually concerns.

Gustav Radbruch (1878–1949) was a German legal philosopher, professor of law, member of the Reichstag, and Minister of Justice in the Weimar Republic. He formulated his theory – later known as the *Radbruch formula* – after the Second World War, in response to the question of how to hold German lawyers and judges accountable for crimes committed between 1933 and 1945. These crimes were often committed in accordance with Nazi laws, which themselves violated fundamental human rights. The problem Radbruch addressed was the legal and moral responsibility of lawyers and judges who had participated in state-sponsored crimes, in particular the imposition of death sentences for trivial offences.

Radbruch began by observing that National Socialism had built the obedience of both soldiers and jurists on two principles: *"an order is an order"* (*Befehl ist Befehl*) and *"a law is a law"* (*Gesetz ist Gesetz*). He noted that, in certain circumstances, even soldiers could refuse to carry out criminal orders. In contrast, because of legal positivism that had dominated German jurisprudence for decades, the obedience demanded of lawyers to any enacted statute had been absolute.

Radbruch presented his reflections in an article titled *"Statutory Lawlessness and Supra-Statutory Law"* ("*Gesetzliches Unrecht und übergesetzliches Recht*," *Süddeutsche Juristen-Zeitung*, 1946, No. 5, p. 105 ff.). He wrote it in the context of a specific case: the judicial murder of a man convicted for allegedly writing the words "Hitler is a mass murderer and guilty of war" on a scrap of paper. The Nazi court treated this as high treason (*Hochverrat*) and sentenced the accused to death. Radbruch analyzed not only the responsibility of the informer, who acted as an accessory to murder, but above all the criminal liability of the judges who issued the death sentence. He wrote:

> The conflict between justice and legal certainty may well be resolved in this way: The positive law, secured by pronouncement and power, takes precedence even when its content is unjust (*ungerecht*) and fails in its purpose of benefitting the people, unless the conflict between positive statute and justice reaches such an intolerable degree that the statute, as "flawed law" (*unrichtiges Recht*) must yield to justice.

As examples of laws that constituted *intolerable injustice*, Radbruch pointed to Nazi provisions that denied human rights to entire categories of people by classifying them as subhuman; imposed severe or capital punishment regardless of the actual gravity of the offence, purely for the purpose of intimidation; and defined offences of varying seriousness but prescribed identical penalties, often the death penalty, without any regard for proportionality (see J. Zajadło, *Formuła Radbrucha* [The *Radbruch Formula*], Gdańsk 2001, p. 111; W. Kulesza, *Crimen laesae iustitiae*, Łódź 2013, p. 82).

Radbruch was inspired to formulate his principle by a statement made by a post-war jurist who argued that:

> No judge can invoke, and no precedent can be set on, a law that not only is unjust, but criminal. We invoke the human rights that surpass all written statutes, the indefeasible and immemorial Right that denies validity to the illegitimate commands of inhumane tyrants. Based on these considerations, I hold the opinion that the judges who have pronounced judgments contrary to the principles of humanity, and have pronounced death sentences for trifles, should be prosecuted (W. Kulesza, *Crimen...*, p. 80).

3. The Legal Lawlessness of the Third Reich

To fully understand the legal context addressed by Gustav Radbruch, it is necessary to recall the nature of Nazi legislation – specifically, the types of acts that were defined as crimes and often punished by the only available penalty: death.

The Nuremberg Laws of 1935 prohibited extramarital sexual relations between Jews and persons of "German blood," creating the offence of "racial defilement" (*Rassenschande*). In the following years, public incitement to refuse military service in the Wehrmacht or any attempts to weaken the morale of the German nation became capital offences. The regime also authorized preventive internment in concentration camps of individuals deemed potential enemies of the nation or the state.

Beginning on September 1, 1939, listening to foreign radio broadcasts was banned under threat of severe imprisonment. The death penalty could be imposed for disseminating any information obtained in this way that might "harm the resistance of the German nation." Acts considered detrimental to the nation's food supply – such as hiding or falsifying ration cards – were also criminalized, punishable by imprisonment or, in grave cases, by death.

In 1941, the Nazi regime issued the notorious but never officially published "Night and Fog Decree" (*Nacht-und-Nebel-Erlass*). This secret order instructed special courts to sentence civilians brought to the Reich from occupied territories – suspected of crimes against German authorities or institutions, but not tried by military courts – to death or deportation to penal camps, in proceedings conducted entirely in secrecy.

By 1942, it was decided that "anti-social elements" held in prisons – including Poles sentenced to more than three years' imprisonment, all Jewish prisoners, as well as Roma, Russians, and Ukrainians – would be transferred to the custody of the SS to be "exterminated through labor" (*zur Vernichtung durch Arbeit*).

On July 1, 1943, new regulations governing the "treatment of Jews" were introduced. They stated succinctly: "Criminal behavior by Jews is punishable by the police." The following paragraph clarified the meaning of this statement: "After the death of a Jew, his property shall fall to the Reich." The Nazi system routinely employed retroactive criminal statutes, denied defendants the right to a defence, and conducted "trials" before courts staffed with party loyalists (Kulesza, *Crimen ...*, pp. 26–29).

4. The Legal Lawlessness of the German Democratic Republic – *Mauerschützenprozesse*

For the second time in history, Radbruch's formula was applied in Germany. After almost fifty years, it became the basis for prosecuting crimes committed under another totalitarian regime – communism in the German Democratic Republic (GDR). These were the cases of the so-called "Berlin Wall shooters" (*Mauerschützenprozesse*).

The Berlin Wall became one of the most recognizable symbols of the "Iron Curtain." It was heavily guarded, and the security measures taken along its length were extreme to the point of paranoia. Under GDR law, anyone attempting to escape across the border was to be captured or killed. East German criminal law contained special provisions authorizing the unrestricted use of firearms against escapees. Shooting at those attempting to flee was standard practice – a policy completely incompatible with contemporary principles governing the lawful use of force by uniformed services.

As with the crimes committed by the Third Reich officials, the actions of the *Mauerschützen* – the border guards who fired upon escapees – were formally legitimized by the laws in force at the time.

When confronted with the task of judging these "wall shooters," the post-unification German judiciary turned once again to the Radbruch formula. This approach allowed for the delegitimization of the communist regime's border policy. It was acknowledged that, although the legal provisions and governmental policies of the GDR had formally sanctioned a harsh border regime, this system was fundamentally incompatible with universal, human,

and generally accepted moral standards. Consequently, the legal provisions that had purported to exclude the unlawfulness of excessive force by border guards were declared void *ex tunc*, and the actions of those guards were recognized as unlawful (See M. Lubertowicz, "*Lex iniustissima non est lex.* Formuła Gustawa Radbrucha jako alternatywa dla międzynarodowego systemu ochrony praw czowieka" *[Gustav Radbruch's Formula as an Alternative to the International Human Rights Protection System*], in: *Prawa człowieka- idea, instytucje, krytyka [Human Rights – Idea, Institutions, Criticism*], ed. M. Sadowski, P. Szymaniec, *Studia Erasmusiana Wratislaviensia* 2010, No. 4, pp. 369–375.)

5. The Absurd Thesis of an Ignorant Person

As is evident, Radbruch's formula referred to the most perverted form of positive law – one that deprived people of equal treatment, excluded entire categories of persons (including on racial grounds) from legal protection, allowed imprisonment in concentration camps without trial, imposed the death penalty for writing dissenting statements, and permitted the shooting of human beings with impunity. It must therefore be said even more clearly that Minister of Justice Waldemar Żurek's announcement of his intent to apply this rule to laws passed through a legal, democratic parliamentary process – such as the 2017 statute providing for the election of members of the National Council of the Judiciary by the Sejm – is a travesty. Moreover, the Constitutional Tribunal confirmed that this act complies with the Polish Constitution (Constitutional Tribunal ruling of March 25, 2019, K 12/18, www.trybunal.gov.pl/sprawy-w-trybunale/art/10382-wybor-czlonkow-krs-przez-sejm-sposrod-sedziow-odwolanie-od-uchwaly-krs-dotyczacej-powola).

It must therefore be reiterated that anyone who, like Waldemar Żurek, compares this situation to the extreme lawlessness of the criminal Nazi regime is either ignorant or deliberately manipulative.

Every public official – whether judge or government minister – has a constitutional duty, reinforced by the oath taken upon assuming office, to uphold the law and conscientiously perform their duties in accordance with the Polish Constitution and statutory provisions. Even a basic understanding of Radbruch's doctrine makes it clear that only

> If laws deliberately betray the will to justice – by, for example, arbitrarily granting and withholding human rights – then these laws lack validity, the people owe them no obedience, and jurists, too, must find the courage to deny them legal character (Radbruch, *Five Minutes of Legal Philosophy, 1945,* translated by Bonnie Litschewski-Paulson & Stanley L. Paulson. *Oxford Journal of Legal Studies, 26*(1), 13–15).

Even the harshest criticism of legislation enacted between 2015 and 2023 to regulate the organization and functioning of the judiciary in Poland provides no grounds to conclude that such acts bear any resemblance to the "unjust

laws" Radbruch described. The Supreme Court confirmed this position in its resolution of November 24, 2021 (ref. no. I DO 14/21, www.sn.pl/sites/orzecznictwo/orzeczenia3/i%20do%2014-21.pdf).

It is inconceivable that Żurek lacks even the most elementary knowledge of modern legal developments and doctrine. If he truly did, he could not have completed legal studies, become a judge, or later a minister. A more plausible explanation is that Żurek – having already committed numerous acts in violation of the law (including undermining judges, unlawfully dismissing court presidents and deputy presidents, attempting to dismiss the Deputy Disciplinary Spokesman, appointing disciplinary officers to non-vacant positions, filing politically motivated and unfounded motions to lift the immunities of the First President of the Supreme Court and the President of the Constitutional Tribunal, unlawfully preventing a judge from performing his professional duties for the content of his rulings, issuing a regulation flagrantly contrary to law, and restoring the manual appointment of court panels in place of random selection) – now intends to violate the law on an even greater scale, acting without regard for the Constitution or statutory norms. By invoking the "Radbruch formula," he seeks, ineptly, to justify such future actions in advance.

In Waldemar Żurek's distorted interpretation, the "Radbruch formula" – which historically served as a moral and legal instrument to prosecute the executors of "inhuman law" – is transformed into a justification for open and deliberate lawbreaking. Polish writer and journalist Rafał Ziemkiewicz aptly summarised Żurek's doctrine as "Radbruch's rule of law in quotation marks, or whoever has the stick makes the law" (Rafał Ziemkiewicz, *Mafia nie śpi. Opozycja tak [The Mafia Never Sleeps. The Opposition Does]*, www.youtube.com/watch?v=Hpye-cjBF-M).

There is, however, another deeply troubling aspect of Żurek's statement. Any reasonably educated person – raised within the tradition of Christian civilization, with respect for Aristotelian logic and the Platonic ideal of truth, aware of history and cautious of the totalitarian ideologies that once enslaved Europe – should know where to draw the line when invoking doctrines developed to prosecute the perpetrators of Nazi Germany's crimes. By thoughtlessly appealing to the "Radbruch formula" to justify his own unlawful actions, Waldemar Żurek has effectively equated the democratically elected United Right government (which governed Poland between 2015 and 2023, did not violate fundamental human rights, and peacefully relinquished power following the 2023 elections) with the totalitarian regime that ruled Germany between 1933 and 1945 under Adolf Hitler and the NSDAP. That regime created an anti-democratic, totalitarian system responsible for one of the greatest tragedies of the twentieth century – promoting racism, anti-Semitism, anti-Romani and anti-Slavic ideologies; seeking to eliminate Jews, Roma, the disabled, and other groups deemed "undesirable," which led to brutal persecution and genocide, including the Holocaust – the extermination of the

Jewish people – and the Porajmos – the extermination of the Roma; pursuing an imperialist policy aimed at creating a "Greater Germany" and seizing "living space" (*Lebensraum*) in the East; committing war crimes, genocide, and crimes against humanity; invading Poland, murdering over six million of its citizens, destroying its cities, economy, and infrastructure; razing Warsaw to the ground; and constructing concentration and extermination camps on Polish soil where millions were killed industrially.

Żurek's comparison is not only absurd but profoundly offensive and historically dishonest. Such statements do not express genuine concern for the rule of law; they reflect arrogance and ignorance. They distort public understanding, trivialize genuine atrocities, and diminish the gravity of real crimes. To equate the Sejm's statutory selection of members of the National Council of the Judiciary with the crimes of Nazism and communism is to desecrate the memory of the victims of those totalitarian systems and to insult millions of descendants of the victims of World War II and of both National Socialist and Communist terror (https://x.com/BartoszLewand20/status/1976918890568450503?t=_fTrhUc5E0odKECeHxh0eA&s=08).

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

Politically Motivated Decision of Minister of Justice Waldemar Żurek to Order the Immediate Break in the Performance of Professional Duties by Judge Jakub Iwaniec

On September 29, 2025, pursuant to Article 130 §1 of the Act on Common Courts Organization, Minister of Justice Waldemar Żurek ordered the immediate break in the performance of professional duties by judge Jakub Iwaniec of the District Court for Warsaw-Mokotów in Warsaw.

The decision was not accompanied by a formal written justification; instead, an explanation was later published on the official government website. According to the Ministry of Justice, the grounds for ordering judge Iwaniec's immediate break in the performance of professional duties included the following:

- conducting hearings at the District Court for Warsaw-Mokotów without notifying the prosecutor,
- hearing appeals against prosecutorial decisions in the absence of a public prosecutor,
- stating in his rulings that prosecutors conducting preparatory proceedings had acted without proper authorization and that their decisions were unlawful and unfounded, and
- failing to examine all evidence and consider all allegations raised in complaints under review.

In reality, the reasons for ordering the break in the performance of professional duties by judge Iwaniec were political. The decision was connected to judge Iwaniec's prior conduct as Deputy Disciplinary Spokesman at the Circuit Court in Warsaw, where he initiated disciplinary proceedings against judges cooperating with the current ruling camp. It was also an act of personal and political retaliation for his public criticism of Waldemar Żurek's actions while Żurek served as a judge of the Circuit Court in Kraków and as an active member of judicial associations supporting the political forces currently in power in Poland since December 2023.

No final disciplinary ruling has been issued against judge Iwaniec, and the criminal proceedings initiated by the prosecutor's office have not advanced from the *in rem* stage to the *in personam* stage. All criminal proceedings initiated in the form of prosecutorial requests to lift judge Iwaniec's judicial immunity were filed after December 13, 2023 – i.e., after the current government was formed – which clearly indicates their political nature. It should be stressed that, motivated by political revenge, a government-subordinate prosecutor submitted a request to the Chamber of Professional Responsibility of the Supreme Court to lift judge Iwaniec's judicial immunity in order to bring several dozen charges against him for alleged defamation of Waldemar Żurek on social media – offences prosecuted by private indictment (sic!). In a non-final resolution of February 17, 2025, the Supreme Court's Chamber of Professional Responsibility rejected the prosecutor's request, emphasizing in its justification the complete lack of legal and factual grounds for holding judge Iwaniec criminally liable.

A similar assessment was made by the Supreme Court in its consideration of a request from the Internal Affairs Department of the National Prosecutor's Office to lift judge Iwaniec's immunity in connection with alleged offences related to his duties as Deputy Disciplinary Spokesman at the Circuit Court in Warsaw. The charges concerned his refusal to release files documenting his disciplinary activities to the Disciplinary Spokesman of the Minister of Justice (the so-called *ad hoc* disciplinary spokesman).

By refusing, in a non-final resolution of September 10, 2025, to lift judge Iwaniec's immunity in this case, the Supreme Court found no factual or legal basis for granting the prosecutor's request. The Court stressed that Arkadiusz Myrcha, acting as Secretary of State at the Ministry of Justice, lacked the legal authority to appoint the Minister's Disciplinary Spokesman. Consequently, by refusing to release the disciplinary case files to an unlawfully appointed *ad hoc* spokesman, judge Jakub Iwaniec had acted in full compliance with the law.

Furthermore, the political reprisal against judge Iwaniec in the form of ordering the immediate break in his professional duties was also linked to his disciplinary action of September 9, 2025, against judge Joanna Raczkowska. Despite being aware of the illegality of Minister Żurek's actions in dismissing judge Piotr Schab from his position as Disciplinary Spokesman for Judges of Common Courts, judge Raczkowska agreed to be appointed to that post by Żurek and unlawfully exercised that office thereafter.

Taken together, the defamatory accusations underlying the order for judge Jakub Iwaniec's immediate break in his professional duties constitute an act of political vengeance and Waldemar Żurek's personal retaliation. The decision was aimed at achieving a short-term propaganda effect – providing a pretext to justify an unlawful ministerial action – and, in the longer term, at producing a "chilling effect" on the judiciary. The message is clear: any criticism of Waldemar Żurek's performance as Minister of Justice will be met

with immediate retaliation and professional reprisals from the head of the Ministry of Justice, who simultaneously serves as Prosecutor General.

Assessing the Minister of Justice's decision in a strictly legal sense, it should be emphasized that the issue of ordering the immediate break in a judge's official duties is exhaustively regulated in the Act on Common Courts Organization (Section II, Chapter III). The provisions of this chapter comprehensively govern the disciplinary responsibility of judges.

Article 130 §1 of the Act provides two circumstances in which the Minister of Justice or the president of a court may order an immediate break in the performance of professional duties by a judge:

- if a judge is detained due to being caught in the act of committing an intentional offence; or
- if, due to the type of the act committed by the judge, the authority of the court or significant interests of the service require their immediate removal from the performance of professional duties.

According to this provision, the order for an immediate break in the performance of professional duties remains in force until a decision is issued by the disciplinary court, but for no longer than one month. Under Article 130 §3 of the Act, within three days of issuing such an order, the Minister of Justice is obliged to notify the competent disciplinary court, which must promptly – within one month at the latest – issue a resolution either suspending the judge (with a reduction in remuneration of between 25% and 50%) or revoking the order. The disciplinary court is not required to notify the judge of the date of the hearing, though it may do so if it deems it appropriate.

