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National Sovereignty vs. Liberal Juristocracy. The Construction of a Liberal Regime of Lawlessness and "Militant Democracy" in the Sphere of Justice — The Case of Poland After 2023[1]

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1. Introduction

Since the political transformations of 1989, the centers of political, economic, and media power in Poland have remained largely in the hands of left-liberal circles, despite the conservative and national character of the majority of Polish society. One of the key areas completely dominated by leftist, liberal, and post-communist elites has been the judiciary, which in Poland has long functioned according to the textbook model of *juristocracy*.

A significant political shift occurred in 2015, when the conservative camp obtained both social and legal legitimacy to carry out systemic reforms, first winning the presidential election and then securing an absolute majority in both chambers of Parliament. During eight years of United Right government, numerous reforms were implemented in the social, economic, and institutional spheres. In many areas, however, the necessary changes were either only partially undertaken or never initiated at all. The greatest resistance from the left-liberal establishment arose in response to the conservative government's – partially successful – attempt to reform the broadly understood system of justice.

In the autumn of 2023, after two consecutive conservative terms, a left-liberal coalition gained a parliamentary majority sufficient to form a government. It was determined to reverse all major changes introduced between 2015 and 2023, particularly in the area of justice. The purpose of this "return to the past" was to deprive citizens of any influence over the functioning of the judiciary and to restore that influence to a narrow, left-liberal judicial

[1] Text published at the Institute of World Politics: Marcin Romanowski, *National Sovereignty vs. Liberal Juristocracy. The Construction of a Liberal Regime of Lawlessness and "Militant Democracy" in the Sphere of Justice — The Case of Poland After 2023*, https://www.iwp.edu/articles/2025/11/06/national-sovereignty-vs-liberal-juristocracy/ (accessed: 6 November 2025).

oligarchy. All of this was intended to ensure that, regardless of election results, a society that is inherently conservative would be prevented from changing the direction of state policy—through the authorities it had freely chosen—in accordance with a conservative, national, or Christian agenda and in line with the interests of the state as a whole. It was the power of the juristocracy, devoid of any democratic legitimacy, that served to restrict the will of the people. In addition, this juristocracy engaged in a progressive reinterpretation—or rather, destruction—of the traditional meaning of legal concepts, thereby arrogating to itself lawmaking powers and, at times, even the constituent power (*pouvoir constituant*). It carried out these actions entirely without oversight, all under the convenient pretense of "judicial interpretation" supposedly performed by an *independent*, *impartial*, and *autonomous* court—criticism of which was treated almost as a crime against the state and the constitution.

Poland has, since 2023, become a unique testing ground for the dismantling of state institutions in a society that is conservative and traditional by its very nature. This process has been unfolding within a framework of lawlessness, carried out under the banner of "militant democracy." It began under the conditions of a liberal dictatorship of the minority. In 2023, the five-year term of President Andrzej Duda—representing the conservative camp—was still in effect. The president retained his key constitutional powers, including the right to nominate judges and the suspensive veto in the legislative process, which may only be overridden by a three-fifths majority in the lower house of Parliament (the Sejm). Since the left-liberal coalition neither possessed nor presently possesses such a majority, it has, in fact, lacked the legal legitimacy to govern *par excellence*—holding, at most, a mandate for day-to-day administration.

The weakness of the left-liberal coalition was further deepened by the victory of the conservative candidate Karol Nawrocki and the defeat of the liberal candidate Rafał Trzaskowski in the presidential election of June 2025. In addition to making explicit and undeniable the coalition's lack of legal authority to introduce fundamental changes, this outcome also undermined its social legitimacy to exercise power.

Nevertheless, despite lacking a sufficient parliamentary majority, the government of Donald Tusk, formed on 13 December 2023, immediately embarked on a series of actions in open violation of the Constitution, statutory law, rulings of the Constitutional Court, the Supreme Court, and decisions of other constitutional bodies. The state and its coercive apparatus were transformed into instruments of political repression against the opposition and dissenters, serving the purpose of restoring and consolidating full control for left-liberal elites—elites that form part of Europe's globalist establishment and, in Poland's case, are still deeply rooted in post-communist networks.

At the forefront of these actions was the unlawful and violent takeover of the public prosecution service[2] and public media, accompanied by a broader campaign of assaults on

[2] https://www.iwp.edu/articles/2025/05/28/weaponizing-justice-the-unlawful-takeover-of-polands-prosecution-service-by-the-left-liberal-government-of-donald-tusk/ (accessed: 20 October 2025).

freedom of speech and expression[3], the unlawful detention of opposition members of parliament[4], and attempts to manipulate or obstruct free and fair elections[5]. These moves were cloaked in rhetoric about "reclaiming the state from PiS," yet this was far more than mere political posturing. It was not simply a semantic manipulation designed to justify, for current political needs, the seizure of one institution or another. Rather, it reflected a deeply internalized belief within liberal-left circles in their own superiority and inherent entitlement to govern Poland.

The eight years of conservative rule were perceived by these elites as a period of trauma—a "mistake" caused by the supposed immaturity of a primitive, uneducated, provincial, and pathological segment of society. This error, in their view, had to be corrected—through enlightenment, re-education, or exclusion and elimination. Such an attitude prevails among liberal "elites" in virtually every sphere of life, but it is cultivated with particular intensity within the judicial class. Following the reforms introduced under the conservative government, over one-third of Polish judges received nominations or promotions outside the control of the previously omnipotent judicial oligarchy. In order to restore the liberal juristocracy and its inherently anti-democratic function, "purges" became necessary. Thus, the judiciary after 2023 became a primary experimental field for these operations.

Donald Tusk himself described the methods of action after 13 December 2023 during what amounted to a *de facto* programmatic conference held in the Senate in September 2024, titled *"Ways Out of the Constitutional Crisis."* [6] He openly defined his government's approach as a form of "militant democracy." Tusk declared:

"We will commit acts which, according to some legal authorities, will be inconsistent or not entirely consistent with the provisions of law. But nothing relieves us of the duty to act. Every day I must make decisions that can easily be criticized and questioned from a legal point of view, but without those decisions, there would be no sense in taking responsibility for governing."