In the case of judge Jakub Iwaniec, the unpublished notification from the Minister of Justice was received by the Disciplinary Court at the Court of Appeal in Warsaw, where it was registered under reference number ASdo 3/25.

The reasons cited by the Ministry of Justice for ordering the immediate break in the performance of professional duties by judge Iwaniec clearly do not satisfy any of the criteria set forth in Article 130 §1 of the Act on Common Courts Organization. Judge Iwaniec was not caught in the act of committing an intentional crime, and any alleged procedural irregularities in his judicial work did not justify the use of such an extraordinary measure as ordering an immediate break. It must also be stressed that, under Polish law, a difference in interpretation or legal assessment adopted by a judge in adjudicating a case does not constitute a disciplinary offence if it falls within the bounds of judicial independence and the law.

These circumstances were highlighted by the National Council of the Judiciary, a constitutional body responsible for safeguarding the independence of the courts and judges. In its resolution of October 1, 2025, the Presidium of the Council unequivocally stated that the decision of the Minister of Justice to order the immediate break in the performance of professional duties by judge Iwaniec was made in flagrant violation of Article 130 §1 of the Act on Common Courts Organization. The Presidium emphasized that the Minister's

decision concerned the substantive content of judicial rulings issued by panels including judge Iwaniec, which is expressly prohibited under Article 107 §3(1) of the same Act. It further stressed that this action undermines judicial independence, compromises the integrity and dignity of the administration of justice, and is discriminatory in nature.

In the view of the Presidium of the National Council of the Judiciary, the absence of any lawful grounds for ordering the immediate suspension of judge Iwaniec indicates that the real motive behind the Minister of Justice's decision was political expediency, designed to conceal the government's lack of genuine initiatives to reform the judiciary.

The politically motivated actions described above – constituting professional repression and personal retaliation by Minister Waldemar Żurek against a judge who publicly criticized him – form part of the broader context of the ongoing constitutional coup d'état that has been unfolding in Poland since December 13, 2023. This process involves the active participation of segments of the judicial community in a political struggle aimed at reshaping the state system and achieving the complete subordination of judges and the judiciary to the ruling political regime.

Krzysztof Dąbkiewicz
(judge of the District Court in Toruń)

A Barbarian in the Temple, or On the Violation of the Autonomy of the Supreme Court[1]

I. There is no freedom without law, and there is no law without independent and irremovable judges and independent Polish courts. These words, spoken by the President of the Republic of Poland, Karol Nawrocki, should serve as a canon for every lawyer. This applies particularly to judges who, in exercising justice within the framework of investiture – the authority of judicial power that determines both their legitimacy and the scope of that power – issue judgments on behalf of the State. It must be strongly emphasized that judicial power is not self-contained and does not act for its own purposes. It must be structured, empowered, and exercised in a manner consistent with the law so that it is perceived by society as objective, reliable, competent, independent, and fair.

These principles should be perfectly clear to Waldemar Żurek the judge. Yet they are not merely forgotten – they are disregarded and trampled upon by Waldemar Żurek the politician. The former judge, now serving as the Minister of Justice and Prosecutor General – a position of significant influence, enabling both administrative supervision of the common courts and the initiation of various repressive measures – adheres, contrary to his public declarations, to entirely different values.

It must be noted, as an aside, that observations of Waldemar Żurek's conduct over many years support claims circulating in the public sphere that he was never truly a judge but rather a politician in judicial robes. Having now shed the institutional constraints inherent to the judiciary, Waldemar Żurek – freed from inhibition and responsibility – has, as Minister of Justice and Prosecutor General, undertaken a systematic effort to seize control of the judiciary, subordinate it, and reshape it in accordance with the expectations of the political faction currently governing the Republic of Poland.

In doing so, Waldemar Żurek the politician has abandoned the principles outlined above and has become an ardent proponent of actions justified by the notion of so-called *militant democracy* – a concept developed by German political scientist Karl Loewenstein. Yet Żurek applies this idea in-

1 The title of this text alludes to *Barbarian in the Garden*, a collection of essays by Zbigniew Herbert – an outstanding Polish patriot, essayist, poet, and playwright, and for many, a symbolic figure.

strumentally, adapting it to current political needs, often in a distorted and self-serving way. This distortion is not without consequence. As Professor Jan Majchrowski aptly notes, militant democracy frequently degenerates into *violent democracy*, in which the state turns against its own citizens and ceases to be a safe state. It becomes a system in which it is not the law but the will of politicians that governs – *ergo*, a state no longer governed by the rule of law. This approach aligns with Carl Schmitt's concept of *decisionism*, which posits that law does not determine political action; rather, politics dominates law. In this paradigm, it is the decision of the ruler that is binding, not any abstract or general legal norm.

In a more vulgar and straightforward – non-legal – form, this same attitude was expressed by the Prime Minister of Poland, who publicly admitted: "Everything will be in accordance with the law as we understand it," and "We will commit acts that, according to some legal authorities, will be inconsistent or not entirely consistent with the provisions of the law, but nothing exempts us from our duty to act," adding further, "I will make decisions with full awareness of the risk that not all of them will meet the criteria of full legality from the point of view of purists." Paradoxically, these words were spoken at a conference titled "Overcoming the Constitutional Crisis" (*sic!*).

In response, Supreme Court Judge Professor Paweł Czubik rightly observed that, under such circumstances, the state ceases to exist as an idea for those in power. In this sense, it loses its historical continuity and moral value. The state becomes a technical construct, a product of the moment, a mere material instrument. Consequently, law itself becomes a tool of political authority, subject to arbitrary manipulation. When the state is reduced to a technical construct, law follows suit: it becomes fluid, malleable, detached from constitutional constraints. Those in power no longer feel bound by the Constitution or by the general principles that underpin civilized states. Professor Czubik concluded that such assumptions – especially when implemented in practice – amount to pure Marxism, only clothed in a new and more deceptive guise.

The actions of the Minister of Justice – the Prosecutor General – taken, of course, under the cynical pretext of acting "for the sake of the law," "for the rule of law," or "in defense of the idea of the rule of law," are merely cloaked in the external form of legality while, in substance, they distort and undermine it. It is worth emphasizing that the roots of these actions reach back several years, when Waldemar Żurek, still serving as a judge, allowed his judicial conduct to be influenced by his personal social and political views and by the "caste spirit" of the professional circles with which he identified – particularly the *Iustitia* and *Themis* associations. Acting in accordance with their expectations, Żurek consistently questioned the constitutional order and the principles governing the organization of the justice system in Poland.

This process began with what might have seemed at first an insignificant linguistic shift – but one that was consistently and deliberately introduced into public discourse. Terms such as *judge* were replaced with "neo-judge,"

court with "non-court," the *KRS* (National Council of the Judiciary) with "neo-KRS," and *First President of the Supreme Court* with "acting First President." The progressive spread of this reconstructed terminology enabled the arbitrary questioning of the legal status of judges appointed after 2018 by then-President Andrzej Duda, thereby undermining their judicial authority and the legitimacy of their investiture. This practice was carried out by opposition politicians and a group of judges allied with them who, under the banner of defending judicial independence, in fact sought to protect their own corporate interests and to oppose the reforms introduced into the judicial system.

It should also be noted that the deliberate introduction of this semantic framework corresponds closely to a phenomenon described in the sociology of law and criminology as *social labelling*, formulated by Edwin Lemert. This mechanism involves the use of negative categories and the assignment of pejorative labels to individuals or groups. In this case, nearly four thousand judges legally appointed to office after 2018 became the target of such linguistic stigmatization. Through repeated semantic manipulation, attitudes of hostility toward these judges were fostered. This created a false appearance of legitimacy for unfounded accusations, while the accompanying verbal layer served as propaganda to justify that hostility. By denying the ethical and professional integrity of thousands of legally appointed judges, this seemingly harmless linguistic campaign amounted in practice to discrimination based on the assumption of their moral "lesser value" – a concept reminiscent of Hermann Mannheim's principle of social devaluation. The defamatory rhetoric about alleged incompetence, corruption, or bad faith in judicial service served to entrench that perception. It is worth recalling that the current Minister of Justice – Prosecutor General – has long been one of the most vocal proponents of this crude and manipulative language, which bears clear resemblance to the infamous patterns of communist *newspeak*, so incisively analyzed in the writings of Professor Michał Głowiński.

It is self-evident that this type of contestation of lawfully appointed judges has never had any basis in the Polish legal system. Contrary to claims made by the groups mentioned above, it is not supported by the jurisprudence of international tribunals such as the European Court of Human Rights (ECtHR) or the Court of Justice of the European Union (CJEU). For clarity, it must be stressed that neither of these bodies has competence to interfere with the constitutional principles or internal organization of the Polish judiciary. In particular, the CJEU may adjudicate only within the scope defined by the Treaty on European Union and strictly within the limits of its jurisdiction. Under Article 19 of that Treaty, the organization of the judiciary remains an area of exclusive national competence. Consequently, it is inadmissible to derive from the Treaty any authority for the CJEU to assess the validity or effectiveness of judicial appointments. Therefore, the CJEU does not exercise supremacy or control over the Polish Parliament, the President of the Republic of Poland, or other constitutional bodies. There exists no legal basis – neither

national nor international – for declaring that a Polish court is a "non-court," or that any judge appointed by President Andrzej Duda to the Supreme Court, the common courts, or the military courts after 2018 has not been effectively appointed, or is a "neo-judge." It must be emphasized that these judges were appointed in full compliance with the Constitution of the Republic of Poland – specifically, Article 179, which provides that judges are appointed by the President of the Republic of Poland upon the recommendation of the National Council of the Judiciary. The act of appointment is final and unappealable, as confirmed both by the jurisprudence of the Constitutional Tribunal and by constitutional practice. It constitutes an exclusive presidential prerogative that creates a binding and irrevocable judicial appointment, guaranteeing full independence and irremovability pursuant to Article 180 of the Constitution.

The judgments of the ECtHR and the CJEU have not, therefore, resulted in the legal annulment of any judicial appointments. Any claim to the contrary – as also pointed out by the Polish Ombudsman – is inconsistent with the principles of generally applicable legal interpretation. This did not, however, prevent a group of judges with clear liberal-left political affiliations, including Waldemar Żurek, from engaging in a one-sided and wishful interpretation of these rulings and using them instrumentally to question the legality of judicial appointments made after 2018, thereby contributing to the *de facto* destabilization of the justice system.

These actions intensified after December 13, 2023, when the current ruling coalition assumed power. The mechanism initially introduced by Adam Bodnar, then Minister of Justice and Prosecutor General, was creatively – and even "artistically" – expanded and put into full operation by his successor, Waldemar Żurek, who, no longer a judge but a political figure, executed these measures with unprecedented boldness. This is evidenced by, among other things, the mass dismissal of court presidents and their replacement – by Żurek's own admission – with trusted individuals; the unconstitutional and extra-statutory amendment to the rules governing the random allocation of cases, replacing them with arbitrary, manual selection; and ordering 57 Supreme Court judges to cease adjudication, accompanied by unlawful threats of criminal proceedings for alleged abuse of power or usurpation of public office. Żurek also announced the possibility of recourse claims by the State Treasury against Supreme Court judges, implying their personal financial liability for specific rulings – a method clearly intended to intimidate the judiciary. He revived work on the so-called "rule of law bill," harshly criticized by the Venice Commission, which, in substance, constitutes an unconstitutional act of segregation, dividing judges into three groups – marked red, yellow, and green – those deemed "loyal" or "disloyal," "trusted" or "untrusted," which evokes the darkest memories of the Nuremberg legislation. At the same time, Żurek appointed a special team of prosecutors tasked with exerting pressure on Supreme Court judges through threats of criminal or financial liability to force them to abandon adjudication.

The cumulative effect of these actions fully justifies the strong and decisive words of President Karol Nawrocki, who stated:

> The segregation of judges into different categories, including the denial of judicial status to many, evokes the worst associations, and therefore such actions can only be described as the terror of lawlessness imposed under the slogan of restoring the rule of law – terror that, in reality, leads to destruction and, in essence, to boundless injustice.

Parallel to these developments, and with the active participation of the Minister of Justice and Prosecutor General himself, the stigmatizing narrative described earlier in this report was systematically propagated, while new manipulative concepts were introduced into legal and public discourse. As Supreme Court Judge Professor Paweł Czubik aptly observed, this has produced a situation in which truth and falsehood have ceased to serve as points of reference. We are witnessing what he described as "the undermining of reason." The classical biblical principle of *est est, non non* – "let your yes mean yes, and your no mean no" – has lost all normative value. The language of public communication, and especially of law, has been degraded into a language of vagueness and distortion. Existing legal terms are being stripped of their meaning, while new and artificial concepts are being created to overturn, circumvent, or nullify established legal principles. Among the most striking examples are the absurd notions of a "statutory judge," allegedly allowing for the dismissal of thousands of sitting judges, and the equally nonsensical term "statutory rule," which purports to stand in opposition to the "rule of law" – a concept unknown to any well-established legal theory.

The pretext for all these measures is the so-called Radbruch formula, named after the German legal philosopher Gustav Radbruch, which Minister of Justice and Prosecutor General Waldemar Żurek frequently invokes. Yet for any scholar of legal philosophy – or even a modestly educated lawyer – this reference provokes justified outrage. It must be remembered that Radbruch's propositions were developed in response to the criminal acts perpetrated under the National Socialist legal system that governed Nazi Germany between 1933 and 1945. This historical reality poses is irrelevant for Waldemar Żurek. With characteristic levity and arrogance, he has declared: "The fact that people were murdered then and not today does not change anything." In making this statement, the Minister of Justice and Prosecutor General demonstrated a profound lack of respect for the millions of victims of the German totalitarian regime and their families. Moreover, his comparison accomplishes two deeply offensive distortions: first, it equates Polish judges legally appointed after 2018 with German judges who actively imposed death sentences and legitimized a genocidal system; and second, it equates the democratic Polish state – whose authorities between 2015 and 2023 were elected in free, equal, direct, and secret elections in accordance with the law – with the criminal machinery of Nazi Germany.

II. An excellent example of one of the most recent unconstitutional actions undertaken by the Minister of Justice – Prosecutor General in this field, and one that deserves closer examination, is his violation of the autonomy of the Supreme Court.

At first glance, the matter might appear trivial. The Minister of Justice – Prosecutor General, together with representatives of the Lay Judges' Council of the Supreme Court, organized and took part in a joint press conference held in the Supreme Court building. One could ask: what is wrong with that? Yet the apparently innocuous nature of this event is entirely misleading. Its true significance becomes clear only when the surrounding circumstances are properly understood.

At the invitation of the Lay Judges' Council – composed of lay judges serving at the Supreme Court – Waldemar Żurek arrived at the Court accompanied by armed officers of the State Protection Service, an act which, in itself, was wholly inappropriate. Moreover, he failed to inform the First President of the Supreme Court of his intention to enter the building. After his meeting with members of the Council, he held a joint press conference during which he presented statements challenging the legal status of judges appointed in 2018. The event was interrupted only when one of the Supreme Court judges intervened, prompting an offensive response from the President of the Lay Judges' Council, who went so far as to question both the authority and the legality of the office of the First President of the Supreme Court.

The very fact that a representative of the executive branch – the Minister of Justice and Prosecutor General – met with lay judges at the Supreme Court constitutes a breach of constitutional norms and judicial autonomy. To understand why, it is necessary to recall who lay judges are under Polish law. Pursuant to the Act of December 8, 2017, on the Supreme Court (Journal of Laws 2024, item 622), lay judges are elected by the Senate of the Republic of Poland – the upper chamber of parliament. Candidates for these positions may be put forward by associations or other social and professional organizations registered under separate regulations, with the exception of political parties, as well as by at least one hundred citizens holding active voting rights. Crucially, lay judges are judges in the full legal sense – non-professional, but nonetheless integral members of adjudicating panels. They participate in the consideration of extraordinary appeals and in certain disciplinary cases within the Supreme Court's jurisdiction. As full participants in judicial proceedings, they share responsibility for the issuance of judgments and are therefore bound by the same standards of impartiality and independence that apply to professional Supreme Court judges. This is made explicit in the oath they take before the First President of the Supreme Court:

> I solemnly swear as a lay judge of the Supreme Court that I will faithfully serve the Republic of Poland, uphold the law and the rule of law, conscientiously perform a lay judge's duties, adjudicate in accordance with the law

and principles of equity, my conscience and without partiality, preserve the confidentiality of information protected by law and be guided by the principles of integrity and dignity.

There exists no legal basis whatsoever for the Minister of Justice – Prosecutor General to engage directly with lay judges of the Supreme Court, nor for him to interfere, either directly or indirectly, with their duties. On the contrary, such meetings are inherently undesirable, as they may reasonably give rise to doubts regarding the impartiality and independence of the lay judges concerned – particularly in the eyes of an external observer. This concern is amplified by the fact that the Minister of Justice – Prosecutor General frequently appears as a party before the Supreme Court in various types of proceedings. Such a perception of compromised impartiality could not have been avoided in light of the joint appearance of Waldemar Żurek and the members of the Lay Judges' Council at the aforementioned press conference – especially since the statements delivered during that event were overtly political in tone and substance. The remarks of the Minister of Justice – Prosecutor General himself, as well as the resolution read out by the Council, must therefore be viewed as politically motivated acts that intruded into the judicial sphere. The resolution in question contained an appeal to the President of the Republic of Poland not to appoint as President of the Chamber of Professional Responsibility of the Supreme Court any judge appointed after 2018, and it urged those judges not to exercise their active or passive voting rights in the selection process, claiming that such rights were "undue and usurped." It is therefore beyond dispute that, by acting in this manner, the Minister of Justice and Prosecutor General – a representative of the executive – together with a number of lay judges flagrantly violated the autonomy and independence of Poland's highest judicial authority.