Addressing liberal lawyers and constitutional experts, Tusk stated explicitly that, "not having legal instruments," the executive power must "find within itself the strength and determination (…) to take risks and make decisions that will sometimes even be questioned by you." He pledged to act "with full awareness of the risk that not all our decisions will meet the criteria of full rule of law from the point of view of purists."

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[3] https://www.iwp.edu/articles/2025/06/18/threats-to-media-freedom-and-pluralism-in-poland-after-2023/, https://ordoiuris.pl/raport/sytuacja-w-mediach-publicznych-po-roku-rzadow-ko-bezprawne-przejecie-i-partyjna-propaganda/ (accessed: 20 October 2025).

[4] https://www.iwp.edu/articles/2025/05/22/the-unlawful-detention-of-polish-conservative-opposition-mps-under-the-tusk-administration/ (accessed: 20 October 2025).

[5] https://www.iwp.edu/articles/2025/10/14/dismantling-electoral-safeguards-in-poland-under-tusks-government/, https://prawnicydla.pl/publikacja/raport-o-wyborach/ (accessed: 20 October 2025).

[6] https://www.senat.gov.pl/aktualnoscilista/art,16395,w-senacie-odbylo-sie-spotkanie-drogi-wyjscia-z-kryzysu-konstytucyjnego.html (accessed: 20 October 2025).

Later, in October 2025, in a key interview summarizing half of the parliamentary term, Tusk explained the dismissal of Minister of Justice and Prosecutor General Adam Bodnar—previously the government's flagship figure in its campaign of lawless actions against the opposition. He praised Bodnar but added: "Adam Bodnar truly believed it was possible to restore a civilized legal order in Poland by civilized methods. It turned out that this was not true."[7] In this way, Tusk justified removing Bodnar, who, despite carrying out unlawful measures, had tried to disguise them under the appearance of legality. His successor, Waldemar Żurek—lacking even the intellectual pretensions of his predecessor—was tasked with conducting far more brutal and overtly illegal actions, constrained only by two practical limits: to avoid overexposing these abuses to a domestic public already weary of political witch-hunts, and to conceal the real nature of political persecutions from the increasingly attentive international community. The formulation of such a plan was a direct consequence of the situation following the lost presidential election and the real prospect of being held accountable for numerous official offenses and actions directed against the state. Tusk himself compared the position of his political camp to that of the conquistadors who had burned their ships behind them, leaving no path of return, while the new Minister of Justice admitted with disarming candor that unless the current government imprisons the opposition, it will be they who end up facing imprisonment once power changes hands.

The illegal political takeover of the judiciary after 2023 thus became a key component in building a liberal system of lawlessness[8]. In defiance of statutes and Constitutional Court rulings, the government unlawfully replaced court presidents and disciplinary officers, abolished the random case assignment system, and transformed the judiciary from an impartial and blind institution into one subordinated to the current political needs of Tusk's left-liberal administration. Beyond its immediate political goals, this campaign had a strategic purpose: to restore the extreme oligarchic juristocracy that had ruled Poland unchallenged until 2017—a system with deep roots in communism and in the nature of Poland's 1989 transformation, which, particularly in the judiciary, was characterized by a "smooth transition" without any reckoning with the past.

Despite numerous judicial crimes committed in the service of the communist regime — including the political persecution of anti-communist opposition activists — and despite the fact that many judges had been members of the communist party, virtually none were removed from the bench or held criminally or disciplinarily accountable. Individuals who, in the 1980s, had sentenced anti-communist dissidents in political trials continue to sit on the bench to this day, including within the Supreme Court.

[7] https://300polityka.pl/pl/live/2025-10-17/tusk-bodnar-wierzyl-ze-da-sie-cywilizowanymi-metodami (accessed: 20 October 2025).

[8] https://prawnicydla.pl/publikacja/cui-prodest/, https://obserwator-praworzadnosci.pl/en/violations-of-the-principles-of-the-democratic-state-of-law-and-the-rule-of-law-by-the-government-of-donald-tusk-after-december-13-2023/ (accessed: 20 October 2025).

From the standpoint of judicial independence and impartiality, three areas are decisive for the functioning of the judicial system: (1) access to the profession and the promotion system, (2) organizational principles of courts, including the allocation of cases, and (3) disciplinary accountability. In each of these areas, the conservative PiS governments (2015–2023) introduced reforms aimed at breaking the entrenched networks of political, business, and social connections characteristic of oligarchic systems—connections which, in Poland, were further rooted in the communist and post-communist nomenklatura.

Unfortunately, these reforms were not always implemented consistently; their enforcement was often hampered by hesitation on the part of conservative leaders (particularly President Andrzej Duda and Prime Minister Mateusz Morawiecki). Above all, they encountered fierce resistance from the left-liberal judicial oligarchy and the political opposition, strongly supported by the central institutions of the European Union. These attacks took the form of political assaults by the European Parliament and unlawful actions by the European Commission, which—without factual or legal grounds—invoked Article 7 TEU procedures, threatened to activate the conditionality mechanism under the 2021–2027 Multiannual Financial Framework, and unjustifiably blocked disbursement of the Recovery Fund. The Court of Justice of the European Union (CJEU) also engaged in unlawful actions, issuing several *ultra vires* rulings that, in violation of the principle of conferred competences and other Treaty provisions, undermined Poland's constitutional reforms.

2. Limiting the Power of the Juristocracy in Judicial Recruitment and Promotion

A fundamental element of the reform of the common court system—and, in a sense, its point of departure—was the reform of the National Council of the Judiciary (*Krajowa Rada Sądownictwa*, KRS). Its purpose was to remove the Council from the control of the judicial oligarchy and place it within the sphere of influence of democratically legitimized institutions. The Council is a constitutional body that safeguards the independence of courts and the impartiality of judges (Article 186 of the Constitution) and holds an important competence in the process of judicial appointments: judges are appointed by the President upon the motion of the Council (Article 179). Once appointed, judges are irremovable, and their dismissal may occur only by a court ruling and solely in cases specified by statute (Article 180).