There is likewise no doubt that the event in question formed part of a broader, coordinated campaign aimed at the gradual dismantling and destabilization of the Polish system of justice. The actions of one of its principal actors – the group of lay judges mentioned above – and their conduct both within and outside the courtroom, have long been the subject of serious public controversy. The current lay judges of the Supreme Court were elected for a second term on October 6, 2022, set to expire on December 31, 2026. Crucially, of the 30 lay judges elected by the Senate of the Republic of Poland – an upper chamber dominated by the ruling coalition – no fewer than 26 were nominated by the liberal-left Committee for the Defence of Democracy (KOD), an organization openly supportive of the current governing bloc. The list also includes individuals who had previously stood for election on the ticket of the Civic Coalition – the main political force within the government camp.

The political and extrajudicial engagement of these lay judges has been repeatedly demonstrated through their public statements and activities. What is more, their personal political convictions have begun to influence their ju-

dicial duties. This tendency was clearly manifested in two unanimous resolutions adopted by the Supreme Court Lay Judges' Council on October 12, 2023, in which the Council urged lay judges to refrain from participating in proceedings before the Chamber of Professional Responsibility and the Chamber of Extraordinary Control and Public Affairs whenever the adjudicating panels included judges appointed after 2018. In practice, this amounted to a deliberate refusal to perform the duties voluntarily undertaken upon appointment and to a conscious obstruction of the work of both Chambers. As a result, the First President of the Supreme Court, acting on motions submitted by the Presidents of these Chambers, requested that the Senate of the Republic of Poland dismiss the lay judges in question. For obvious political reasons, however, these attempts to restore the proper functioning of the Supreme Court were unsuccessful. Only in light of these broader circumstances can the true role of the members of the Lay Judges' Council in the incident involving the Minister of Justice – Prosecutor General be fully understood.

The second and equally crucial aspect concerns the constitutional framework of the Republic of Poland, which is founded on the division and balance of powers among the legislative, executive, and judicial branches. Legislative power is vested in the Sejm and Senate, executive power in the President and the Council of Ministers, and judicial power in the courts and tribunals (Article 10 of the Constitution of the Republic of Poland). Each of these authorities represents the Polish state, and each must perform its functions with due regard for the competences and independence of the others.

It is therefore the duty of every representative of these three branches to act with respect for the autonomy of the others. This includes procedural obligations such as notifying the competent authority – in this case, the First President of the Supreme Court – of any planned appearance by a member of the executive within court premises. Consequently, when the Minister of Justice – Prosecutor General failed to fulfill this obligation, entered the Supreme Court building without authorization, and proceeded to hold a meeting and press conference in which overtly political statements were made and the legality of Supreme Court judges was openly questioned, he directly violated the autonomy of that institution. The use of the premises of the Supreme Court – an institution whose constitutional role is the administration of justice – for political activity by a member of the executive branch constitutes a grave breach of constitutional boundaries. Such behavior not only undermines the independence of the judiciary but also demonstrates a deliberate and ostentatious disregard for the principle of separation of powers. In response to this incident, the First President of the Supreme Court rightly declared:

> The Supreme Court is an institution that operates on the basis of the law and in the spirit of respect for the separation of powers. The entry of a representative of the executive branch into its premises without formal notification of the First President of the Supreme Court, who is the host of this place, consti-

> tutes a violation of the constitutional independence of the judiciary and may be perceived as an attempt to exert pressure on this authority. Such actions undermine public confidence in the judiciary and set a dangerous precedent that undermines the foundations of a democratic state governed by the rule of law. I call on the Minister of Justice – Prosecutor General to fully respect the autonomy of the Supreme Court, including refraining from media activities in its building. Otherwise, I will take decisive measures to protect the independence of the Supreme Court.

This position was further reinforced by Supreme Court Judge Professor Aleksander Stępkowski, who observed that the described breach of the Supreme Court's autonomy "is an unprecedented situation – unless one refers to examples from the deep period of the People's Republic of Poland and the Stalinist era of the 1950s."

It is therefore beyond dispute that the ostentatious behavior of the Minister of Justice – Prosecutor General towards the authorities of the Supreme Court, represented by its First President, was not only deliberate but also symbolic. It must be seen as an attempt to exert political pressure on the judiciary and to pursue specific objectives: to intimidate not only the judges of the Supreme Court but also those of the common and military courts under its judicial supervision. The act functioned as an explicit warning – an attempt to instill fear and submission – a textbook example of the "chilling effect." Such actions, needless to say, strike at the very heart of the constitutional guarantees of judicial independence and the principles of the separation of powers – pillars of any democratic state governed by the rule of law. Yet the implications of these events go even further. They reveal not merely a violation of the autonomy of the Supreme Court or an arrogant act of executive interference, but a concerted attempt to exert direct pressure on judges and influence their judicial decisions.

As Professor Sławomir Cenckiewicz has rightly observed, the ongoing questioning of the status of judges of the Supreme Court, the Supreme Administrative Court, and the common courts – judges lawfully appointed by the President of the Republic of Poland – together with the undermining of their judgments and the refusal to recognize the constitutional legitimacy of both the Supreme Court's Chambers and the National Council of the Judiciary, constitutes nothing less than a dismantling of the Polish state system. This, in turn, directly endangers the security of the Republic of Poland – an issue of no small significance in the current geopolitical context.

Mariusz Moszowski
(prosecutor of the Circuit Prosecutor's Office in Świdnica)

Motion to Waive the Immunity of the President of the Constitutional Tribunal

The Constitutional Tribunal of the Republic of Poland serves as the guardian of the Constitution and, in many instances, as the final recourse for citizens seeking protection of their fundamental rights. It is designed to act as a counterbalance to any authoritarian tendencies and to uphold the constitutional standards of human and civil rights.

Since October 2023, however, Poland has witnessed an unprecedented twofold assault on the Constitutional Tribunal – an attack unparalleled within the democratic world. First, the executive branch has unlawfully ceased the publication of the Tribunal's judgments. Second, and even more gravely, the executive – having itself been unlawfully constituted – has directly attacked the President of the Constitutional Tribunal, judge Bogdan Święczkowski, in open violation of the Tribunal's constitutionally guaranteed inviolability.

On September 30, 2025, the Prosecutor General, who simultaneously serves as Minister of Justice and thus a member of the Council of Ministers, submitted a formal request to the Constitutional Tribunal seeking its consent to bring criminal charges against judge Święczkowski.

Importantly, under Article 7 of the Act of August 8, 1996, on the Council of Ministers (Journal of Laws of 2025, item 780, consolidated text), each member of the Council of Ministers is obliged to implement the policies of the government. The government, as noted above, had already engaged in unlawful acts by refusing to publish the Constitutional Tribunal's judgments.

The Prosecutor General based his motion on evidence gathered by Investigation Team No. 3 at the National Prosecutor's Office – a body created by the Prosecutor General himself on April 22, 2024, to examine the legality and propriety of the use of Pegasus surveillance software by state authorities. According to statements released by the Prosecutor's Office, Bogdan Święczkowski, while serving as National Prosecutor prior to his appointment to the Constitutional Tribunal, allegedly exceeded his statutory powers under Article 57(2) of the Act on the Prosecutor's Office and §2 of the Regulation of the Minister of Justice of February 13, 2017, concerning the performance of prosecutorial duties in relation to operational and investigative oversight. The accusations assert that Święczkowski instructed prosecutor Paweł Wilkoszewski to conduct an operational oversight procedure regarding Roman Giertych without first issuing the written authorization required under §8(6) of the said regulation. The scope and purpose of this oversight were allegedly extended

beyond lawful boundaries, purportedly seeking information concerning Giertych's personal and professional life and his political activities, as well as confidential details related to cases in which he served as defense counsel. It is further alleged that Święczkowski knowingly permitted access to materials protected by legal professional privilege and attorney-client privilege – protections which, under Polish law, can be waived only by court order. The Prosecutor's Office claims that Święczkowski subsequently ordered the copying of these materials onto fifteen DVDs, despite the fact that such data could be reproduced solely by the head of the Central Anti-Corruption Bureau, and only with prior consent from the minister responsible for coordinating the work of the special services, as stipulated in §8(3) of the 2017 Regulation. The motion argues that these alleged actions caused harm to private individuals – including Roman Giertych, Stanisław Gawłowski, Leszek Czarnecki, and others – by infringing their constitutional rights to privacy (Article 47 of the Constitution) and to defense (Article 42 of the Constitution). It also claims that the confidentiality of attorney-client communication was breached, in violation of fundamental constitutional protections. Moreover, the Prosecutor General contends that these acts harmed the public interest by undermining the constitutional principle of the rule of law enshrined in Article 7 of the Constitution, which obliges public officials to act solely on the basis of and within the limits of the law. Accordingly, the Prosecutor General has requested that judge Bogdan Święczkowski be held criminally responsible under Article 18 §1 in conjunction with Article 231 §1, Article 266 §2, Article 11 §2, and Article 12 of the Polish Criminal Code.

With regard to the allegations contained in the Prosecutor General's motion, it must first be emphasized that any operational control conducted on the territory of the Republic of Poland may be undertaken only on the basis of authorization issued by an independent court. Such authorization specifies both the temporal and material scope of the surveillance. The individuals referred to in the motion against the President of the Constitutional Tribunal are well known public figures, and it is therefore certain that the court granting permission for operational surveillance was fully aware of the identities and professional roles of those concerned. Consequently, an independent court knowingly issued its consent, despite being aware that the surveillance might incidentally encompass information protected by professional secrecy, including attorney-client privilege.

Moreover, under Polish law, it is the statutory duty of the National Prosecutor to supervise the conduct of operational activities and to decide whether evidence obtained during such activities may be used in judicial proceedings. It is difficult to imagine the effective fulfillment of this function without reviewing the content of the evidence in question. Indeed, in order to determine whether such material can be lawfully introduced in court, one must necessarily examine its contents. It is equally implausible to suggest that the National Prosecutor, who is the highest-ranking prosecutor within the Polish

legal system and whose responsibilities are strictly defined under the Act of January 26, 2016, on the Public Prosecutor's Office (Journal of Laws of 2024, item 390, consolidated text), would personally conduct such operational activities.

These considerations make it clear that the motion should be viewed as a political attack on the guardian of the Constitution itself.

The National Prosecutor's Office's request to waive the immunity of the President of the Constitutional Tribunal represents an event unprecedented in the history of the Third Republic of Poland. This is far more than a personal matter – it constitutes a direct assault on the stability of the constitutional order, on the separation of powers, and on the institutional mechanisms designed to protect citizens from the arbitrariness of transient political majorities. The issue at stake is not the individual person of the President of the Constitutional Tribunal, but the integrity of the office – and through it, the functioning of the Tribunal as the constitutional safeguard of the Republic.

The Constitutional Tribunal is not "just another court." Under Article 195(1) of the Polish Constitution, its judges "are independent and subject only to the Constitution." It is the sole body empowered to make binding determinations as to whether statutory law conforms to the Constitution. To attack the President of the Constitutional Tribunal is therefore to question not an individual's actions, but the Tribunal's very right to perform its constitutional mission as guardian of the rule of law. According to Article 195(3) of the Constitution, a judge of the Constitutional Tribunal "may not be held criminally liable or deprived of liberty without the prior consent of the Constitutional Tribunal." The immunity of the President of the Tribunal is not a personal privilege; it is a functional safeguard designed to protect the independence and autonomy of the Tribunal as a whole. The Constitutional Tribunal itself has repeatedly underlined that immunity is not a privilege but "an instrument for protecting the constitutional order of the state."

The motion filed by the National Prosecutor's Office – an organ of the executive – to waive the immunity of the President of the Constitutional Tribunal therefore undermines the very constitutional foundation of judicial independence. It violates Article 10 of the Constitution (the principle of separation of powers) and Article 173 (which declares that courts and tribunals constitute a separate and independent authority from other branches of government). It also contradicts the Tribunal's own established jurisprudence, which consistently affirms that judicial immunity serves as a necessary shield against political interference. In its judgment of May 11, 2007 (K 2/07), the Constitutional Tribunal held that interference by the executive in the status of constitutional bodies constitutes a violation of the core principles of the Polish constitutional system. Likewise, in its judgment of October 24, 2007 (SK 7/06), it emphasized that "the independence of constitutional bodies cannot be illusory; it must be real and effective." And in ruling K 1/98, the Tribunal reiterated that the legislature does not possess the authority to unilaterally

determine the procedures for the removal of constitutional judges, as such an approach would contravene the principle of the rule of law.

Ultimately, the Prosecutor General's request for consent to prosecute the President of the Constitutional Tribunal, Bogdan Święczkowski, was submitted for consideration to the General Assembly of Judges of the Constitutional Tribunal. In its resolution, the Assembly refused to grant consent for criminal proceedings.

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

Repressions of Minister of Justice Waldemar Żurek against First President of the Supreme Court Prof. Dr. Małgorzata Manowska

Introduction

Pursuant to Article 7 of the Constitution of the Republic of Poland, all public authorities – including the judiciary – are bound to act on the basis of and within the limits of the law. Courts may exercise only those powers expressly conferred upon them by the Constitution and statutes, while respecting the hierarchy of sources of law and the binding effects of Constitutional Tribunal rulings. Consequently, no organ of public authority – and certainly not the executive – has the competence to assess or verify the validity of a judicial appointment, or to evaluate a judge's exercise of judicial authority based on circumstances predating the appointment made by the President of the Republic of Poland under Article 179 of the Constitution. Any attempt to question the status of a lawfully appointed judge, or to treat such an assessment as the basis for official or procedural actions, constitutes a direct assault on the constitutional foundations of the Republic of Poland.

Media Attacks on the First President of the Supreme Court

Public announcements signaling attacks on the independence of the judiciary – and on Supreme Court judges in particular – have appeared in the media since early 2024. The government openly discussed introducing new legal regulations designed to impose disciplinary, criminal, and civil sanctions on judges appointed after 2017 – dismissively labeled as "neo-judges" – with the ultimate aim of removing them from office. These repressive measures were expected to affect more than 3,000 judges who had undergone lawful promotion procedures in accordance with the applicable statutes. Such statements, made during Adam Bodnar's tenure as Minister of Justice, were already indicative of a broader campaign of institutional pressure against the judiciary.

Since assuming office in July 2025, Minister of Justice Waldemar Żurek has intensified these attacks. His actions directed at Prof. Dr. Małgorzata Manowska, the First President of the Supreme Court, constitute a flagrant assault on judicial independence and have significantly exacerbated the institutional disarray within Poland's justice system.

During his first press conference on July 31, 2025, Żurek openly questioned the legitimacy of Prof. Dr. Manowska's appointment, instructing journalists to "get used to the nomenclature 'acting First President of the Supreme Court.'" In a subsequent interview, he declared that "Mrs. Manowska does not need to have her immunity revoked because she does not have any."

On October 10, 2025, the Minister of Justice once again violated the autonomy of the Supreme Court by organizing a politically charged press briefing within the Supreme Court building without notifying or obtaining the consent of its head. When the Court's press spokesperson publicly criticized this breach of protocol, Żurek responded on social media: "The Supreme Court is not Mrs. Manowska's fiefdom."

Finally, on October 13, 2025, during the meeting of the EU Justice and Home Affairs Council in Luxembourg, Żurek once again questioned Dr. Małgorzata Manowska's legitimacy as First President of the Supreme Court. In an interview, he demanded her resignation, and accused her of political bias and responsibility for the alleged "chaos" within the judiciary.

Appointment of a Team of Prosecutors at the National Prosecutor's Office

On September 12, 2025, Waldemar Żurek, acting as Prosecutor General, issued Order No. 30/25 on the establishment of a Team of Prosecutors at the National Prosecutor's Office for the prevention of negative consequences arising from the participation in criminal, civil, and administrative court proceedings of judges appointed to office through the nomination procedure conducted by the National Council of the Judiciary, constituted pursuant to the Act of December 8, 2017, amending the Act on the National Council of the Judiciary. The Team's tasks include, among other things,

> collecting and analyzing information on the composition of Supreme Court panels appointed to hear cases (...) in the context of adjudications by judges appointed to office in the nomination procedure conducted by the National Council of the Judiciary, constituted pursuant to the Act of December 8, 2017, amending the Act on the National Council of the Judiciary and certain other acts, as well as assessing the potential negative consequences of judgments issued in these proceedings – both for the public interest and for the private interests of the parties to the proceedings.

In practice, the true effect of this team's actions has been to disrupt proceedings before the Supreme Court by ostentatiously appearing in the courtroom without the attire required by law for participation in hearings, and by sub-

mitting motions for the "exclusion" of judges – motions that have no basis in law – with the aim of undermining the authority of the court adjudicating in a given composition.

Call for Supreme Court Judges to Cease Adjudicating

On September 22, 2025, the Supreme Court received four letters from Prosecutor General Waldemar Żurek, addressed respectively to 21 Supreme Court judges serving in the Civil Chamber (including Supreme Court Judge Małgorzata Manowska), 11 judges of the Criminal Chamber, 7 judges of the Labor and Social Insurance Chamber, and 18 judges of the Chamber of Extraordinary Control and Public Affairs. In these letters, the addressees were called upon to cease adjudicating, under threats of criminal prosecution and recourse liability.

This action by the Minister resulted in the First President of the Supreme Court, Małgorzata Manowska, filing a report on September 30, 2025, concerning a crime in the form of exerting influence, through unlawful threats, on the official activities of the Supreme Court, i.e. an act defined in Article 232 § 1 of the Criminal Code.

Furthermore, in its resolution of October 8 this year, the College of the Supreme Court expressed its opposition to the unlawful actions of Prosecutor General Waldemar Żurek, consisting in sending letters to Supreme Court judges calling on them to betray their oath of office and refuse to perform their judicial duties, as well as submitting motions in individual proceedings that are unknown to the law and are in fact aimed at preventing the examination of cases. In another resolution, the College called on Waldemar Żurek, as Prosecutor General, to refrain from taking unlawful actions against Supreme Court judges that violate their independence, irremovability, and the dignity of their office.

On October 8 this year Waldemar Żurek, acting as Prosecutor General, requested Wiesław Kozielewicz, President of the Chamber of Professional Responsibility of the Supreme Court, to exclude the persons indicated in the letter – i.e. Supreme Court judges Tomasz Demendecki, Marek Dobrowolski, Marek Motuk, Marek Siwek, Maria Szczepaniec, and Paweł Wojciechowski – from performing duties reserved for the court in that Chamber, pointing to the alleged defectiveness of the procedure for appointing judges performing duties in this Chamber, resulting from the excessive influence of the legislative and executive branches on the nomination process.

Motions to Waive Immunity

On July 16, 2025, the National Prosecutor's Office submitted motions to the Professional Responsibility Chamber of the Supreme Court and to the State Tribunal, requesting that resolutions be adopted permitting Małgorzata Ma-

nowska, in her capacity as a judge of the Supreme Court and a member of the State Tribunal, to be held criminally liable, accusing her of the following acts:

1. exceeding her powers as First President of the Supreme Court and Chair of the Supreme Court College between October 7, 2021, and July 14, 2022, by treating the failure of 10 members and deputies of the College to cast their votes in seven votes conducted by circulation as abstentions – in flagrant violation of Article 21 § 3 of the Act on the Supreme Court in conjunction with Article 21(2a) and (2c) of the Act on the National Council of the Judiciary – thereby unjustifiably recognizing the College's votes on the adoption of 24 resolutions as valid, despite the fact that the statutory quorum requirement for the validity of a vote by circulation – namely, that at least two-thirds of the members of the College cast their votes by submitting a statement of "for," "against," or "abstain" – had not been met (Article 231 § 1 of the Criminal Code in conjunction with Article 12 § 1 of the Criminal Code);
2. failure to fulfill the obligation under § 7(3) of the Rules of Procedure of the State Tribunal, in that that, as President of the State Tribunal, in the period from March 20, 2024, to May 6, 2024, she failed to convene a plenary session of the State Tribunal within 45 days of the date of submission on March 20, 2024, to the Supreme Court by six members of the State Tribunal of a written request for its convening in a case falling within the jurisdiction of the State Tribunal (Article 231 § 1 of the Criminal Code);
3. failure to fulfill the obligation under Article 14 § 1(8) of the Act on the Supreme Court in the period from October 12, 2021, to August 22, 2024, in that she failed to comply with the obligation arising from the final decision of the Regional Court in Olsztyn of May 10, 2021, ref. no. I Co 76/21, which was to consist in adding to the resolution of the Disciplinary Chamber of the Supreme Court of February 4, 2020, ref. no. II DO 1/20, published on the website of the Supreme Court, information that the effectiveness and enforceability of that resolution had been suspended for the duration of the proceedings to determine that the resolution was not a ruling of the Supreme Court (Article 231 § 1 of the Criminal Code).

The hearing before the Chamber of Professional Responsibility on the motion seeking consent to initiate criminal proceedings against Prof. Dr. Małgorzata Manowska in her capacity as a judge of the Supreme Court was scheduled for November 5, 2025.

On September 18, 2025, the State Tribunal issued a decision to discontinue proceedings concerning the motion of the National Prosecutor's Office to adopt a resolution granting consent to hold the President of the State Tribunal, Małgorzata Manowska, criminally liable, pursuant to Article 17 § 1 points

9 and 11 of the Code of Criminal Procedure, on the grounds of lack of quorum and the absence of a motion submitted by an authorized prosecutor.

On September 30, 2025, the National Prosecutor's Office submitted a new motion to the State Tribunal, seeking the adoption of a resolution authorizing the criminal prosecution of Małgorzata Manowska in the following matters:

1. exceeding her powers as First President of the Supreme Court and Chair of the Supreme Court College between October 7, 2021, and July 14, 2022, by treating the failure of 10 members and deputies of the College to cast their votes in seven votes conducted by circulation as abstentions – in flagrant violation of Article 21 § 3 of the Act on the Supreme Court in conjunction with Article 21(2a) and (2c) of the Act on the National Council of the Judiciary – thereby unjustifiably recognizing the College's votes on the adoption of 24 resolutions as valid, despite the fact that the statutory quorum requirement for the validity of a vote by circulation – namely, that at least two-thirds of the members of the College cast their votes by submitting a statement of "for," "against," or "abstain" – had not been met (Article 231 § 1 of the Criminal Code in conjunction with Article 12 § 1 of the Criminal Code);
2. failure to fulfill the obligation under Article 14 § 1(8) of the Act on the Supreme Court in the period from October 12, 2021, to August 22, 2024, in that she failed to comply with the obligation arising from the final decision of the Regional Court in Olsztyn of May 10, 2021, ref. no. I Co 76/21, which was to consist in adding to the resolution of the Disciplinary Chamber of the Supreme Court of February 4, 2020, ref. no. II DO 1/20, published on the website of the Supreme Court, information that the effectiveness and enforceability of that resolution had been suspended for the duration of the proceedings to determine that the resolution was not a ruling of the Supreme Court (Article 231 § 1 of the Criminal Code).

Final conclusions

Personal attacks on Prof. Dr. Małgorzata Manowska, intended to humiliate her in the public eye, undermine her position as a judge and her role as the First President of the Supreme Court, demonstrate a fundamental lack of respect for the constitutional office she holds, a disregard for the independence of the Supreme Court, and a deliberate assault on the principle of the separation of powers in a democratic state governed by the rule of law. Interfering with the independence of Supreme Court judges, harassing them, exerting pressure, questioning their competence, independence, and credibility, undertaking actions without any legal basis, employing threats of criminal or financial liability, and submitting motions for the "exclusion" of members of adjudicating panels – motions unknown to Polish law – constitute deliberate

measures aimed at destabilizing the judiciary. The use of the National Public Prosecutor's Office and other prosecutorial units subordinate to the Prosecutor General for political ends is intended to influence the actions of the First President of the Supreme Court – a constitutional organ of the Republic of Poland – and the judges of that Court.

Such actions are reminiscent of the repressions suffered by judges during the period of martial law under the communist regime. Waldemar Żurek's breaches of the law, committed in his capacity as Minister of Justice and Prosecutor General, serve to advance brutal political objectives, cynically and falsely presented as an effort to "restore the rule of law," in reality aimed at subordinating the Supreme Court to the executive branch.

Łukasz Zawadzki
(judge of the Circuit Court in Opole)

The Revolutionary Assumptions of Minister Waldemar Żurek: The Deformation and Extremism of Legal Positivism and the Emergence of Statutory Lawlessness

Waldemar Żurek – until only a few weeks ago a judge of the Circuit Court in Kraków, later a beneficiary of the parliamentary elections of October 15, 2023 (when he assumed the post of deputy director of the National School of Judiciary and Public Prosecution), and now Minister of Justice in Poland's liberal-left government – on October 9, 2025, presented the main assumptions of a draft law which, according to its authors, is intended to restore order in the justice system.

Owing to the extremely unconstitutional normative solutions contained in the draft law – entitled *"on the restoration of the right to a trial by an independent and impartial court established by law by regulating the effects of the resolutions of the National Council of the Judiciary adopted in 2018–2025,"* as announced during a press conference attended by the leadership of the Ministry of Justice and the chairpersons of two codification committees – we are dealing with an initiative that is destructive to the Polish system of justice, undermines the constitutional framework of the separation of powers, and fuels antagonism within the judiciary and, more broadly, the entire legal community. By disregarding the fundamental principles of the hierarchy of legal sources – including the rule that lower-level norms must conform to higher-level ones – and by violating the elementary principles of formal logic, the drafters are attempting to implement an extreme form of debased legal positivism. This approach, while asserting the binding force of all legal norms enacted by state authorities empowered to do so, disregards both the internal coherence of the Polish legal system and the natural legal order to which, notably, the Polish Constitution itself explicitly refers in its preamble.

In terms of vocabulary, during the press conference on October 9, 2025, Minister of Justice Waldemar Żurek employed propaganda patterns typical of totalitarian regimes, arbitrarily dehumanizing selected individuals and social or professional groups. Referring to judiciary organs and judges, defenseless in their confrontation with the politician, he used derogatory and humiliating

expressions such as "neo-National Council of the Judiciary" ("neo-KRS") and "neo-judges," even though these terms have no basis in applicable law. He spoke of the alleged authoritarianism of the political authorities prior to the 2023 parliamentary elections – which is curious given that the previous parliamentary majority fully respected the sovereign decision of the nation and adhered to democratic principles. He also used an explicitly pejorative verb to describe the work of judges appointed by the President of the Republic of Poland after completing the statutory procedure: "infecting the justice system."

Substantively, the draft bill offers nothing new to the legal community, as it merely implements the most extreme demands of the politicized judges' associations *Iustitia* and *Themis*, from which, incidentally, Waldemar Żurek himself originates. Judge Krystian Markiewicz publicly endorsed the draft bill during the October 9, 2025, press conference. He currently chairs the Commission for the Codification of the Judicial System and the Public Prosecutor's Office, and in the past served as president of the *Iustitia* Polish Judges' Association. In that capacity, following the 2023 parliamentary elections, he openly boasted that it was his organization that had introduced the principle of "money for the rule of law" to the European forum. In essence, this meant pressuring the conservative Polish government – prior to the 2023 Sejm and Senate elections – by conditioning the disbursement of funds under the so-called National Recovery Plan (a joint European loan designed to rebuild national economies after the stagnation caused by COVID-19) on the implementation of judicial reforms demanded by the European Union bureaucracy.

In terms of its fundamental provisions, enthusiastically presented by Minister of Justice Waldemar Żurek, the draft of the so-called rule-of-law bill does not differ from the version proposed more than a year earlier – on September 6, 2024 – by then Minister of Justice Adam Bodnar. The difference lay solely in presentation: Waldemar Żurek framed the proposed solutions as a "compromise" with the judicial community and attempted to entice the conservative President of Poland, Karol Nawrocki – the victor of the elections held on May 18 and June 1, 2025 – with this false narrative. By contrast, Minister Adam Bodnar, despite advancing a project based on essentially identical premises, refrained from such rhetoric in September 2024, as it was widely believed at the time that a left-liberal candidate would win the presidential election expected a few months later, in the spring of 2025. That candidate ultimately proved to be Rafał Trzaskowski, who went on to lose the vote for the office of President of the Republic of Poland, but who, in the heat of the campaign, had publicly declared his readiness to sign a bill on the judiciary in the form desired by Prime Minister Donald Tusk's government and the politicized judges' associations *Themis* and *Iustitia*.

During the press conference on October 9, 2025, Minister of Justice Waldemar Żurek bandied about a series of political slogans which, from a legal standpoint, amount at best to half-truths. He claimed that the proposed bill would restore the proper functioning of the justice system; regulate the

status of so-called "neo-judges"; legalize their procedural decisions; stabilize the judiciary; implement the recommendations of the Venice Commission; and demonstrate concern for the state budget, allegedly strained by compensation payments arising from the participation of so-called "neo-judges" in court proceedings. He further asserted that judicial appointments made after 2017 violate the Polish Constitution and international conventions binding on the Republic of Poland; that the proposed measures respect constitutional norms as well as the provisions of the Treaty on the Functioning of the European Union and the Convention for the Protection of Human Rights and Fundamental Freedoms; that international jurisprudence highlights systemic flaws in judicial appointments (particularly the judgment of the European Court of Human Rights in *Wałęsa v. Poland*); and that the crisis in the Polish judiciary was caused by the resolutions of the allegedly illegal "neo-National Council of the Judiciary," with cases adjudicated by judges appointed through its participation purportedly lacking an independent court, according to European tribunals.

The founding falsehood long propagated by Waldemar Żurek is his claim that the National Council of the Judiciary was constituted illegally. Under the Polish Constitution, the Council is a judicial body responsible for evaluating candidates for judicial office and submitting requests for judicial appointments to the President of the Republic of Poland (Article 179 of the Constitution). On December 8, 2017, Article 9a was added to the Act on the National Council of the Judiciary (see: Article 1(1) of the Act of December 8, 2017, amending the Act on the National Council of the Judiciary – *Journal of Laws* of 2018, item 3), introducing a mechanism for selecting 15 members of the judicial component of the National Council of the Judiciary by the Sejm for a joint four-year term. Meanwhile, judges in the Republic of Poland are appointed by the President at the request of the National Council of the Judiciary for an indefinite period (Article 179 of the Constitution). This new selection mechanism for the Council's judicial members became a pretext for certain segments of the legal community to allege supposed defects in all judicial appointments made after the entry into force of the aforementioned Article 9a of the Act of May 12, 2011, on the National Council of the Judiciary (*Journal of Laws* of 2024, item 1186, consolidated text). From this narrative arose the derogatory terms "neo-National Council of the Judiciary" ("neo-KRS") and "neo-judges."

The authors of these claims seem untroubled by the fact that, in its judgment of March 25, 2019, in case no. K 12/18, the Constitutional Tribunal – the sole body within the Polish legal system empowered to issue binding rulings on the constitutionality of laws (Article 188(1) of the Constitution) – held that Article 9a of the aforementioned Act is consistent with Article 187(1)(2) and (4), in conjunction with Article 2, Article 10(1), and Article 173 of the Constitution. It is particularly important to note that the rulings of the Constitutional Tribunal are universally binding and final (Article 190(1) of the Constitution).

Finally, it should be emphasized that the reform of the National Council of the Judiciary of December 8, 2017, implemented the constitutional requirement of democratic oversight over each of the three branches of government (Article 2). The earlier model of appointing judges to this body – through selection by their own professional corporation – was oligarchic in character and shielded from public scrutiny. Contrary to the false assertions of certain politicians and judges (including, during the aforementioned press conference, Undersecretary of State at the Ministry of Justice, judge Dariusz Mazur), Article 187 of the Polish Constitution does **not** mandate that this closed judicial circle select the judicial members of the National Council of the Judiciary.

As a side note, judge Krystian Markiewicz – who accused the National Council of the Judiciary and judges appointed after the amendment to the Act of May 12, 2011, on the National Council of the Judiciary (*Journal of Laws* of 2024, item 1186, consolidated text) of being politicized – himself became Chairman of the Commission for the Codification of the Judicial System and the Public Prosecutor's Office, operating under the Minister of Justice, following the parliamentary elections of October 15, 2023 (*Regulation of the Council of Ministers of March 5, 2024, on the establishment, organization, and mode of operation of the Commission for the Codification of the Judicial System and the Public Prosecutor's Office – Journal of Laws* of 2024, item 350). Those gathered in the judges' associations *Iustitia* and *Themis* – the very architects of the accusations of politicization of Polish judges and the National Council of the Judiciary, whose claims have proved destructive to the state and anarchic in their consequences – seem untroubled by judges assuming explicitly political posts. Apart from Krystian Markiewicz, one may cite, for instance, judge Dariusz Mazur, formerly spokesperson for the *Themis* association, who now serves as Undersecretary of State at the Ministry of Justice. Incidentally, the former Minister of Justice, Adam Bodnar has been an honorary member of this association since March 26, 2022, and, in that capacity, took part, among other events, in the Extraordinary General Meeting of the *Themis* Association of Judges on November 23, 2024 (See: *Minister of Justice Adam Bodnar at the Themis meeting: We are restoring basic order in the justice system* – Ministry of Justice – Gov.pl portal).

As for the alleged irregularities in the process of judicial appointments after 2017, as claimed by Minister of Justice Waldemar Żurek, the Constitutional Tribunal has repeatedly ruled in the past that certain statutes governing the procedure for assuming judicial office were inconsistent with the Constitution. The Tribunal's case law supports the following conclusions.

First, the appointment of judges in Poland is a prerogative of the President of the Republic. This decision is not subject to appeal or review in any manner or before any body. The President is not bound by the positive opinion of the National Council of the Judiciary, as he may refuse to appoint a judge recommended by that body. Moreover, the President himself has no authority to challenge an act of appointment – whether his own or that of his predecessor.

Second, there are no grounds for questioning the judicial status of individuals who, although appointed through a constitutionally flawed procedure, met the criteria for judicial office at the time as defined by constitutional statutes (the Act on the Supreme Court, the Act on Common Courts Organization, and the Act on Administrative Courts Organization) and received a presidential act of appointment, which constitutes an exercise of constitutional prerogative.

Finally, it is solely within the President's discretion to determine whether a candidate, at the moment of appointment, meets the statutory criteria – including ethical requirements such as impeccable character – for holding judicial office.

These conclusions are confirmed by the Constitutional Tribunal's rulings of October 24, 2007 (case no. SK 7/06), November 29, 2007 (case no. SK 43/06), May 27, 2008 (case no. SK 57/06), June 5, 2012 (case no. K 18/09), June 2, 2020 (case no. P 13/19), April 20, 2020 (case no. U 2/20), March 4, 2020 (case no. P 22/19), and January 23, 2022 (case no. P 10/19).

However, in light of the aforementioned judgment of the Constitutional Tribunal of March 25, 2019 (case no. K 12/18), which confirmed that Article 9a of the Act on the National Council of the Judiciary complies with Article 187(1)(2) and (4) in conjunction with Article 2, Article 10(1), and Article 173 of the Constitution, referring to the essence of the presidential prerogative in the area of judicial appointments after 2017 is simply irrelevant. No irregularities or procedural defects occurred before the National Council of the Judiciary at the stage immediately preceding the President's act of appointment.

The neologisms "neo-judge" and "neo-KRS" ("neo-National Council of the Judiciary") are derogatory, dehumanizing (stigmatizing and discriminatory), and disparaging – and, as indicated, have no legal basis. They are used by certain media outlets sympathetic to Poland's current political authorities, as well as by some politicians from the current parliamentary majority. Since 2017, these terms have been applied both to the National Council of the Judiciary itself and to all judges in Poland who assumed office after completing the procedure before the Council, which – as described – was shaped as a result of the amendment to the Act of May 12, 2011, on the National Council of the Judiciary (*Journal of Laws* of 2024, item 1186, consolidated text), adopted on December 8, 2017 (see: Act of December 8, 2017, amending the Act on the National Council of the Judiciary, *Journal of Laws* of 2018, item 3).

In summary, under the strictly statutory framework subject to constitutional review by the Constitutional Tribunal – a judicial authority independent of both the legislative and executive branches – there are no grounds for denying the legality of the National Council of the Judiciary (or its resolutions submitting candidates for judicial appointment to the President), nor for questioning the status of any judges appointed after 2017. All the more so – *a minori ad maius* – it is entirely unjustified to challenge their jurisprudence or to divide judges according to the arbitrary criterion of the date of their appointment.