According to Article 187 of the 1997 Constitution[9], the Council consists of 25 members: 15 judges, *ex officio* members (the First President of the Supreme Court, the Minister of Justice,

[9] Article 187. 1. The National Council of the Judiciary shall be composed of:
(1) the First President of the Supreme Court, the Minister of Justice, the President of the Supreme Administrative Court, and a person appointed by the President of the Republic of Poland;
(2) fifteen members elected from among the judges of the Supreme Court, ordinary courts, administrative courts, and military courts;
(3) four members elected by the Sejm from among its Deputies and two members elected by the Senate from among its Senators.
2. The National Council of the Judiciary shall elect from among its members a Chairperson and two Deputy Chairpersons.
3. The term of office of the elected members of the National Council of the Judiciary shall be four years.

the President of the Supreme Administrative Court, and a representative of the President of the Republic), as well as 4 deputies elected by the Sejm and 2 senators elected by the Senate. From 1989 onward, the judicial members (15 persons, guaranteeing judges a majority within the Council regardless of the political balance among the remaining members) were elected by the judges themselves.

The Actual Role of the National Council of the Judiciary (1989–2017)

The National Council of the Judiciary was established in early 1989, at the twilight of communist dictatorship in Poland. Its function was to safeguard the political and economic interests—and legal immunity—of the communist nomenklatura, which, under the so-called Round Table Agreements, was transferring political power to the left-liberal segment of the opposition. The events of 1989 in Poland can, in part, be explained through the Orwellian schema of *1984*. The communist nomenklatura agreed to hand over part of its political authority peacefully, yet under strict control, to circles that often consisted of left-wing critics of the communist party or individuals entangled in secret collaboration with the communist security services.

The old communist elites—usually driven not by Marxist ideology but by opportunism—retained influence in the economy, the security apparatus, and, crucially, in the judiciary. Thus, contrary to the narrative later constructed, the National Council of the Judiciary was not the "first institution established in a free Poland," but rather the *last* one created under communist dictatorship—established with specific objectives.

Since the Council's function includes presenting judicial candidates to the President and recommending judges for promotion within the judicial hierarchy, its composition was of key importance for shaping the judiciary's personnel structure. From 1989 to 2017, the election of most Council members by judges themselves resulted in an oligarchic, self-perpetuating system of co-optation for judicial posts and in the dominance of higher-court judges within the Council. The majority of these judges had received their appointments to newly established appellate courts in the early 1990s directly from General Wojciech Jaruzelski—the head of the communist party, military dictator, and, until 1990, the President of what was already nominally a "democratic" Poland.

Between 1989 and 2017, across all terms of the Council, only two judges came from the lowest (district) level of the judiciary—despite the proportional composition of roughly 500 appellate judges, 2,500 regional judges, and 6,500 district judges, totaling nearly 10,000 judges nationwide.

The 2017 Reform of the National Council of the Judiciary and Its Controversy

4. The organization, scope of activity, and mode of operation of the National Council of the Judiciary, as well as the manner of electing its members, shall be specified by statute.

The reform adopted in 2017 sought to democratize the election of judicial members of the Council—transferring the selection from the judges themselves to the Parliament. This was a key element in restoring the balance of powers and freeing the judiciary from the entrenched system of oligarchic co-optation. Interestingly, similar proposals had appeared earlier in Donald Tusk's own party platform.

The initial legislative proposals—concerning both the National Council of the Judiciary and the Supreme Court—were prepared in 2017 by the Ministry of Justice under the leadership of Zbigniew Ziobro and adopted by the conservative parliamentary majority but were unexpectedly vetoed by President Andrzej Duda, who considered them too far-reaching. The President later introduced his own legislative drafts, which were adopted by the Sejm at the end of 2017 and entered into force shortly thereafter.

The amended Act on the National Council of the Judiciary introduced a new procedure for electing the Council's judicial members. Under Article 9a[10], these members are now elected by the Sejm from among candidates nominated by at least 15 judges or 2,000 citizens. The purpose of this regulation was to democratize the Council and dismantle the previous closed, self-selecting system of judicial appointments.

The provisions were enacted and came into force. Since 2018, the reformed National Council of the Judiciary has reviewed and recommended approximately 3,500 judicial nominations or promotions. Unsurprisingly, the new framework and the Council's work met with fierce resistance from liberal judges—particularly from higher courts—and from left-liberal politicians, who questioned the legality of the Council and the status of judges nominated upon its recommendation (labeled "neo-judges"). The main allegation was that the reform was "unconstitutional."

However, the Constitution itself merely states that the Council includes "fifteen members chosen from among the judges of the Supreme Court, common courts, administrative courts, and military courts," without specifying who is to perform the selection. In the same provision, it explicitly identifies that Sejm and Senate members of the Council are "four members elected by the Sejm from among deputies and two members elected by the Senate from among senators." Furthermore, it delegates the regulation of the Council's organization, scope, procedures, and the method of electing its members to statute. There are therefore absolutely

[10] Article 9a. 1. The Sejm shall elect, from among the judges of the Supreme Court, ordinary courts, administrative courts, and military courts, fifteen members of the Council for a joint four-year term of office.
2. In making the election referred to in paragraph 1, the Sejm shall, as far as possible, take into account the need to ensure the representation within the Council of judges from various types and levels of courts.
3. The joint term of office of the newly elected members of the Council chosen from among the judges shall begin on the day following the date of their election. The members of the Council from the previous term shall perform their duties until the commencement of the joint term of office of the new members of the Council.
(Journal of Laws of 2024, item 1186 – consolidated text)
https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20111260714/U/D20110714Lj.pdf (accessed: 20 October 2025).

no constitutional grounds for challenging the legitimacy of the Council's "democratization"—a position confirmed by the Constitutional Tribunal in 2019[11].

The reform of the National Council of the Judiciary, along with other elements of Poland's judicial reforms, became the subject of scrutiny by central EU institutions (the European Commission, the CJEU, and the European Parliament). The Court of Justice of the European Union in particular examined the independence of the Supreme Court's Disciplinary Chamber and the process of appointing judges with the participation of the Council (Cases C-585/18, C-624/18, C-625/18), the appointment of a Supreme Court judge by the President upon the Council's motion (Case C-487/19), and the legal effects of rulings issued by the Chamber of Extraordinary Control and Public Affairs (Case C-225/22).