Nevertheless, Minister of Justice Waldemar Żurek announced – using a discriminatory temporal criterion (appointment after 2017, i.e., following the reform of the National Council of the Judiciary described above) – a division of judges into three categories, which he symbolically marked with colors during the press conference on October 9, 2025. This act was profoundly offensive to Polish sensibilities and historical memory, as it evoked associations with the color-based prisoner classifications used in the German concentration camp at Auschwitz.

The "green" group, according to the Minister of Justice, comprises graduates of the National School of Judiciary and Public Prosecution, who were allegedly placed in a coercive situation because, after completing their training and passing the judicial examination, they were required to undergo evaluation by the supposedly defective National Council of the Judiciary. Żurek stated that no negative professional consequences or invalidation of rulings would apply to these judges.

However, the claim that this group of judges lacked freedom in participating in proceedings before the National Council of the Judiciary after 2017 is wholly unfounded and cannot withstand logical scrutiny. The judicial training period in Poland lasts 36 months, whereas the term of office of the National Council of the Judiciary extends to four years. Consequently, law graduates applying for admission to the National School of Judiciary and Public Prosecution after 2017 were fully aware of the Council's composition and its nature. They therefore knew in advance that their professional suitability would be assessed by this judicial body as reconstituted after December 8, 2017 (it was clear *a priori* that their training and examinations would conclude within the term of the reformed National Council of the Judiciary).

As a side note, the assessment offered by Minister of Justice Waldemar Żurek on October 9, 2025, concerning the high professional competence and strong academic preparation of this group of judges should be regarded as accurate and fair. Indeed, these jurists received their education at the National School of Judiciary and Public Prosecution primarily under the instruction of lecturers whom the Minister now disparagingly labels as "neo-judges," many of whom – following the 2023 change of political power – were dismissed from the School's teaching staff (the undersigned among them).

The color "yellow" was used to denote judges appointed before 2018 who, after the reform of the National Council of the Judiciary, were promoted to higher courts. Under the draft of the so-called rule-of-law bill, these judges are to be removed from their current offices and reinstated to the positions they held prior to promotion.

Meanwhile, judges who practiced other legal professions before 2018 are to be dismissed from the judiciary altogether and permitted only to assume the role of court clerks – a position in the Polish judicial system that lacks the constitutional guarantees of judicial independence and involves limited adjudicatory authority as defined by court procedure.

This proposal – concerning the so-called "yellow" and "red" groups – is manifestly and egregiously unconstitutional. Article 179 of the Constitution provides that judges are appointed by the President of the Republic of Poland, at the request of the National Council of the Judiciary, for an indefinite term. Furthermore, Article 180(1) of the Constitution explicitly states that judges are irremovable. In addition, Article 55 §1 and §2(1)–(3) of the Act of July 27, 2001, on Common Courts Organization (*Journal of Laws* of 2024, item 334, consolidated text) stipulates that a judge of a common court is a person appointed to that position by the President of the Republic of Poland after taking an oath before the President. Judges of common courts are appointed to one of three ranks: district court judge, circuit court judge, or court of appeal judge.

In view of the unambiguous wording of Article 55 of the Act on Common Courts Organization, the Minister of Justice's intention to remove the judges marked "yellow" from their positions in circuit and appellate courts stands in clear violation of Article 180 of the Constitution. The euphemistic language used by representatives of the executive branch – referring to the supposed "return" of judges to their former positions in regional and circuit courts – serves only to obscure a direct assault on the judicial system and on the principle of the separation of powers. It must be recalled that the President of the Republic alone possesses the constitutional authority to appoint judges through individual acts (Article 142(2) of the Constitution). The Polish constitutional order grants no power to the legislature to appoint or remove judges through a general and abstract statute – precisely what the draft of the so-called rule-of-law bill proposes. *Prima facie*, this constitutes a flagrant breach of the Polish Constitution.

Minister of Justice Waldemar Żurek's claims that the so-called rule-of-law bill would have a "stabilizing effect" on the justice system are misguided – not only for the reasons outlined above. The proposed re-opening of competitions for judicial positions – positions currently occupied by judges from the "yellow" and "red" groups – would in fact exacerbate institutional disorder. From a constitutional standpoint, these offices are not vacant; thus, any attempt to refill them would create legal uncertainty and invite challenges before higher courts or the Supreme Court against judgments issued by courts staffed with "substitute" judges.

Even the Venice Commission, in its Opinion No. 1206/2024 of October 12, 2024 – issued in response to questions submitted by then-Minister of Justice Adam Bodnar, who sought to legitimize his proposed solutions despite their conflict with several constitutional principles – criticized the very assumptions now embedded in the so-called rule-of-law bill. Contrary to the intentions of Minister Bodnar, the Commission's opinion confirmed both the indisputable legal status of judges appointed after July 1, 2017, and the inadmissibility of their mass removal from office by statute. It also stated unambiguously that the rulings issued by these judges remain legally binding.

The Venice Commission thus rejected the notion that all judicial appointments made after 2017 were defective. Likewise, the case law of the Court of Justice of the European Union makes it clear that mere participation in a post-2017 nomination process before the National Council of the Judiciary neither invalidates judicial status nor infringes the parties' right to an independent and impartial tribunal – such a concern may arise only if other specific irregularities accompany the appointment procedure (see cases C-585/18, C-624/18, C-625/18, and C-791/19). The European Court of Human Rights has consistently taken the same approach (see applications nos. 43447/19, 1469/20, 49868/19, and 57511/19).

Thus, the distinction between "legal" and "illegal" judges, put forward during the press conference of October 9, 2025, by Minister of Justice Waldemar Żurek and his associate, judge Dariusz Mazur, is legally simplistic and patently false. The same holds true for their insinuations concerning the rulings issued by those judges – contrary to Żurek's misrepresentations, such rulings do not in themselves give rise to state liability for damages on the part of the Republic of Poland. The Minister's assertion that, according to European courts, "where neo-judges adjudicate, there is no independent court," is a complete distortion. This claim is unfounded, unsupported by, and in fact contrary to, the case law of both the Court of Justice of the European Union and the European Court of Human Rights. In reality, the so-called rule-of-law bill advanced by Minister Żurek stands in open conflict with both the Polish Constitution and the jurisprudence of these international courts.

Beyond this, however, the Minister of Justice assigns to the rulings of the aforementioned courts a legal weight they do not possess within the Polish legal order. Like the judgments of national courts, the decisions of the European Court of Human Rights and the Court of Justice of the European Union are not sources of law in Poland (see Article 87(1)–(2) *et seq.* of the Constitution). Exercising its constitutional authority to review the constitutionality of international agreements (Article 188(1)(1) of the Constitution), the Constitutional Tribunal ruled on March 10, 2022, that Article 6(1) of the *Convention for the Protection of Human Rights and Fundamental Freedoms*, insofar as it authorizes the European Court of Human Rights or national courts to review the constitutionality or Convention compliance of laws governing the judicial system, the jurisdiction of courts, or the structure, organization, and appointment procedures of the National Council of the Judiciary, is inconsistent with Articles 188(1)–(2) and 190(1) of the Polish Constitution (case no. K 7/21).

Similarly, the jurisdiction of the Court of Justice of the European Union extends only to ensuring the uniform interpretation, application, and observance of EU law. It lacks any legitimacy to adjudicate on matters that fall within the sovereign competences of EU Member States – competences that have not been transferred to the Union. This includes, in particular, the organization of the judiciary in the Republic of Poland. As a constitutional matter, this domain is neither an exclusive competence of the European Union, nor a

shared competence, nor even a supporting competence (as defined respectively in Articles 3, 4, and 6 of the *Treaty on the Functioning of the European Union*).

Accordingly, unless the principles expressed in the aforementioned judgments – including the operative findings of the so-called pilot judgment in *Wałęsa v. Poland* of November 23, 2023 – are granted normative force through incorporation into Polish legislation enacted by Parliament, signed by the President of the Republic, and published in the *Journal of Laws*, they remain irrelevant to the Polish legal order and are not binding upon Polish courts. This conclusion applies *a fortiori* to purely journalistic or politically motivated statements by members of the current government or by representatives of judicial associations such as Themis and Iustitia.

The Minister of Justice's assertions that the so-called *rule-of-law bill* will restore the proper functioning of the judiciary defy the most elementary principles of formal logic. Beyond the already noted danger of dual appointments to the same judicial position, the judicial system has been steadily deteriorating due to the months-long suspension – initiated by then-Minister of Justice Adam Bodnar – of public announcements of vacant judicial posts, which, under Polish law, serve as the formal beginning of the appointment process. According to media reports, more than one thousand judicial vacancies remain unfilled as a result of a politically motivated standoff between the executive authorities and the National Council of the Judiciary ("Już ponad 1000 wakatów w sądach" [Over 1,000 vacancies in the courts], *Rzeczpospolita*, June 11, 2025). Moreover, during the press conference of October 9, 2025, not a single ruling from any European court was cited that would confirm the alleged payment of compensation for cases adjudicated by judges of the common courts appointed after 2017 – although this claim was loudly repeated in public discourse.

From a strictly logical standpoint, freezing judicial recruitment for two years – without introducing any procedural reforms – cannot possibly improve the administration of justice. It can only damage it, overburdening the remaining judges and drastically extending the time citizens must wait for their cases to be heard. Equally illogical is the idea embedded in the so-called *rule-of-law bill* whereby the political authorities themselves (*sic!*) would "recognize" as valid the rulings of judges whose legitimacy they simultaneously deny. There is, after all, no rational way to reconcile the claim that an "illegal judge" can render a "legal judgment."

Adding to these contradictions, despite the purported illegality of their appointments to circuit and appellate courts, these same judges – according to the Minister of Justice's own logic – would be delegated, within two years of the act's entry into force and before their formal demotion, to perform *fully legal* (*sic!*) judicial duties in the very courts from which they are being removed as "illegally appointed."

This disarray is compounded by the unprecedented failure rate among graduates of the National School of Judiciary and Public Prosecution in the

judicial examination held in spring 2025: roughly one hundred of the nearly three hundred examinees failed, leaving the most overburdened district courts without much-needed reinforcement. Media coverage of the examination further fueled suspicions that the results were manipulated to discredit the teaching staff responsible for training these candidates prior to the 2023 parliamentary elections (see: www.tokfm.pl/polska/malopolskie/tokfm-7-189656-31758973).

Despite his ostensibly principled stance, Waldemar Żurek did not object to the legality of the appointment of the judge who ruled in his favor in a personal dispute with a bank over payment (https://wpolityce.pl/polityka/669601-nasz-news-zurkowi-nie-przeszkadzal-wyrok-neo-sedzi). The hypocrisy of this milieu, from which the Minister of Justice himself emerges, is further illustrated by the identical behavior of Piotr Gąciarek, the head of Warsaw's Iustitia association (https://niezalezna.pl/polska/umowa-gaciarka-z-bankiem-ws-kredytu-frankowego-uniewazniona/542947), who likewise abandoned his zealous "negationism" when his personal financial interests were at stake.

The press conference of October 9, 2025, epitomized the revolutionary fervor – though devoid of substantive legal merit – characterizing Minister of Justice Waldemar Żurek's activism. Viewed through the lens of militant democracy, the solutions proposed in the so-called rule-of-law bill clearly align with the ideological framework of an anarchic appeal by the political leadership to apply "law" as interpreted by the current parliamentary majority. Yet, the proposed provisions bear no relation to the constitutional principles defining a democratic state governed by law (Article 2), the separation of powers (Article 10(1)), the legality of public authority (Article 7), the hierarchical structure and closed catalogue of legal sources (Article 87), or the constitutional guarantee of judicial irremovability (Article 180).

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The Case of Judge Jakub Iwaniec – A Case Study

1. Facts

On October 12, 2025, at 5:57 p.m., the news portal Onet.pl published an article on its website with the significant title "Sędzia zamieszany w aferę hejterską spowodował kolizję. Był nietrzeźwy" ["Judge involved in a hate scandal caused a collision. He was intoxicated"]. The content of the publication indicated that on October 11, 2025, at around 11:00 p.m., in the town of Rejowiec Fabryczny, judge Jakub Iwaniec, while intoxicated, crashed into a tree. After the collision, the driver of the car drove away to a nearby property. Witnesses to the incident informed the police. Later in the article, the Onet journalist quoted a statement by Rafał Kawalec, spokesperson for the Circuit Prosecutor's Office in Zamość, who reportedly said:

> I can confirm that there was an incident involving a car collision. The person who was driving the vehicle while intoxicated was Jakub I. The driver was tested for alcohol in his breath. The result was positive – 0.96 mg per liter of alcohol [approximately 1.8 per mille – ed.]. A blood sample was also taken from him for further testing (https://wiadomosci.onet.pl/lublin/sedzia-jakub-iwaniec-zamieszany-w-afere-hejterska-wjechal-w-drzewo-byl-nietrzezwy/jc6jwcg – accessed: 15 October 2025, 9:16 p.m.).

On October 13, 2025, the National Prosecutor's Office issued the following statement:

> Today (October 13), the Internal Affairs Department of the National Prosecutor's Office took over the investigation into drunk driving in Rejowiec Fabryczny on October 11, 2025. The reason for taking over the proceedings was the suspicion that the driver of the vehicle was Warsaw judge Jakub I. The case therefore remains within the jurisdiction of the Internal Affairs Department of the National Prosecutor's Office.
>
> The necessary evidence was gathered (pursuant to Article 308 of the Code of Criminal Procedure) on October 11 and 12, 2025, by prosecutors from the District Prosecutor's Office in Krasnystaw and the Circuit Prosecutor's Office in Zamość. As part of these activities (and the investigation initiated on October 13), eyewitnesses to the incident and police officers from the local police station who intervened were interviewed, the car and the site of the collision with the tree were inspected, and materials for further examination were collected.

The evidence gathered shows that on Saturday, October 11, 2025, at around 10:55 p.m., a person called the Police Station in Rejowiec Fabryczny and reported that they had witnessed a person driving a car while intoxicated. A few minutes later, officers from the local police station arrived at the scene. They questioned the woman who had made the call, who stated that the driver was her neighbor, Jakub I., who was standing a few meters away.

Questioned as a witness, the caller testified that at around 10:50 p.m., she saw Jakub I., a Warsaw judge whom she had known for many years, crash his car into a tree and then drive away, passing within a few dozen centimeters of her and other people. She testified that there was no one else in the car except Jakub I.

The evidence shows that on that day (October 11), from 4 p.m., Jakub I. participated in a social gathering in Rybie, about 10 km from his place of residence in Rejowiec Fabryczny. At around 9 p.m., he was driven home by his friend's wife in their car. This car was not involved in the collision with the tree. These findings were confirmed by the testimony of his friend and his wife (the driver).

Jakub I.'s car, which bore traces of a collision, was found on his property. The car was subjected to an inspection by an expert. Traces of what appeared to be tree bark were found on the outside. Biological and osmological traces were secured from inside the car.

Jakub I., who was present at the scene, informed the police that he had been driven home by an "unknown friend," whose details he did not provide. At the same time, no one else was present at the scene. No one reported to the police. So far, no other person has been identified who, at around 10:50 p.m., would have been driving Jakub I.'s car and involved in a collision with a tree.

The testing device used on Jakub I. showed a content of 0.947 mg/l, 0.959 mg/l, 0.933 mg/l and 0.907 mg/l of ethyl alcohol in his breath. This is equivalent to approximately 2 per mille of alcohol in the blood. Subsequently, in the presence of the prosecutor, three blood samples were taken from Jakub I. at the hospital for further toxicological testing for the presence of alcohol and drugs.

On 12 October, the prosecutor issued a decision requesting the surrender of Jakub I.'s mobile phone, considering that it could constitute evidence in the case, in particular by containing content that could be helpful in determining who was driving the car, including possible correspondence with the "unknown friend" indicated by Jakub I. This decision was carried out by police officers on October 12. The procedure was recorded. The prosecutor's decision may be appealed to the court.

In view of Jakub I.'s statements that the phone may contain information covered by legal professional privilege, the phone was secured without its contents being examined. Further action will be taken by the prosecutor from the Internal Affairs Department of the National Prosecutor's Office in accordance with the procedure applicable in such situations.

An expert in the field of traffic accident reconstruction was also consulted in order to determine whether, based on the damage found in the car, it may

have collided with a tree. The police were instructed to secure CCTV footage and recordings from private properties and a local petrol station.

Jakub I. is a judge of the Warsaw District Court and therefore enjoys judicial immunity. A judge cannot be detained or held criminally liable without the permission of the competent disciplinary court (currently the Professional Responsibility Chamber of the Supreme Court). ("Information on the investigation of the Internal Affairs Department of the National Prosecutor's Office into drunk driving in Rejowiec Fabryczny"; https://www.gov.pl/web/prokuratura-krajowa/prowadzenia-pojazdu-w-stanie-nietrzezwosci; accessed on October 15, 2025, at 9:38 p.m.).

The defense counsel for judge Jakub Iwaniec, Dr. Michał Skwarzyński, argued from the outset that the prosecutors were more interested in securing the judge's equipment and searching his home and person– in violation of his immunity – than in establishing the facts. In one of his many statements, he pointed out that

> The judge's phone was seized despite my recorded comment, made by telephone, that it contained data covered by attorney-client privilege – in this case, I had corresponded with my client, as had another attorney. In addition, I informed the prosecutor that there was data concerning the defense in other cases where Jakub Iwaniec is a defense lawyer, that he participates in defense teams where other lawyers also defend, and that the line of defense is presented there. [In his opinion] the case was a pretext for raiding the judge's home, searching the judge and seizing the judge's telephone in violation of his immunity" (https://www.rp.pl/sady-i-trybunaly/art43169111-sedzia-jakub-iwaniec-wjechal-w-drzewo-pod-wplywem-alkoholu-jego-adwokat-zaprzecza – accessed on October 17, 2025, at 2 p.m.).