These CJEU judgments, being *ultra vires*, have no legal effect in Poland and constitute an example of power usurpation and violation of the principle of conferred competences set forth in Article 5(2) of the Treaty on European Union. Moreover, the CJEU attempted to base its reasoning on Article 47 of the Charter of Fundamental Rights, even though—by virtue of Article 51 of that Charter and the provisions of the so-called British Protocol—it neither extends the competences of the CJEU nor of any other EU institution. This attempt to circumvent the Treaties represents a legal scandal and a political abuse.

In 2021, the activist overreach of CJEU judges prompted a firm response from the Polish Constitutional Tribunal, which on 7 October 2021 (case K 3/21) unequivocally ruled that Article 19(1), second sentence, of the TEU cannot be interpreted in a manner that would allow the CJEU to interfere in the judicial systems of Member States[12]. It was precisely this provision—stating that "Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law"—that the CJEU had used as a pretext to claim "jurisdiction" over matters of national judicial organization.

The ruling of the Polish Constitutional Tribunal sent a clear signal that Poland would not accept Treaty violations or *ultra vires* judgments. It triggered a hysterical reaction from the European Commission, which went so far as to challenge before the CJEU the very status of the Polish Constitutional Tribunal itself (Case C-448/23). The Advocate General subsequently issued an opinion branding the actions of Polish constitutional authorities as a "legal rebellion"[13] — an extraordinary act of arrogance that verges on a usurpation of power and could arguably fall under the scope of Poland's domestic criminal law provisions.

Approach to the National Council of the Judiciary under the Tusk Administration

[11] https://ipo.trybunal.gov.pl/ipo/Sprawa?&pokaz=dokumenty&sygnatura=K%2012/18 (accessed: 20 October 2025).
[12] https://trybunal.gov.pl/postepowanie-i-orzeczenia/wyroki/art/11662-ocena-zgodnosci-z-konstytucja-rp-wybranych-przepisow-traktatu-o-unii-europejskiej (accessed: 20 October 2025).
[13] https://curia.europa.eu/juris/document/document.jsf?cid=2911833&dir=&docid=296431&doclang=en (accessed: 20 October 2025).

The actions of the European Commission and the Court of Justice of the European Union, aside from their unlawful character (as found by Poland's Constitutional Tribunal), were—under the PiS government and remain today—tools in the ongoing political struggle for power in Poland. They also shift according to political needs. A striking example is one of the Court's most recent rulings: although it had previously never directly or automatically questioned the status of Supreme Court judges appointed by the President upon the motion of the democratized National Council of the Judiciary, in its judgment of 4 September 2025 it adopted—albeit in veiled form—such a position, effectively undermining an entire chamber of the Supreme Court established in 2017[14].

To understand the reasoning behind such a far-reaching *contra legem* position, it must be noted that the chamber challenged by the Court adjudicates, among other things, on the validity of presidential elections. It can therefore be assumed that this action fits into a broader plan for a constitutional coup d'état in Poland: beginning with the failed attempt in July 2025 to prevent Karol Nawrocki from assuming the presidency, and now potentially leading to his removal from office in 2026 by the Constitutional Tribunal—by then already under the control of the current parliamentary majority—under the pretext that the validity of his election had not been duly confirmed.

Further confirmation of the political nature of EU institutional activity concerning Poland's judicial reforms is provided by the sudden reversal in the European Commission's position. Until then, the Commission had consistently challenged the compatibility of the National Council of the Judiciary with EU law. However, in Case C-719/24 pending before the Court, the Commission declared on 25 March 2025 that no provision of EU law prescribes a specific procedure for selecting the judicial members of a national body such as the Council and that, in light of Article 19(1), second subparagraph, TEU, in conjunction with Article 2 TEU and Article 47 of the Charter of Fundamental Rights, it is permissible for the judicial members of the Council to be elected by Parliament[15].

Thus, the entire narrative previously advanced by the Commission against Poland's judicial reforms collapsed—the tale of "neo-judges," the "unlawful National Council of the Judiciary," and the alleged degradation of the rule of law in Poland after 2017. In reality, this new position simply prepares the ground for the 2026 election of a new judicial composition of the Council. The current left-liberal majority intends to abandon—false from the very beginning—the narrative about the Council's supposed "unconstitutionality" and "incompatibility with European standards" now that, under the very provisions it once denounced, it can secure a majority within the institution. If, in the new political constellation, it is the liberals who are

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[14] https://curia.europa.eu/juris/document/document.jsf?text=&docid=303860&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=16477105 (accessed: 20 October 2025).

[15] https://www.sn.pl/aktualnosci/SitePages/Komunikaty_o_sprawach.aspx?ItemSID=734-b6b3e804-2752-4c7d-bcb4-7586782a1315&ListName=Komunikaty_o_sprawach (accessed: 20 October 2025).

granted the power to evaluate judicial appointments, the very same regulations, as if by magic, suddenly acquire the qualities of legality and full conformity with European standards.

A similar shift occurred regarding the Article 7 mechanism, previously used as a political weapon against Poland under the PiS government. Suddenly, it ceased to be "necessary": the proceedings were discontinued immediately after the Tusk administration took power—without the new left-liberal authorities introducing any legislative changes in the areas previously contested by the Commission (including the National Council of the Judiciary, the Supreme Court, or the Constitutional Tribunal). A mere political change proved sufficient, showing that this was precisely the true purpose of invoking Article 7 against Poland.

The actions of the European Commission, the Court, and other central EU institutions toward Poland—an observation that also applies to attacks on Orbán's Hungary—demonstrate political cynicism and legal hypocrisy. In the Commission's practice, "rule of law" does not mean adherence to legal norms but blind subordination to the dominant globalist political and ideological line and its economic interests. In the present circumstances, it also serves as a tool for imposing a centralizing agenda on the Member States in defiance of the Treaties, paving the way for their planned amendment toward deeper centralization by removing governments that defend national sovereignty.

After the formation of the government on 13 December 2023, the new authorities—together with circles of liberal judges—moved to dismantle the 2017 judicial reforms. In July 2024, the left-liberal coalition adopted a statute restoring the the corporatist and self-reproducing character of the National Council of the Judiciary and introducing provisions openly contrary to the Constitution, as they undermined the status of judges appointed by the President and shortened the Council's term[16]. This provoked criticism even from the Venice Commission[17], a consultative body of the Council of Europe that had usually aligned itself with the left-liberal narrative. The President of the Republic referred the statute to the Constitutional Tribunal for *ex ante* (preventive) review.

Similarly, subsequent drafts prepared by successive Ministers of Justice—Adam Bodnar and later Waldemar Żurek—aimed *de facto* at purging from the judiciary those judges appointed or promoted by the President upon the motion of the democratized Council (and thus outside the framework of liberal juristocracy) have no chance of becoming binding law. In addition to the negative opinions of the Venice Commission[18], the current coalition lacks the parliamentary majority necessary to override a presidential veto; and the President will certainly refuse to approve unconstitutional measures that would undermine the principle of judicial irremovability (Article 180 of the Constitution) and reintroduce non-transparent, oligarchic mechanisms for judicial nomination and promotion.

[16] https://www.sejm.gov.pl/sejm10.nsf/PrzebiegProc.xsp?nr=219 (accessed: 20 October 2025).
[17] https://www.coe.int/en/web/venice-commission/-/opinion-1181 (accessed: 20 October 2025).
[18] https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2024)029-e (accessed: 20 October 2025).

Unable to change the legal-based structure of the National Council of the Judiciary or to remove judges appointed with its participation, the Tusk administration has instead launched a series of initiatives in other areas of the justice system—most of them of an unlawful nature.

3. Unlawful Changes in Court Administration

The first practical step in the process of capturing the judiciary by the left-liberal establishment—and transforming it into a weapon against political opponents, a tool for protecting loyalists, and a means of entrenching power—was a series of unlawful actions consisting of dismissing most court presidents and vice-presidents before the expiration of their terms and replacing them with political nominees of the Minister of Justice. These actions were taken without meeting statutory grounds for dismissal, in violation of procedure, and in disregard of decisions and rulings of constitutional bodies. As a result, the Minister of Justice installed loyal judges in managerial positions in most courts, creating the conditions for further domination of the judiciary by influencing the composition of panels adjudicating politically sensitive criminal cases in accordance with the expectations of the executive.

The Structure of the Common Court System in Poland

Poland's common court system is organized into three levels: district courts, regional courts, and appellate courts. The approximately 300 district courts handle the vast majority of civil, criminal, family, guardianship, commercial, and labor cases—they are the citizen's first point of contact with the justice system. The 45 regional courts act as courts of second instance and, in important categories, as courts of first instance—especially in cases involving serious crimes or large commercial proceedings. The 11 appellate courts review appeals from judgments of regional courts acting as courts of first instance.

Each court is managed by its president, who also represents the court externally, supervises the efficiency of proceedings and internal organization, and provides opinions on personnel matters (Article 22). Court presidents (and, upon their motion, vice-presidents) are appointed by the Minister of Justice for a six-year term in the case of appellate and regional courts, and for a four-year term in the case of district courts (Articles 23–26). In performing their tasks, presidents of regional and appellate courts are supported by the court college, an advisory body that also embodies elements of judicial self-governance. The college of an appellate court consists of the court's president and vice-presidents and the presidents of the regional courts within its territorial jurisdiction (Article 28). Correspondingly, the college of a regional court consists of its president, vice-presidents, and the presidents of the district courts within its territorial jurisdiction (Article 30).

The court director—appointed and dismissed by the Minister of Justice—is responsible exclusively for administrative, financial, and technical matters (Articles 31–32). The Minister of Justice has no competence to interfere with adjudication, exercising only administrative supervision to ensure the court has adequate conditions to perform its functions.

Judicial supervision—i.e., supervision over adjudication—belongs to the Supreme Court, which formally is not part of the common court system but stands above it as a cassation and supervisory body.

The key provision governing the procedure for dismissing presidents and vice-presidents of common courts before the end of their term—central to the unlawful takeover of control over the judiciary—is Article 27 of the Act of 27 July 2001, *Law on the System of Common Courts*. According to the original version of this provision (part of which was later declared unconstitutional, as discussed below), the Minister of Justice may dismiss a court president or vice-president only in four strictly defined circumstances under §1 of that article: (1) gross or persistent failure to perform official duties; (2) incompatibility, for other reasons, of further service with the good of the administration of justice; (3) particularly low efficiency in administrative supervision or in the organization of work within the court or subordinate courts; or (4) submission of a resignation from office.

Each such dismissal required the conduct of a specific procedure, including obtaining an opinion from the college of the relevant court. Moreover, under §3, when requesting such an opinion, the Minister of Justice could suspend the president or vice-president of the court from performing official duties. Under §5, a positive opinion of the relevant college authorized the Minister to proceed with the dismissal, as did a failure to issue an opinion within 30 days of the Minister's request. However, under §5a, if the college issued a negative opinion and the Minister maintained his intention to dismiss the president, he was required to submit a motion to the National Council of the Judiciary, accompanied by written justification. The Council could block the dismissal by a two-thirds majority within 30 days of receiving the motion.

Unlawful Shortening of Terms and Appointment of Loyal Political Nominees

Since 2024, the Minister of Justice has bypassed—or outright violated—the law governing the role of court colleges in the process of dismissing court presidents, ignoring interim and final rulings of the Constitutional Tribunal as well as the statutory competences of the National Council of the Judiciary, a constitutional body responsible for safeguarding the independence of courts and the impartiality of judges (Article 186 of the Constitution). These violations were justified under the false pretext of the Council's alleged unconstitutionality, despite the fact that the Constitutional Tribunal—the body of last resort—had upheld the legality of the provisions governing its composition.

The Minister's motions were supported by unfounded or false claims of "low efficiency" in administrative supervision but, above all, by assertions directly contrary to the Polish legal order (including the jurisprudence of the Constitutional Tribunal), namely that serving as a court president after having been promoted or appointed through a process involving the National Council of the Judiciary after 2017 was somehow incompatible with the "good of the administration of justice." The Tusk government thus continued to rely on the same political narrative that *ultra vires* rulings of the Court of Justice of the European Union or the European

Court of Human Rights could affect the structure of Poland's judicial authorities—even in areas that those rulings did not explicitly address.