On October 17, 2025, Katarzyna Balcerzak, President of the District Court for Warsaw-Mokotów, issued an order for the immediate break in the performance of professional duties by judge Jakub Iwaniec ("Kolejne kłopoty sędziego Jakuba Iwańca. Decyzja prezes sądu po pijackim rajdzie" [*"More trouble for judge Jakub Iwaniec. The court president's decision after a drunken joyride"]*; https://wiadomosci.onet.pl/kraj/sedzia-jakub-iwaniec-zawieszony-sprawa-ma-zwiazek-z-jego-pijackim-rajdem/pe7kz3j; accessed on October 19, 2025, at 4:22 p.m.). The order was issued despite an identical order already being issued by the Minister of Justice Waldemar Żurek on September 29, 2025, and during the period of its validity (https://www.gov.pl/web/sprawiedliwosc; accessed on October 19, 2025, at 4:32 p.m.); this case is described in Przemysław W. Radzik's article *Politically Motivated Decision of Minister of Justice Waldemar Żurek to Order the Immediate Break in the Performance of Professional Duties by Judge Jakub Iwaniec.*

At the time of submitting this study to the editorial committee, there was no information in the media about the prosecutor's possible request to the Supreme Court for permission to hold judge J. Iwaniec criminally liable.

2. Status and Legal Assessment of the Facts

2.1. Judicial Immunity

Pursuant to Article 181 of the Constitution, a judge may not be held criminally liable or deprived of liberty without the prior consent of a court specified by statute. They may not be detained or arrested, except when caught in the act of committing a crime, if their detention is necessary to ensure the proper course of proceedings.

Article 80 of the Act of July 27, 2001, on Common Courts Organization (i.e. of February 9, 2024; Journal of Laws of 2024, item 334) specifies the constitutional regulation, stating that:

> **§ 1.** A judge shall not be detained or held criminally liable without the permission of the competent disciplinary court. This restriction does not apply when a judge is caught in the act of committing an offence, provided that such detention is necessary to ensure the proper course of proceedings. Until a resolution permitting the judge to be held criminally liable has been issued, only urgent actions may be undertaken.
>
> **§ 2.** The president of the court of appeal with jurisdiction over the place of detention shall be immediately notified of the judge's detention. The president may order the immediate release of the detained judge and shall promptly inform the National Council of the Judiciary, the Minister of Justice, and the First President of the Supreme Court of the detention.

The essence of judicial immunity was aptly explained by the Supreme Court in its judgment of 4 April 2014 (II CSK 407/13, Legalis No. 1048606), stating that immunity

> as a public right, consists in granting judges a special, strictly defined right exempting them from generally binding legal obligations due to the need to ensure that the administration of justice and citizens perform their jurisdictional tasks free from any influence and pressure.

2.2. The Principle of the Presumption of Innocence

Pursuant to Article 42(3) of the Constitution, "Everyone shall be presumed innocent of a charge until his guilt is determined by the final judgment of a court.".

The constitutional presumption of innocence, which is absolute in nature, applies to "everyone", thus covering not only suspects or defendants, but also persons who are merely suspected of having committed a prohibited act, and is not limited to criminal proceedings in the strict sense, but also covers proceedings in cases of misdemeanors, disciplinary matters, vetting, etc. (see judgments of the Constitutional Tribunal of October 16, 1999, SK 11/99, OTK

1999, No. 7, item 158; and of January 29, 2002, K 19/01, OTK-A 2002, No. 1, item 1).

The directive is addressed to everyone, and in particular to public authorities (see judgments of the Constitutional Tribunal of May 16, 2000, P 1/99, OTK 2000, No. 4, item 111; and of February 27, 2001, K 22/00, OTK 2001, No. 3, item 48). It is rightly noted in the doctrine that until guilt is established by a final judgment, "it is not permissible to draw any legal consequences for the individual other than those resulting from the provisions governing repressive proceedings." It is also noted that "not only is every person subject to the principle of the presumption of innocence, but is also its addressee. This means that in the public sphere, it is unacceptable to express opinions suggesting that specific acts (not only in the criminal law sphere) have been committed by specific individuals. This is to protect the good name of the individual and to counteract social stigmatization before a final judgment is issued" (P. Karlik, T. Sroka, P. Wiliński, in *Konstytucja RP. Tom I. Komentarz do art. 1–86*, [*Constitution of the Republic of Poland. Volume I. Commentary on Articles 1–86]*, 1st ed., eds. M. Safjan, L. Bosek, 2016, commentary on Article 42, Legalis, thesis 1 and 2, point XV).

According to Article 130 § 1 of the Act on Common Courts Organization,

> If a judge is detained after being caught in the act of committing an intentional offence, or if, due to the nature of the act committed, the authority of the court or the vital interests of the service require the judge's immediate removal from professional duties, the president of the court or the Minister of Justice may order an immediate suspension from the performance of those duties until a resolution is issued by the disciplinary court. Such suspension may not exceed one month.

The material described in the Facts section, and above all the statement by the spokesperson for the Circuit Prosecutor's Office in Zamość, who said, "I can confirm that there was an incident involving a car collision. The person who was driving the vehicle while intoxicated was Jakub I." entitles us to claim that the principle of the presumption of innocence of judge Jakub Iwaniec has been violated. This principle also appears to have been violated by the order of Katarzyna Balcerzak, President of the District Court for Warsaw-Mokotów, as the judge was not caught in the act of committing an intentional crime, nor was it established that he had committed any prohibited act that would undermine the dignity of the court or the essential interests of the service, which would justify "removing" the judge from the performance of his official duties for a period of one month.

2.3. Immunity and Physical Inviolability of Judges

The Constitution, in Article 181, establishes judicial immunity as a constitutional guarantee and distinguishes between two elements of this institu-

tion: the first is the prohibition of "criminal liability", and the second is the prohibition of "deprivation of liberty" of a judge, in both cases "without the prior consent of a court specified in the Act". In its resolution of September 20, 2007, I KZP 21/07, Legalis No. 87066, the Supreme Court indicated that "deprivation of liberty" is not only temporary arrest or detention provided for in Chapter 27 of the Code of Criminal Procedure, but also any other actual deprivation of liberty based on the provisions of law.

It follows from both provisions in question (Article 181 of the Constitution and Article 80 of the Act on Common Courts Organization) that the detention of a judge without the prior consent of the competent court is possible if two conditions are met: firstly, the judge is caught in the act of committing a crime, and secondly, the detention is necessary to ensure the proper course of proceedings. In such a case, the president of the competent court of appeal is notified of the detention and may demand the immediate release of the detained person.

Detention *in flagrante delicto* occurs when the detaining officer

> immediately before taking action to detain the person, observes behavior on the part of the person being detained that fulfils the statutory criteria for a crime – and, as a result of this observation, takes action to detain the person (K. Szczucki, in *Konstytucja RP*..., op. cit., commentary on Article 181, Legalis).

According to media reports, judge Jakub Iwaniec was not detained in the act of committing a crime. Instead, he was detained and taken to hospital, where blood samples were taken from him three times. The next detention took place when the judge was asked to hand over his phone. This action was recorded and shows that the judge was surrounded by five to six officers, one of whom was holding him by the arm ("Prokuratura złamała prawo i ukradła telefon sędziego. Obrońca Jakuba Iwańca uderza w śledczych" [The prosecutor's office broke the law and stole the judge's phone. Jakub Iwaniec's defence lawyer attacks investigators]; https://wiadomosci.onet.pl/lublin/prokuratura-ukradla-telefon-sedziego-obronca-jakuba-iwanca-uderza-w-sledczych/7zvxkpn; accessed on October 17, 2025, at 6 p.m.).

From the above, it can be concluded that the judge was detained twice in violation of Article 181 of the Constitution and Article 80 of the Act on Common Courts Organization, as well as Article 5 of the *Convention for the Protection of Human Rights and Fundamental Freedoms*, drawn up in Rome on November 4, 1950, amended by Protocols Nos. 3, 5 and 8 and supplemented by Protocol No. 2 (Journal of Laws 1993, No. 61, item 284, hereinafter referred to as the ECHR).

Moreover, it cannot be ruled out that the actions of the officers conducting the search of the judge may have constituted an offence under Article 217 § 1 of the Criminal Code (violation of physical integrity).

2.4. Legal Professional Privilege

Pursuant to Article 225 § 3 of the Code of Criminal Procedure:

> If a defense counsel, or any other person from whom the surrender of objects is demanded or whose premises are being searched, declares that the writings or other documents discovered during the search relate to matters connected with the performance of the defense counsel's professional duties, the authority conducting the action shall leave those documents in the possession of that person, without examining their content or appearance.
>
> If such a declaration is made by a person who is not a defense counsel and it gives rise to doubts, the authority conducting the action shall forward the documents to the court in accordance with the requirements set out in § 1. After examining the documents, the court shall either return them [in sealed packaging – author's note], in whole or in part, to the person from whom they were taken, in accordance with the provisions of § 1, or issue an order for their seizure for the purposes of the proceedings.

The above rules apply accordingly to "the owner and user of a device containing IT data or an IT system, in relation to data stored on that device or system or on a medium at their disposal or in their use, including correspondence sent by e-mail" (Article 236a of the Code of Criminal Procedure).

The available factual material indicates that judge J. Iwaniec's defense counsel, Dr. Michał Skwarzyński, informed the supervising prosecutor that the judge's phone contained information covered by legal professional privilege, which in itself should have resulted in the withdrawal of the phone seizure or its immediate return. If such a statement raised doubts, the phone should have been placed in a so-called secure envelope and handed over to the court as the sole authorized entity to decide on the seized item. Meanwhile, in an interview, Dr. Skwarzyński stated that the phone had been handed over to the National Prosecutor's Office, rather than to the competent court in Krasnystaw, which consequently could not examine his complaint about the seizure of the item due to its absence. Thus, the actions of public officials violated not only the provisions of Article 225 § 3 of the Code of Criminal Procedure in conjunction with Article 236a of the same Code, but also Article 45(1) of the Constitution, which provides that "Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court," and Article 8(1)–(2) of the European Convention on Human Rights:

1. Everyone has the right to respect for their private and family life, their home, and their correspondence.
2. There shall be no interference by a public authority with the exercise of this right except where such interference is in accordance with the law and is necessary in a democratic society in the interests of national secu-

rity, public safety, or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The scale of possible violations is so serious that it has been met with public disapproval by the President of the Supreme Bar Council, Przemysław Rosati, who addressed a letter to the Prosecutor General, Waldemar Żurek. He pointed out that:

> Referring to the information provided to me by Mr. Skwarzyński, I asked for an explanation of this matter – both in terms of the circumstances he described and, above all, the need to protect attorney–client privilege. I do not tolerate such situations. They are unacceptable from the point of view of the fundamental rights guaranteed by the Constitution and international law, but above all [...] from the point of view of the rights and interests of citizens who, for various reasons, may have contact with the justice system. The lawyer-client privilege is sacred" (Szef Izby Adwokackiej kontra Prokurator Generalny Żurek: „Przywilej adwokata – klienta jest święty – złamano prawo" [Head of the Bar Association vs. Prosecutor General Żurek: "The lawyer-client privilege is sacred – the law has been broken"]; https://www.pogotowieflagowe.pl/aktualne/szef-izby-adwokackiej-kontra-prokurator-generalny-zurek-przywilej-adwokata-klienta-jest-swiety-zlamano-prawo/; accessed on October 19, 2025, at 3:39 p.m.).

3. Final Conclusions

The facts cited in this study and their legal assessment justify the conclusion that a number of irregularities occurred in the case of judge Jakub Iwaniec, which created a climate of threat to his personal rights and to the integrity of the legal order. This situation certainly does not foster an atmosphere conducive to the independent and impartial functioning of the judiciary. The scale and nature of the violations have created a situation in which, even if substantive proceedings are conducted and the situation is subsequently "clarified," this will not repair the damage done to judge Jakub Iwaniec's reputation (see the Constitutional Tribunal's judgment of November 28, 2007, K 39/07, OTK-A 2007, No. 10, item 129). The actions taken against him, in particular statements violating the principle of the presumption of innocence, are stigmatizing and cast him under a presumption of guilt for an intentional offence corresponding to the characteristics described in Article 178a § 1 of the Criminal Code (driving a motor vehicle while intoxicated).

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Unlawful Dismissal of Presidents and Deputy Presidents of Common Courts

On July 24, 2025, at the request of Prime Minister Donald Tusk, Polish President Andrzej Duda appointed Waldemar Żurek, a judge of the Circuit Court in Kraków, to the position of Minister of Justice. Before taking up this office, he was required to resign from his judicial position, which occurred on July 24, 2025. Thus, at the moment of his appointment to the constitutional office of minister – a representative of the executive branch – he was openly and evidently violating the provisions of the Polish Constitution by serving simultaneously as a judge of a common court. Waldemar Żurek had previously been a court spokesperson and a member of the National Council of the Judiciary for two terms. Prior to assuming the position of Minister of Justice and Prosecutor General, he had served as Deputy Director for Organizational Matters at the National School of Judiciary and Public Prosecution. As he himself declared in public statements, he received the offer to become Minister of Justice from Donald Tusk approximately 48 hours before his appointment. At that time, preliminary proceedings were still ongoing in a case concerning Żurek's alleged certification of falsehoods in judicial decisions, which the District Court for Katowice-Wschód had ordered the prosecutor's office to investigate. The investigation is being conducted by the Internal Affairs Department of the National Prosecutor's Office, now supervised by Żurek himself as Prosecutor General (file ref. 1001-14.Ds.3.2025).

After his appointment, on July 31, 2025, Minister Żurek announced that he had dismissed nine judges seconded to the Ministry of Justice and, more significantly, suspended forty-six presidents and deputy presidents of common courts from their official duties, initiating proceedings for their dismissal. When announcing these decisions at a press conference, Żurek staged what was widely described as a political spectacle, stigmatizing numerous judges who had performed their judicial and administrative duties with dedication for many years (https://www.youtube.com/watch?v=SqqWckAuSWE).

The procedure for dismissing a president or deputy president of a common court during their term of office is precisely regulated in Article 27 of the Act of July 21, 2001, on Common Courts Organization (Journal of Laws 2024, item 334, consolidated text). Pursuant to §1 of this provision, the president or deputy president of a court may be dismissed by the Minister of Justice

during their term of office only in the event of: gross or persistent failure to perform official duties; circumstances that make continued performance of the function incompatible with the good of the administration of justice; particularly low effectiveness in the performance of administrative supervision or the organization of work in the court or subordinate courts; or resignation from office. The dismissal of a president or deputy president must be preceded by consultation with the college of the competent court. The Minister of Justice presents the intention to dismiss, together with written justification, to the college for its opinion. When requesting this opinion, the minister may suspend the judge from performing their duties. However, a negative opinion of the college prevents dismissal. If the minister disagrees with the college's negative opinion, he may refer the matter to the National Council of the Judiciary (NCJ), together with justification. A negative opinion of the NCJ is binding on the minister if adopted by a two-thirds majority.

Since Waldemar Żurek's predecessor, Minister Adam Bodnar, had already applied this mechanism to dismiss and suspend court presidents on fictitious or politically motivated grounds, sometimes invoking alleged criminal charges, the Constitutional Tribunal, in its judgment of October 16, 2024 (K 2/24), found this procedure to be partially unconstitutional. To avoid criminal liability, Adam Bodnar invoked his senatorial immunity, and the Senate majority blocked the lifting of that immunity (https://www.bankier.pl/wiadomosc/Bodnar-zachowa-immunitet-Senat-nie-zgodzil-sie-na-jego-uchylenie-w-zwiazku-z-prywatnym-aktem-oskarzenia-8990623.html).

Despite this, Minister Żurek proceeded to suspend 46 judges serving as presidents and deputy presidents of courts. He explained that his decisions concerned individuals who had participated in promotion procedures before the "incorrectly" formed National Council of the Judiciary or had supported it by signing lists of candidates. In doing so, Żurek relied on extra-statutory criteria that blatantly violated Article 7 of the Polish Constitution ("Public authorities shall act on the basis of and within the limits of the law"). The minister justified these actions by arguing that the continued performance of their functions by these individuals was incompatible with the good of the administration of justice, which constitutes a peculiar legal anomaly.

The following persons were suspended from their official duties: Przemysław Jasinkiewicz – Deputy President of the Circuit Court in Gdańsk; Tomasz Jabłoński – President of the District Court Gdańsk-Południe in Gdańsk; Sylwester Świerdza – President of the District Court in Myszków; Tycjan Kotara – Deputy President of the District Court Katowice-Wschód in Katowice; Ewa Łąpińska – President of the Circuit Court in Sosnowiec; Katarzyna Czerwińska-Koral – Deputy President of the Circuit Court in Sosnowiec; Marta Wilk – President of the District Court in Czeladź; Ewa Barańska – Deputy President of the District Court in Dąbrowa Górnicza; Beata Włoch – President of the District Court in Jaworzno; Roman Glos – Deputy President of the District Court in Jaworzno; Małgorzata Hencel-Święczkowska – President of the

District Court in Sosnowiec; Rafał Sobczuk – President of the District Court in Chrzanów; Lucyna Podsadecka – Deputy President of the District Court in Myślenice; Mirosław Baranowski – President of the Circuit Court in Zamość; Andrzej Sak – Deputy President of the Circuit Court in Zamość; Barbara Gałka – Deputy President of the District Court in Biłgoraj; Adam Pisiewicz – President of the District Court in Hrubieszów; Tomasz Orzeł – Deputy President of the District Court in Janów Lubelski; Wojciech Osiński – President of the District Court in Krasnystaw; Arkadiusz Kopańko – Deputy President of the District Court in Krasnystaw; Krzysztof Pliszka – President of the District Court in Tomaszów Lubelski; Adam Abraszek – President of the District Court in Zamość; Adam Michalak – Deputy President of the District Court in Konin; Anna Filipiak – President of the District Court in Wągrowiec; Marek Gajdecki – Deputy President of the District Court in Jelenia Góra; Karolina Miklaszewska – President of the District Court in Wadowice; Mariusz Nawrocki – Deputy President of the District Court in Stargard; Piotr Szarek – President of the Circuit Court in Szczecin; Rafał Lila – Deputy President of the Circuit Court in Szczecin; Mirosław Skowyra – President of the District Court in Bartoszyce; Tomasz Cichocki – President of the District Court in Kętrzyn; Anna Kwoczek-Wadecka – President of the District Court in Braniewo; Marzena Madrak – President of the District Court in Ostróda; Ewa Knopisz-Motylewska – President of the District Court in Rypin; Piotr Korczyński – President of the District Court in Szydłowiec; Rafał Długajczyk – President of the District Court in Mława; Ewa Jarzyńska – President of the District Court in Sierpc; Paweł Jagodziński – President of the District Court in Śrem; Elżbieta Stefaniuk – Deputy President of the District Court for Warsaw Praga-Południe in Warsaw; Piotr Kula – Deputy President of the Circuit Court in Katowice; Maria Jolanta Häusler – President of the District Court in Olesno; Krzysztof Grajcar – Deputy President of the District Court in Olesno; Konrad Łaszkiewicz – Deputy President of the District Court in Zamość; Marcin Rowicki – Deputy President of the Circuit Court in Warsaw; Adam Woźniak – Deputy President of the District Court in Sosnowiec; Andrzej Lewandowski – Deputy President of the Circuit Court in Wrocław.