Several examples clearly illustrate these unlawful actions. On 18 January 2024, the Minister of Justice, Adam Bodnar, requested the opinion of the College of the Warsaw Court of Appeal regarding the dismissal of its president, Judge Piotr Schab, simultaneously suspending him from office. That same day, the College of the Court of Appeal in Warsaw unanimously issued a negative opinion, obliging the Minister to refer the matter to the National Council of the Judiciary. However, after 30 days had passed, the Minister arbitrarily concluded that the College's letter was not an opinion but merely a "notification of the vote results" (sic!) and sent Judge Schab a letter informing him of his dismissal.

This action flagrantly violated Article 27 of the *Law on the System of Common Courts* and was carried out under a completely absurd pretense of legality. The Minister also acted in defiance of an interim order of the Constitutional Tribunal dated 27 February 2024 (ref. Ts 32/24), which suspended the execution of the Minister's decision to dismiss Judge Schab pending review of his constitutional complaint. The Tribunal expressly prohibited any action that could hinder the performance of his duties in that or a similar factual and legal context. Despite this ruling, in March 2024 Adam Bodnar "appointed" Judge Dorota Markiewicz as president of the court.

Another example of violation of statutory provisions occurred in the illegal dismissal of the President of the Court of Appeal in Poznań. On 15 January 2024, Minister Bodnar sought to dismiss Judge Mateusz Bartoszek and his deputies, obtaining a positive opinion by a margin of one vote. This was made possible only by co-opting into the college a judge temporarily designated by the Minister to perform the duties of president following the suspension of the incumbent. However, the *Law on the System of Common Courts* contains no provision allowing a person temporarily performing presidential duties to participate in a vote. The participation of such an unauthorized person in issuing an opinion constituted a blatant breach of statutory procedure. The National Council of the Judiciary determined that the college's opinion had been issued unlawfully. Nevertheless, the Minister dismissed the president and his deputies, ignoring the mandatory procedure and the requirement of obtaining the Council's position.

Even broader violations occurred at the Warsaw Regional Court. On 18 June 2024, the Minister of Justice requested the opinion of the College of the Warsaw Regional Court regarding the dismissal of its president and vice-presidents, while simultaneously suspending them from office to prevent their participation in the process. Notably, at the same time, he initiated suspension proceedings against six of the eight presidents of the district courts—who were members of the College—solely to manipulate the vote outcome. Before the suspensions took effect, however, the College met in its original composition and issued a negative opinion that formally precluded the dismissal without the Council's consent. The Minister refused to recognize the validity of that opinion and, on 1 July 2024, repeated the procedure on the same factual basis, not provided for among the statutory grounds for dismissal, obtaining this time

a favorable opinion after illegally altering the College's composition. These changes followed the same unlawful pattern as before: suspending sitting members and replacing them with judges temporarily designated by the Minister to perform the duties of presidents—an arrangement not provided for by law. In this manner, the Minister unlawfully ensured himself a majority within the College, which enabled him to secure a favorable opinion supporting the dismissal. In August 2024, Adam Bodnar "appointed" Beata Najjar as President of the Warsaw Regional Court.

Such actions represented a clear violation of the *Law on the System of Common Courts* and of the principle of legality enshrined in Article 7 of the Polish Constitution, according to which public authorities act on the basis of and within the limits of the law. The chaos in the Warsaw Regional Court has since deepened. In July 2025, President Beata Najjar reached retirement age. Under Article 69(1b) of the *Law on the System of Common Courts*, the consent for a judge to continue serving in such a situation must be granted by the National Council of the Judiciary. However, President Najjar did not apply for such consent, adhering to the position propagated by the Tusk administration and liberal legal circles that the Council is "illegal." She nonetheless continued to perform her duties as president, a situation confirmed by the Minister of Justice. As a result, the Warsaw Regional Court is currently headed not only by a person illegally appointed but also by someone who has effectively ceased to hold judicial office.

Analogous leadership changes were carried out in courts across the country. In the overwhelming majority of cases, the statutory prerequisites for dismissal were not met, and the sole objective was political purging. Given the jurisdiction over politically significant cases, the unlawful replacement of the leadership of Warsaw's courts at all levels had the most far-reaching consequences. This particularly concerned the District Court for Warsaw-Śródmieście and the District Court for Warsaw-Mokotów (whose vice-president for criminal matters resigned on 12 July 2024, citing political pressure from the Minister of Justice), as well as the Warsaw Regional Court. These are the courts of first and second instance that hear motions for pre-trial detention submitted by teams of the National Public Prosecutor's Office in proceedings concerning politicians of the current opposition.

Ruling of the Constitutional Tribunal

The response of the Constitutional Tribunal to the unlawful actions of the Minister of Justice came in the judgment of 16 October 2024[19], in which the Tribunal examined a motion filed by the National Council of the Judiciary concerning the procedure for dismissing court presidents and vice-presidents before the end of their term, as laid down in Article 27 of the *Law on the System of Common Courts*. The National Council of the Judiciary challenged the provisions governing its role in this procedure, arguing that they gave the Minister of Justice excessive power at the Council's expense, as well as the provisions allowing the Minister to suspend court presidents or vice-presidents from performing their duties. The Tribunal reviewed the

[19] https://trybunal.gov.pl/postepowanie-i-orzeczenia/komunikaty-prasowe/komunikaty-po/art/procedura-odwolania-prezesa-lub-wiceprezesa-sadu-1 (accessed: 20 October 2025).

constitutionality of the contested provisions in light of the principle of the separation and balance of powers (Article 10), the provisions defining the Council's role as the guardian of the independence of courts and the impartiality of judges (Article 186(1)), the principle of the separation and independence of the judiciary from other branches of power (Article 173), and the guarantee of judicial independence, under which judges, in the exercise of their office, are subject only to the Constitution and statutes (Article 178(1)).

The Tribunal ruled that the Minister of Justice cannot suspend a court president in the dismissal procedure without the participation of the National Council of the Judiciary, and that any such suspension must be time-limited. Accordingly, the provisions regulating the suspension procedure (Article 27 §3) were declared unconstitutional. The Tribunal found that the existing provisions violated the principle of the separation and independence of the judiciary and created opportunities for abuse. Furthermore, the Tribunal held that even where a court college issued a positive opinion or failed to do so within 30 days, the National Council of the Judiciary must still be involved in the process of dismissing court presidents; thus, the current provisions (Article 27 §5) that omit this requirement were deemed unconstitutional. The Tribunal also declared unconstitutional the provisions (Article 27 §5a) limiting the Council's powers in cases where a court college issues a negative opinion, finding the two-thirds majority requirement and the 30-day time limit for blocking the Minister's decision excessively restrictive.

In violation of the constitutional and statutory obligation, the ruling was not published by the Chancellery of the Prime Minister, which is responsible for maintaining the *Journal of Laws*. This does not, however, prevent the ruling from producing legal effects—a principle long established in the jurisprudence of the Constitutional Tribunal itself. Nevertheless, the ruling has not been recognized by the government administration, even though Article 190(1) of the Constitution provides that decisions of the Constitutional Tribunal are universally binding and final. It should be added that in April 2024 the Tribunal also issued an interim order, and thus all subsequent actions of the government administration were in direct conflict with that ruling as well.

After Waldemar Żurek assumed the office of Minister of Justice in July 2025, the unlawful practices intensified. At the end of July 2025, he initiated the process of dismissing nearly 50 presidents and vice-presidents of regional and district courts across Poland. His actions were based on the very statutory provisions declared unconstitutional by the Constitutional Tribunal in the aforementioned ruling. In many instances, court colleges issued negative opinions on these dismissals. Żurek carried out particularly extensive purges in the Zamość judicial district, where the college issued only negative opinions regarding his plans to dismiss all court presidents—including the president and vice-president of the Regional Court in Zamość and all presidents of the district courts in Biłgoraj, Hrubieszów, Krasnystaw, Tomaszów Lubelski, Janów Lubelski, and Zamość itself. Despite this, Waldemar Żurek, in clear violation of the law, issued "decisions" dismissing them without the participation of the National Council

of the Judiciary, even though such participation was required under the original version of the provisions[20].

This illustrates that, unlike Adam Bodnar, who sought to conceal his unlawful actions behind absurd legal interpretations, Waldemar Żurek violates statutes and the Constitution openly and blatantly. He thus implements, within the judiciary, Prime Minister Tusk's political directive, who compared his government to conquistadors who had burned their ships and could not turn back—acknowledging in one interview that unless they carried out sweeping changes, they would all end up in prison once power changed hands.

In fact, the actions of Ministers of Justice Adam Bodnar and Waldemar Żurek, as well as those of the public officials involved in this process, fulfill the statutory elements of the criminal offense of abuse of power (Article 231 of the Criminal Code). Furthermore, these actions constitute participation in an organized group formed for the purpose of committing crimes (Article 258 of the Criminal Code)[21] and, insofar as they disregard the binding rulings of the Constitutional Tribunal and the authority of the National Council of the Judiciary—both constitutional bodies—amount to a constitutional coup d'état under Article 128 §1 of the Criminal Code, which provides that anyone who undertakes activity directed toward the violent removal of a constitutional organ of the Republic of Poland shall be subject to imprisonment for three to twenty years. The concept of "violence" here is understood broadly, extending beyond the narrower sense of "violence against a person."

Additionally, judges who accept positions as presidents or vice-presidents of courts (as well as those who accept other administrative appointments from them, such as department chairs) fulfill the elements of the offense of usurpation of a public function under Article 227 of the Criminal Code, which provides that anyone who, pretending to be a public official or exploiting another person's mistaken belief to that effect, performs an act associated with that function, shall be subject to a fine, restriction of liberty, or imprisonment for up to one year. It must be remembered that such acts are committed within an organized group, and under the basic definition of that offense—anyone who participates in an organized group or association formed to commit a criminal or fiscal offense—the penalty is imprisonment from six months to eight years (Article 258 §1 of the Criminal Code).

4. Abolition of Random Case Assignment and Manipulation of Judicial Panels in Criminal Cases

The unlawful takeover of control over the judiciary subsequently enabled manipulation of judicial panels in politically motivated criminal cases. Ultimately, in September 2025, Minister of Justice Waldemar Żurek issued a regulation altering the statutory rules governing the

[20] https://obserwator-praworzadnosci.pl/en/minister-of-justice-waldemar-zurek-announced-the-dismissal-of-court-presidents-and-vice-presidents-despite-the-negative-opinion-of-the-court-councils/ (accessed: 20 October 2025).

[21] https://oczyscicpolske.pl/zawiadomienia/tytul-zawiadomienia/ (accessed: 20 October 2025).

electronic random case assignment system, completing the process of establishing political control over the adjudicative functions of the courts.

The unlawful seizure of political control first over the prosecution service and then over the courts served to restore—and safeguard for the future—the full power of the left-liberal establishment. In the short term, the justice system became an instrument for protecting Tusk's close associates accused of serious corruption or financial crimes, as well as for persecuting the conservative opposition. By 2024, the regime was already using not only the unlawfully captured prosecution service but also the courts to prosecute political opponents under absurd charges. This has affected dozens of the most active conservative opposition politicians who have publicly challenged the government's globalist agenda—particularly its policies on migration, net-zero emissions, *woke* ideology, the dismantling of nation-states, and the centralization of the European Union.

Control over the justice system also ensures impunity for hundreds of figures from the left-liberal establishment who, after 13 December 2023, engaged in a series of unlawful actions under the banner of "militant democracy" directed by Prime Minister Tusk. These include the illegal and forcible takeovers of public media, the prosecution service, and the courts; the defiance of rulings and decisions of constitutional bodies such as the Constitutional Tribunal, the President, the Supreme Court, the National Council of the Judiciary, and the National Broadcasting Council; as well as politically motivated investigations involving psychological coercion, unlawful detention, and numerous acts of official misconduct. The stakes are high. The number of individuals who face potential charges carrying long prison sentences—including, in extreme cases, life imprisonment—encompasses virtually the entire left-liberal ruling elite: ministers, MPs and senators of the governing coalition, hundreds of politically aligned judges and prosecutors, numerous senior officials and civil servants, and members of the legal profession. At the same time, this situation represents a historic opportunity to cleanse the state of the entrenched liberal and often post-communist networks of personal, business, and political collusion. Given the official and procedural nature of the crimes committed—many of them documented publicly—the evidentiary process will not require complex investigative efforts. This claim may seem exaggerated or even absurd, but to appreciate its validity one need only read the extensive report submitted in January 2025 by the President of the Constitutional Tribunal, notifying the competent authorities of the commission of a constitutional coup d'état and numerous offenses of abuse of power[22]. The allegations are so serious and well documented that Tusk's associates have so far failed to secure the discontinuation of the ongoing criminal investigation.