It should be emphasized that the suspension of court presidents and deputy presidents on the grounds of their appointment to judicial positions at the request of the National Council of the Judiciary – established under the Act of December 8, 2017, amending the *Act on the National Council of the Judiciary* and certain other acts (Journal of Laws of 2018, item 3) – or for giving written support to candidates for this body, that is, for exercising rights expressly provided by statute, is incompatible with the principles of a state governed by the rule of law. Such actions undermine both the principle of legality (Article 7 of the Constitution of the Republic of Poland) and the principle of trust in the state and its laws. Contrary to the political narrative of Minister of Justice Waldemar Żurek, the actions of the suspended presidents and deputy presidents – whether in supporting candidates for the National Council of the

Judiciary or participating in competition procedures before it – were fully compliant not only with domestic law but also with the *International Covenant on Civil and Political Rights*, ratified by Poland in 1977. According to the applicable legal framework, the effective dismissal of a president or deputy president of a court requires positive opinions from the relevant colleges of the courts. Furthermore, the Constitutional Tribunal's judgment of October 16, 2024 (ref. no. K 2/24) explicitly confirmed the necessity of the National Council of the Judiciary's participation in the procedure for suspending and dismissing presidents of common courts.

Minister Żurek ignored both the Constitutional Tribunal's ruling (K 2/24) and the negative opinions issued by the colleges of the courts, invoking Article 27 §1(2) of the Act on Common Courts Organization (Journal of Laws 2024, item 334, as amended). This provision states that dismissal may occur when "the continued performance of the function is incompatible with the good of the administration of justice." As justification for these decisions – clearly in breach of the law – the Minister relied on false or manipulated information reflecting purely his own political assessment. Where court colleges issued positive opinions supporting dismissals, Żurek accepted them; where they did not, he declared those opinions constitutionally invalid. Moreover, despite a clear statutory obligation, the Minister of Justice failed to seek the opinion of the National Council of the Judiciary. In total, he dismissed forty-five presidents and deputy presidents of courts. Only one procedure – concerning the president of a military court – remained incomplete due to the involvement of the Minister of National Defense.

The Minister of Justice, with the approval of Prime Minister Donald Tusk, committed a number of offences prosecuted *ex officio*, each falling under Article 231 §1 of the Criminal Code in conjunction with Article 218 §1 of the Criminal Code and Article 11 §2 of the Criminal Code. Despite the submission of formal reports, the politically supervised and controlled prosecutor's office has not initiated preparatory proceedings to hold Waldemar Żurek criminally liable. The Presidium of the National Council of the Judiciary expressed deep concern and strong opposition regarding the information on the unlawful dismissal of presidents and deputy presidents of common courts by the Minister of Justice, carried out in breach of applicable law, contrary to the positions of the judicial authorities, and in violation of the binding judgment of the Constitutional Tribunal. The actions of the Minister of Justice – consisting of the unilateral and arbitrary dismissal of court presidents despite the negative opinions of court colleges – constitute a gross violation of the principles of a democratic state governed by the rule of law, as guaranteed by the Constitution of the Republic of Poland. Under Article 178(1) of the Constitution, judges are subject only to the Constitution and statutes, and their independence is the foundation of an effective system of justice. Moreover, these dismissals were carried out without any consultation with the National Council of the Judiciary – a constitutional body established to safeguard the

independence of courts and judges (Article 186(1) of the Constitution) – and without following the procedures specified in the Act on Common Courts Organization. In 25 cases concerning suspended judges, the relevant colleges issued unambiguously negative opinions on the proposed dismissals, stressing their incompatibility with the interests of the administration of justice and the potential threat they posed to judicial independence. Ignoring these opinions not only constitutes a breach of law – since a negative opinion of the college represents an absolute legal obstacle to dismissal – but also undermines the authority of internal judicial self-governing bodies. Furthermore, these dismissals are in clear conflict with the Constitutional Tribunal's judgment of February 18, 2004 (K 12/03), which stated that:

> Given the constitutional position of the National Council of the Judiciary and its functions (as the body safeguarding the independence of courts and of judges), taking into account its objection (in the form of a negative opinion) in the procedure for dismissing a court president, in relation to circumstances concerning the occurrence of the "interests of the administration of justice" premise, should be regarded as an essential safeguard for the implementation of the principle of judicial independence.

The actions of the Minister of Justice not only disregard this ruling but also erode the authority of the Constitutional Tribunal as the guardian of constitutionality. Such conduct risks leading to systemic chaos in Poland's legal order and to the erosion of public trust in state institutions. The dismissed court presidents and deputy presidents have also been deprived of their right to a fair hearing, in violation of Article 45(1) of the Constitution and Article 6 of the *European Convention on Human Rights*.

The essence of Waldemar Żurek's unlawful actions was encapsulated in a recent statement by his superior, Prime Minister Donald Tusk, who remarked:

For two years, in this most spectacular place, which is the Ministry of Justice, we had a minister of whom I am proud. Adam Bodnar truly believed that it was possible to restore legal civilization in Poland using civilized methods, and it turned out that this was not true" (https://dorzeczy.pl/opinie/794214/to-dlatego-tusk-postawil-na-zurka-przestal-to-ukrywac.html).

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Manual Control of the Justice System: Minister of Justice Waldemar Żurek's Regulation of September 29, 2025, as a Breach of the Principle of Random Case Assignment and the Right to a Fair Trial

The regulation issued by Minister of Justice Waldemar Żurek on September 29, 2025, amending the *Rules of Procedure of Common Courts*, constitutes a flagrant breach of the constitutional hierarchy of sources of law and the guarantees of judicial independence. Acting through a secondary legislative act, the Minister unlawfully interfered with the statutory provisions of Article 47a of the Act on Common Courts Organization, thereby circumventing the powers of the legislature and violating Articles 10, 175(1), 176(2), and 178(1) of the Constitution of the Republic of Poland.

The new provisions restrict the principle of random case assignment by granting department heads and court presidents the discretion to manually designate adjudicating panels, transfer cases between judges without statutory justification, and alter the order of incoming cases. These mechanisms create a systemic risk of manipulation in the formation of adjudicating panels and, consequently, a threat to citizens' right to an independent and impartial court, guaranteed under Article 45 of the Constitution of the Republic of Poland, Article 19(1) of the Treaty on European Union, and Article 47 of the Charter of Fundamental Rights of the European Union.

In practice, this regulation enables administrative interference in judicial processes – from channeling commercial cases to "preferred" judges to influencing outcomes in criminal, family, or labor proceedings. The reinstatement of manual case assignment recalls the mechanisms of the communist period, when the judiciary functioned as an instrument of political power. As such, Minister Żurek's regulation not only violates constitutional principles of judicial independence and equality before the law but also erodes public trust in the justice system and undermines the foundations of the rule of law.

The principle of random case assignment is a cornerstone of the modern model of an independent judiciary. It is one of the key institutional safeguards against administrative or political influence on judicial proceedings. Its purpose is to ensure that no administrative authority or court official can decide

which judge will hear a specific case. This mechanism serves as a procedural guarantee of the right to a fair trial, enshrined in Article 45(1) of the Constitution, Article 19(1), second paragraph, of the Treaty on European Union, and Article 47 of the Charter of Fundamental Rights of the European Union. Its dismantling thus strikes at the very pillars of judicial impartiality and independence.

The randomness of case allocation is therefore not merely an organizational principle but a constitutional one. It directly implements the rule of law (Article 2 of the Constitution) and judicial independence (Article 178(1)). The Court of Justice of the European Union, in its judgment of November 14, 2024 (C-197/23, *S. S.A. v C. sp. z o.o.*), held that EU law precludes national provisions that prevent a court from verifying whether the panel of judges was constituted in accordance with the applicable rules on case allocation. Consequently, a national court is obliged to disregard provisions that permit the manual or arbitrary formation of adjudicating panels.

Against this background, the regulation of Minister Żurek of September 29, 2025, must be viewed as a regression to the pre-2017 model of case allocation, which weakens guarantees of transparency, impartiality, and fairness in judicial proceedings.

Until the amendment of the Act on Common Courts Organization of July 12, 2017, (Journal of Laws of 2017, item 1452), the allocation of cases in common courts depended entirely on administrative discretion exercised by department heads and court presidents. The absence of a unified IT system meant that the distribution of cases varied from court to court, often based on opaque or arbitrary internal practices. This discretionary system was repeatedly criticized by judicial associations, professional legal bodies, and European institutions as corruptible and non-transparent.

To address these deficiencies, the 2017 reform introduced a fundamental shift: the legislator codified the principle of random case assignment as a statutory requirement. The addition of Article 47a to the Act on Common Courts Organization was a landmark change. For the first time, it established that case allocation must be random, ensure an even distribution of workload among judges, and operate under transparent and verifiable rules – thereby securing an objective, depoliticized mechanism for the administration of justice.

The amendment to the Act on Common Courts Organization introduced into the Polish legal order a new Article 47a, establishing the principle of random case assignment to judges. This reform responded to long-standing postulates from the judicial community and reflected the requirements of transparency arising from the constitutional principle of the rule of law as well as European standards of judicial independence. The legislator's objective was to create a mechanism that would minimize the influence of non-merit-based or extraneous factors on the composition of adjudicating panels and guarantee citizens the objective right to an impartial court.

To implement these goals, the *Random Case Assignment System* (*System Losowego Przydziału Spraw*, SLPS) was established – a centralized IT module designed to allocate cases according to objective criteria, such as the number of cases already assigned to a given judge, the type and category of cases, and the judge's workload and specialization. Each draw is automatically recorded, which ensures verifiability and transparency – not only for administrative oversight but, crucially, as a safeguard for the parties to the proceedings. The public and auditable nature of the SLPS ensures transparency in the assignment process and strengthens citizens' trust in the justice system. The SLPS has successfully achieved the legislator's principal aim: it has reduced administrative discretion and arbitrariness in the allocation of cases. From both a constitutional and European perspective, it has strengthened the guarantees of judicial impartiality and the equality of citizens before the law. The principle of random assignment has been unequivocally endorsed in judicial rulings and in the opinions of European institutions as a necessary safeguard for judicial independence and fairness.

From a practical standpoint, the system not only increased public confidence in the judiciary but also protected judges themselves from external pressure and from suspicions of bias or favoritism. The introduction of Article 47a therefore created an institutional barrier to interference in the composition of adjudicating panels, reinforcing the constitutional principle of judicial independence enshrined in Article 173 of the Constitution of the Republic of Poland.

The random case assignment system became the foundation for the organization of work in common courts and was recognized as an essential component of the constitutional guarantee of the right to a fair trial. The use of the SLPS has significantly limited the possibility of arbitrary intervention in the composition of the bench and enhanced the transparency and predictability of judicial proceedings.

A key feature of the SLPS is its external transparency: all case allocation actions are documented and may be subject to verification in internal or administrative reviews. Thus, the principle of randomness functions not merely as a technical or procedural tool but as a substantive legal guarantee of impartial adjudication and equality of the parties. In practice, it has effectively reduced the risk of informal influence on judicial decisions and strengthened public confidence in the fairness of court proceedings. Over time, this model of random case assignment has become embedded in Polish judicial practice as an integral element of the right to a fair and impartial trial.

It is therefore worth emphasizing that the introduction of the random case assignment system in 2017 was of fundamental significance: it implemented the constitutional principle of a court "established by law" (Article 176(2) of the Constitution of the Republic of Poland) and the principle of judicial independence (Article 178(1)).

The statutory character of these guarantees means that no subordinate legal act – including a regulation of Minister of Justice Waldemar Żurek – may

alter the manner of their implementation. Any attempt to do so, as exemplified by the Minister's regulation of September 29, 2025, constitutes a breach of the hierarchy of sources of law and an encroachment on the powers of the legislature, contrary to Article 10 of the Constitution.

The new regulation on the *Rules of Procedure of Common Courts* introduces provisions that, in practice, abolish the principle of random case assignment, allowing presiding judges (or their deputies) and court presidents to determine adjudicating panels manually. Contrary to Article 47a of the Act on Common Courts Organization, presiding judges are empowered to decide not only on the composition of the panel but also to transfer cases between judges, alter the order of receipt, and even suspend assignments. In effect, this allows a presiding judge to shape the composition of a panel according to preference, thereby influencing the outcome of proceedings. Such mechanisms create the possibility of arbitrary control over court cases and directly violate the constitutional principles of judicial independence and impartiality.

From the perspective of the hierarchy of sources of law, the regulation of Minister Żurek also infringes the principle that executive acts must conform to statutes. Article 47a clearly stipulates random case assignment; the minister therefore cannot, through a regulation, replace the statutory model with one that limits randomness to a single member of the adjudicating panel. Statutory provisions cannot be modified or repealed by regulation, and the issuance of a regulation contrary to statute constitutes an overreach of delegated legislative authority, in breach of Article 92 of the Constitution. Instead of safeguarding citizens from abuse, the regulation opens the door to instrumental control over judicial processes, transforming courts from guarantors of justice into components of administrative management.

This mechanism is also in clear conflict with the principle of judicial impartiality, as set forth in Article 45(1) of the Constitution and Article 6(1) of the *European Convention on Human Rights*, and with the case law of the Court of Justice of the European Union (CJEU), which recognizes random case allocation as a safeguard of judicial independence. The regulation raises serious concerns under European Union law. In light of the CJEU judgment of November 14, 2024 (C-197/23, *S. S.A. v C. sp. z o.o.*), any national rule that prevents a court from verifying whether cases have been allocated according to transparent and random procedures contravenes Article 19(1) of the Treaty on European Union and Article 47 of the *Charter of Fundamental Rights of the European Union*. By transferring the power to determine the composition of adjudicating panels to department heads, the regulation of Minister Żurek directly violates this standard.

Contrary to the Ministry of Justice's public statements, the amendment does not "rationalize" the work of the courts but instead represents a regression – a reversion from transparency and impartiality to administrative discretion. The regulation of September 29, 2025, forms part of a broader process of erosion of procedural guarantees, shifting the system from a model

of institutional impartiality toward one of bureaucratic control. This change risks the instrumentalization of judicial panels and marks an institutional regression of nearly a decade, undoing the reforms introduced in 2017.

The issuance of the Minister's regulation of September 29, 2025, which effectively abolishes the principle of random case assignment in common courts, has multifaceted legal implications under both domestic and European law. It constitutes a departure from statutory and constitutional principles governing the judiciary and infringes fundamental guarantees of the right to a court, judicial independence, and a fair trial.

The primary constitutional objection concerns the breach of Article 92(1), which requires that regulations be issued on the basis of a specific statutory provision and for the purpose of implementing the statute. By limiting the randomness of case assignment to a single judge (rapporteur) and granting presiding judges discretion over the rest of the panel's composition, the Minister exceeded the constitutional limits of executive authority. A court whose composition is determined at the discretion of a department head cannot be regarded as a "court established by law" within the meaning of the case law of both the Constitutional Tribunal and the European Court of Human Rights. The right to a court encompasses not only access to judicial proceedings but also the guarantee that a case will be heard by a panel constituted in accordance with law, through transparent and non-arbitrary procedures. Random case assignment serves as a constitutional safeguard against internal administrative interference in judicial composition.

The regulation issued by Minister Żurek dismantles this safeguard, reinstating discretionary control over panel formation and allowing court managers to influence which judges adjudicate specific cases. This solution contravenes the constitutional principle of the independence of courts (Article 173 of the Constitution) and the independence of judges (Article 178(1)), both of which presuppose the elimination of hierarchical subordination within the judiciary.

The regulation of Minister of Justice Waldemar Żurek also stands in clear conflict with European Union law, particularly with Article 19(1), second paragraph, of the Treaty on European Union and Article 47 of the Charter of Fundamental Rights of the European Union. In light of the judgment of the Court of Justice of the European Union of November 14, 2024, in case C-197/23 (*S. S.A. v. C. sp. z o.o.*), EU law precludes national provisions that prevent a court from verifying whether the rules governing the allocation of cases and the appointment of adjudicating panels have been observed.

Since the new regulation allows department heads to manually select members of adjudicating panels, it effectively makes it impossible to verify whether a panel has been constituted in accordance with the principles of randomness and equal workload. It should be recalled that the CJEU regards the transparency of case allocation not as a mere organizational matter but as a structural element of judicial independence. Therefore, the regulation

issued by Minister Żurek violates fundamental EU standards that Poland, as a Member State, is obliged to uphold.

If an adjudicating panel is constituted in a manner contrary to law, i.e. in violation of Article 47a of the Act on Common Courts Organization, this provides grounds for challenging the validity of the rulings issued by such panels. From a systemic perspective, this results in the erosion of the stability of judicial decisions and consequently undermines the principle of legal certainty and citizens' trust in the state.

Manipulating the allocation of cases is not merely a procedural or technical issue – it strikes at the very essence of the rule of law. In a judicial system where a court president or department head can influence who adjudicates a particular case, citizens lose their sense of equality before the law and legal security. For parties to commercial, criminal, family, or labour proceedings, this means that their cases may be decided not by an impartial judge, but by an individual selected according to political or social preferences. Such a model is contrary to the constitutional principle of procedural justice and the European standards enshrined in Article 6 of the *European Convention on Human Rights* and Article 47 of the *Charter of Fundamental Rights of the European Union*.

An analysis of the regulation of Minister of Justice Waldemar Żurek of September 29, 2025, leads to the unequivocal conclusion that this act represents a regression in the constitutional guarantees of judicial independence and violates the principles of law-making derived from both the Polish Constitution and European Union law. The solutions it introduces return the Polish justice system to its pre-2017 state, dismantling one of the key mechanisms ensuring transparency and impartiality in the allocation of cases to judges. Accordingly, the regulation must be assessed as an act that undermines the foundations of the justice system and contravenes European Union legal standards. The reintroduction of discretionary case assignment poses a systemic threat to the right to a fair trial. Symbolically and legally, it constitutes a step backwards from the standards Poland itself adopted after 2017 in response to the expectations of its citizens and the European community.

In conclusion, the regulation of Minister of Justice Waldemar Żurek is incompatible with the Constitution of the Republic of Poland, European Union law, and the principles of the rule of law. Its continued application will destabilize the constitutional guarantees of an independent judiciary and mark another stage in the institutional subordination of the courts to the executive branch.

Konrad Wytrykowski
(Doctor of Law, retired judge of the Supreme Court)

Prosecutor Żurek Threatens Supreme Court Judges

1. Threats by Waldemar Żurek

On September 12, 2025, Prosecutor General Waldemar Żurek issued Order No. 30/25 establishing a "*Team of Prosecutors at the National Prosecutor's Office for the prevention of negative consequences of participation in criminal, civil and administrative court proceedings by judges appointed to office in a nomination procedure conducted by the National Council of the Judiciary, formed in accordance with the provisions of the Act of December 8, 2017, amending the Act on the National Council of the Judiciary.*"

According to official documents, the Team's tasks include:

- collecting and analyzing information on the composition of the Supreme Court and the Supreme Administrative Court in cases adjudicated by judges appointed through the post-2017 nomination procedure before the National Council of the Judiciary, and assessing the potential negative consequences of such rulings for both public and private interests;
- participating in the meetings and hearings referred to in §1;
- coordinating, in cooperation with the relevant departments of the National Prosecutor's Office, the participation of prosecutors in those proceedings;
- initiating appropriate measures aimed at removing the negative effects of rulings issued by the judges concerned [...];
- preparing and consulting pleadings, motions, legal analyses, opinions and other documents within the scope of the Team's competence;
- cooperating with the General Prosecutor's Office in activities intended to prevent or eliminate financial losses to the State Treasury arising from rulings issued by *judges appointed to office in a nomination procedure conducted by the National Council of the Judiciary, formed in accordance with the provisions of the Act of December 8, 2017, amending the Act on the National Council of the Judiciary and certain other acts*;
- drafting proposals for motions of the Prosecutor General to initiate legislative action in matters and regulations falling within the competence of the Team;
- performing other tasks assigned by the Prosecutor General.

The Team consists of four prosecutors and is headed by Agnieszka Welenc, a prosecutor from the Regional Prosecutor's Office in Kraków, delegated to the National Prosecutor's Office. The Team is required to report to the Prosecutor General on its activities at least once a month (www.gov.pl/web/prokuratura-krajowa/zespol-do-spraw-zapobiegania-negatywnym-skutkom-orzeczen-wydanych-przez-sedziow-nominowanych-w-procedurze-z-udzialem-krajowej-rady-sadownictwa-ukształtowanej-po-2017-roku).

In September 2025, acting as Prosecutor General, Waldemar Żurek issued letters to Supreme Court judges appointed at the request of the National Council of the Judiciary operating since May 2018, ordering them to cease performing their judicial duties. He characterized their judicial activity as unlawful. In his letters, he referred to them as *"persons performing judicial duties in the Supreme Court as a result of a flawed nomination procedure conducted with the participation of the National Council of the Judiciary formed in violation of constitutional norms, in a manner allowing the legislative and executive branches to influence its actions."*

According to the Prosecutor General,

> the creation of special chambers within the Supreme Court and the appointment of judges in a procedure failing to meet constitutional requirements, due to the participation of the National Council of the Judiciary formed after 2017, have resulted in a fundamental defect in the administration of justice by these chambers and the panels operating within them.

He further asserted that the establishment of the Chamber of Extraordinary Control and Public Affairs and the Disciplinary Chamber of the Supreme Court introduced bodies that violate the right to a court established by law, and that the rulings issued by these chambers have led to numerous complaints to the European Court of Human Rights. As Żurek claimed, the judgments of the ECtHR confirming violations of the right to an impartial court have obliged Poland to pay compensation amounting to millions of zlotys, with around one thousand additional complaints currently pending.

> Bearing in mind the negative effects of the activities of the Chamber of Extraordinary Control and Public Affairs of the Supreme Court – in particular the adjudication by panels that do not guarantee an independent and impartial court and the growing financial burden on society – Prosecutor General Waldemar Żurek called upon those performing judicial functions in this Chamber to cease doing so. At the same time, he indicated the possibility for the Polish State to seek remedies for the amounts paid as compensation from those whose actions led to such payments. (www.gov.pl/web/prokuratura-krajowa/dzialania-prokuratora-generalnego-wobec-naruszen-prawa-w-sadzie-najwyzszym)

In subsequent statements, Żurek maintained that

> the financial liabilities incurred by the State as a result of rulings issued by panels failing to meet national and international legal standards may justify **recourse claims** against the judges who took part in them.
>
> The Prosecutor General also reminds that the administration of justice by persons appointed at the request of the National Council of the Judiciary formed after 2017, which does not meet the criteria for a constitutional body, may in any case be **subject to criminal law assessment**. (www.gov.pl/web/prokuratura-krajowa/kolejne-dzialania-prokuratora-generalnego-zwiazane-z-pracami-zespolu-ds-zapobiegania-negatywnym-skutkom-orzeczen-wydanych-przez-sedziow-nominowanych-w-procedurze-z-udzialem-krajowej-rady-sadownictwa-ukształtowanej-po-2017-roku)

Subsequently, Prosecutor General Waldemar Żurek addressed a letter to Wiesław Kozielewicz, President of the Professional Responsibility Chamber of the Supreme Court, requesting that the judges listed in his communication be excluded from performing judicial duties in that Chamber. In support of this request, Żurek presented legal arguments and referred to the case law of the European Court of Human Rights concerning complaints against the judicial activities of these individuals. He also specified the amounts of compensation paid by the Polish State to complainants, implying that he would pursue recourse claims against the judges involved.

The Prosecutor General emphasized that around one thousand similar cases are still pending before the ECtHR and warned that the continued exercise of judicial functions by these judges may result in further financial liabilities for the State Treasury and, ultimately, for Polish taxpayers. (www.gov.pl/web/prokuratura-krajowa/pismo-prokuratora-generalnego-do-prezesa-izby-odpowiedzialnosci-zawodowej-sadu-najwyzszego-w-sprawie-wykluczenia-sedziow-od-podejmowania-czynnosci-orzeczniczych)

2. Reaction of Judges

In response to Waldemar Żurek's actions, on October 2, 2025, the First President of the Supreme Court, Dr. Małgorzata Manowska, filed a report alleging criminal activity by Żurek in the form of unlawful threats intended to influence the official activities of the Supreme Court.

She stated that

> the attempt to portray persons duly appointed to the office of Supreme Court judges as *de facto* usurpers of this function is not only an unjustified attack on the authority of the Supreme Court, but must also be regarded as the deliberate creation of a false state of affairs, aimed at provoking a reaction from law enforcement authorities and delegitimizing the rulings issued by the entire Supreme Court.

It is beyond doubt that the letters addressed to Supreme Court judges contain elements constituting unlawful threats within the meaning of criminal law and are intended to influence the official functioning of the Court. The mere announcement of the initiation of criminal proceedings satisfies this condition. The letters explicitly predict future indictments against the judges and suggest that their activities violate the Polish Constitution and EU law, thereby damaging their reputation and professional authority. The recipients of the letters thus faced a real threat of criminal liability should they fail to comply with the Prosecutor General's demands.

The threat of criminal prosecution is entirely unfounded and purely instrumental: it serves not to protect the law, but to apply pressure and intimidate judges into abandoning their judicial duties. Its purpose is therefore to influence the functioning of the Supreme Court. The author of the letters, by suggesting the possibility of initiating unjustified criminal proceedings against judges for actions taken in the exercise of their duties, is employing unlawful threats to interfere with the official functioning of the Court. These circumstances meet all the criteria of the offences set out in Article 232 § 1 of the Criminal Code. Given that the recipients are Supreme Court judges – members of a constitutional body as referred to in Articles 175(1) and 183(1)–(2) of the Constitution of the Republic of Poland – the use of unlawful threats to influence their official activities also fulfils the elements of the offence under Article 128 § 3 of the Criminal Code. The fact that Waldemar Żurek holds the office of Prosecutor General reinforces the seriousness of the threats and the possibility of their execution through the machinery of the state, giving rise to legitimate fears that it could be carried out. Such an unprecedented attack by a government official on the highest judicial authority in Poland must be met with an appropriate prosecutorial response consistent with the principle of independence.

Sending threatening letters to Supreme Court judges concerning their participation in judicial proceedings can only be interpreted as an attempt to exert political pressure on the judiciary to achieve specific goals. Such conduct undermines constitutionally guaranteed judicial independence and the principle of the separation of powers, both of which are fundamental to a democratic state governed by the rule of law. Particularly alarming are the references in the letters to possible recourse claims by the State Treasury against judges. Threatening judges with financial consequences for carrying out their constitutional and statutory duties constitutes a grave form of coercion. The announcement of recourse actions against judges, implying their personal financial liability for decisions made in the course of adjudication, falls far outside the bounds of permissible legal criticism. It is an instrument of intimidation designed to produce a chilling effect: judges, fearing financial ruin, may refrain from exercising their judicial independence or limit their decisions to avoid personal risk. [...] Such conduct undermines the very essence of judicial independence, which rests on the freedom to adjudicate according to the law and one's conscience without fear of retribution. If judges had to consider the possibility of personal civil liability each time they ruled,

> the inevitable result would be diminished courage, procedural paralysis, and submission to external expectations. The administration of justice would thus be guided not by law or justice, but by fear of personal consequences. This type of threat – especially when directed at Supreme Court judges whose decisions ensure the uniformity of case law and stability of the legal system – has systemic implications. It signals to all judges that certain rulings may lead to personal reprisals, fostering self-censorship and eroding the independence of the judiciary, a principle enshrined in Article 173 of the Constitution of the Republic of Poland. While the law allows for disciplinary or criminal responsibility of judges for specific acts committed in the course of their duties, it does not provide for personal liability for the substance of judicial decisions. Attempting to impose such liability through threats circumvents constitutional guarantees and constitutes unlawful coercion. Consequently, threats of financial liability cannot be viewed as neutral procedural acts or legitimate criticism; they are attempts to intimidate judges, producing a chilling effect that threatens the proper functioning of the justice system and infringes on the right of the parties to a fair trial before an independent court, guaranteed by Article 45 of the Constitution and Article 6 of the European Convention on Human Rights. The inclusion of such threats in official correspondence to named Supreme Court judges, together with public statements by politicians about bringing recourse claims against judges, further supports the assessment that these actions meet the criteria of unlawful threats. (www.sn.pl/aktualnosci/SitePages/Wydarzenia.aspx?ItemSID=1134-0dc69815-3ade-42fa-bbb8-549c3c6969c5&ListName=Wydarzenia)

On October 8, 2025, the Supreme Court College also responded to Żurek's actions. In resolutions adopted that day, the College expressed strong opposition to the unlawful actions of the Prosecutor General, who had sent letters urging Supreme Court judges to violate their oath of office by refusing to perform their judicial duties. The College condemned the threats to initiate criminal proceedings and impose financial penalties on judges for fulfilling their constitutional roles, calling for these actions to be investigated by competent authorities. (www.sn.pl/aktualnosci/SitePages/Wydarzenia.aspx?ItemSID=1135-0dc69815-3ade-42fa-bbb8-549c3c6969c5&ListName=Wydarzenia)

The presidents of the Supreme Court's individual chambers also issued responses. Zbigniew Kapiński, President of the Criminal Chamber, described Żurek's letter as "inappropriate in its wording," noting that "its author, as a representative of the executive branch, which appears before the Supreme Court either directly or through subordinate prosecutors, attempts to unlawfully and extrajudicially influence the allocation of cases in the Criminal Chamber and the composition of adjudicating panels, and thereby the outcomes of Supreme Court proceedings."

Joanna Misztal-Konecka, President of the Civil Chamber, and Krzysztof Wiak, President of the Chamber of Extraordinary Control and Public Affairs, issued similar statements. President Wiak condemned Żurek's "announcements of unlawful actions violating the independence of the

judiciary, the independence of judges, and the principle of separation of powers." He found "equally astonishing and disturbing" the threats of financial claims against judges based on recourse. According to Wiak, Żurek's "threats," combined with his call to cease judicial activity, amount to "a blatant and arrogant attempt by the executive to interfere with the judiciary," representing "an attack on the foundations of the state's legal order." He added that "such forms of pressure on judges who perform their duties in accordance with the Constitution and their oath of office, combined with public statements by the Prosecutor General announcing his intention to act in defiance of the constitutional and statutory order, inevitably evoke associations with the times of the People's Republic of Poland." (www.wpolityce.pl/polityka/743341-prezesi-dwoch-izb-sn-protestuja-przeciw-dzialaniom-zurka).

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Attack on the National School of Judiciary and Public Prosecution

The National School of Judiciary and Public Prosecution (**KSSiP**) was established under the Act of January 23, 2009, on the National School of Judiciary and Public Prosecution (Journal of Laws of 2022, item 217, as amended) as a legal entity supervised by the Minister of Justice and began operating on March 4, 2009. It is the only central institution responsible for the initial and continuing training of personnel of the common courts and public prosecutor's offices in Poland.

The KSSiP is a decentralized public institution whose task is to educate and train the staff of the judiciary and prosecution services. The constitutional principle of decentralization of public authority means that an entity entrusted with the performance of specific public tasks does so in a relatively autonomous and independent manner. This also means that the supervisory authority, in relation to the KSSiP – the Minister of Justice – may interfere in the activities of the School and its bodies only in situations strictly defined by law, and any interpretation extending these powers is prohibited.

One of the bodies of the KSSiP is the Program Board, whose tasks include: outlining the general directions of activity for the National School; drafting annual training schedules of the KSSiP; drafting curricula for initial legal training; expressing opinions on candidates for lecturers for the KSSiP; expressing opinion on annual publishing targets for the KSSiP; passing organizational regulations of the Board; and expressing opinion on all important issues related with activities of the KSSiP.

The Program Board consists of the Director of the National School and no more than 12 members appointed by the Minister of Justice, including one member assigned by the President of the Republic of Poland, one by the National Council of Judiciary, one by the National Council of Prosecutors by the General Prosecutor's Office, one by the First President of the Supreme Court and one by the First President of the Supreme Administrative Court, two members assigned by the Minister of Justice among judges, two members assigned by the General Prosecutor among prosecutors and three members assigned by higher education institutions providing legal education. The term of office of Board members is 4 years. Only judges, prosecutors, persons holding the academic title of professor or the academic degree of habilitated doctor of law, retired judges or prosecutors may be members of the Council.

The manner of appointing Board members is specified in Article 6(1) of the Act on the National School of Judiciary and Public Prosecution. It is a positive and creative competence, separate and independent from Article 8(1) of the Act on the National School of Judiciary and Public Prosecution, which specifies the grounds for dismissing a Board member. Once the order appointing the Board has been issued, this competence is exercised and the members of the Board are appointed for a four-year term. This means that once the appointment to the Board has been made by way of an order, it may either cease as a result of the death of a Board member, or a Board member may be dismissed in a separate, individual procedure specified in Article 8(1) of the Act on the National School of Judiciary and Public Prosecution, after certain conditions have been met. Only after the Minister of Justice has exercised his power to dismiss a Board member, as specified in Article 8(1) of the Act, does the Minister's power to supplement the composition of the Board, as specified in Article 9 of the Act, come into play. This system is clear and consistent.

Contrary to the content of these clear provisions, the Minister of Justice, by orders of August 1, 2025, September 8, 2025 and October 2, 2025, amended the previous order on the appointment of the Program Board of the National School of Judiciary and Public Prosecution (Journal of Laws of the Ministry of Justice Items 152, 173 and 187), attempting to dismiss the members of the Board in an extra-legal manner and appoint other persons in their place.

It should be recognized that the members of the Board listed in these orders were not effectively dismissed, as the appropriate, lawful procedure for their dismissal was not followed. The fact that the Minister appointed additional members to the Board leads to the inevitable conclusion that persons were appointed to positions already occupied, and that the Board currently has more than 12 members, which is therefore inconsistent with the Act on the National School of Judiciary and Public Prosecution.

Even if we assume that, in a manner unknown to the Act, the Program Board of the National School of Judiciary and Public Prosecution unlawfully but effectively removed the indicated members, the composition of the Program Board still does not comply with the law, as it lacks a member appointed by the First President of the Supreme Court and a member appointed by the National Council of the Judiciary, which means that for this reason too, the composition of the Program Board is inconsistent with the Act on the National School of Judiciary and Public Prosecution.

The interference of the Minister of Justice in the composition of the KSSiP body, which has no basis in law, violates the independence and autonomy of this institution, and as a result of the actions taken by the Minister of Justice, the Program Board has now lost its ability to perform its tasks, including, above all, to adopt resolutions that do not violate the law for procedural reasons.

Acceptance of the current state of affairs sets a dangerous precedent – not only will every future Minister of Justice be able to freely change the compo-

sition of the Program Board, but also, based on the same (illegal) logic, freely dismiss the Director of the National School of Judiciary and Public Prosecution, which completely undermines the guarantees of independence associated with the term of office of the School's bodies and inevitably leads to the politicization of this institution..

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Prawnicy dla Polski

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

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

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

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