In the longer term, the capture of the judiciary, its removal from democratic oversight, and the destruction of the genuine system of checks and balances aim to cement the structure of liberal control. The objective is to ensure that even if Poles vote differently in future

[22] https://trybunal.gov.pl/fileadmin/content/uroczystosci_spotkania_wizyty/2025/2025_02_24/NOTIFICATION_of_31_January_2025_translated_from_Pol._into_Eng_.pdf (accessed: 20 October 2025).

democratic elections, courts dominated by globalist circles will block such outcomes under the pretext of protecting the "rule of law" and "human rights," both reinterpreted in defiance of their true and original meaning. In reality, this would mark a return to the past: this was precisely the political and legal shape of the Polish judiciary established in 1989 through an arrangement between the communists and the liberal wing of the opposition—an arrangement designed to preserve post-communist impunity and influence. With only minor modifications, the liberal–post-communist juristocracy endured until 2017, when the PiS government attempted to reform it. Unfortunately, due to fierce resistance and insufficient resolve on the conservative side, the final reforms were partial and failed to purge the judiciary adequately. As a result, after 2023, the old system reasserted itself.

To achieve these aims, the first step was, as previously described, the installation of loyal court presidents, thereby paving the way for the next stage: the prosecution of opposition figures under absurd charges and the shielding of Tusk's allies from criminal accountability through manipulation of judicial panels in politically sensitive criminal cases.

Abolition of Random Case Assignment

Equality before the law is only possible when justice is blind—administered uniformly to all, regardless of person. This principle is especially crucial in the process of assigning cases to individual judges. In 2018, Poland introduced the *System of Random Case Assignment* (SLPS) as a structural rule—one of the key pillars of judicial reform under the Law and Justice (PiS) government. The essence of the system lies in the automatic, computerized assignment of cases to judges using a random-number generator. No human being—the president of a court, the head of a division, or the Minister of Justice—can influence the outcome. As a result, neither the parties nor any superior official can determine who will adjudicate a particular case.

The reform's goal was to end the pathological practice of *de facto* "manual case assignment," characteristic of juristocracy—a system in which verdicts were determined not in the courtroom, but through the prior selection of a "suitable" judge by influential circles. The random case assignment system became a cornerstone of genuine judicial independence and one of the main reasons for the fierce resistance of liberal-left judicial elites to conservative reforms between 2015 and 2023. It also implemented recommendations of the Council of Europe's Committee of Ministers and the European Commission, both of which had emphasized that a transparent, objective, and random allocation of cases regulated on the statutory level is among the foundations of judicial independence and impartiality. The Polish reform was exemplary in this respect: it eliminated arbitrariness and guaranteed citizens protection from political interference.

The *Law on the System of Common Courts* introduced the rule of random assignment of cases to judges (Article 47a §1). In the first phase, in 2018, randomization was introduced for single-judge panels in nearly all cases and for three-judge panels in criminal cases; in 2019, it was

extended to all other three-judge panels. Such panels, which typically hear appeals and more serious cases, are particularly crucial for ensuring the impartiality of final judgments.

However, on 30 September 2025, Minister of Justice Waldemar Żurek published an amendment to the Regulation on the Rules of Operation of Common Courts of 18 June 2019, altering the functioning of the electronic Random Case Assignment System. In the amended §50, the rule of fully random selection of entire panels was replaced with a new provision under which, in cases adjudicated by three judges, only the *rapporteur* is selected randomly, while the two remaining members are designated by the head of the division—an official appointed by the illegal, politicized court leadership. Thus, randomness in appellate cases—an essential safeguard of the right to a fair trial (Article 45 of the Polish Constitution)—was abolished by a ministerial regulation.

Changing a fundamental rule of statutory rank by means of a lower-level act such as a regulation is impermissible and unconstitutional. Appropriate motions have already been submitted to the Constitutional Tribunal. The Minister of Justice has nevertheless announced that he will not comply with the Tribunal's ruling—an explicit declaration of intent to commit another crime and an act that will deepen the existing chaos and uncertainty within the judiciary, including doubts over the validity of judgments affecting ordinary citizens. This is yet another example of the illegal practices of Donald Tusk's left-liberal government, which lacks the three-fifths majority in the Sejm necessary to override the President's *veto suspensivum* (suspensive veto). Given the earlier replacement of court presidents and other managerial positions with loyal political nominees, the Tusk camp has now acquired the means to influence final decisions in politically significant cases. This amendment completes the process of subordinating the judiciary to the executive. Having seized control of the prosecution service, unlawfully dismissed court presidents, and replaced judicial leadership, Tusk's government has now achieved full control over adjudication itself.

Earlier Manipulations of Judicial Panels in Political Cases

Even before the 2025 regulatory change "legalized" political steering of judicial panels, similar manipulations had already occurred under Minister Adam Bodnar in 2024—although they required numerous convoluted and often blatantly unlawful actions. After Żurek's amendment, the same result can now be achieved through a single decision by a judge loyal to the executive, acting as head of a division.

In particular, within the Warsaw Regional Court, a special section was established inside the XII Criminal Division, where the newly installed, illegally appointed president reassigned all judges appointed after 2017 with the participation of the current National Council of the Judiciary. These judges were tasked with handling minor cases, while more serious matters—including those concerning pre-trial detention—were assigned to a separate section composed exclusively of judges appointed before 2017, many of whom had received their nominations during the communist period. The head of this division—and thus, under Żurek's

amended regulation, the person empowered to select two of the three judges in a panel—was appointed as Judge Piotr Gąciarek, one of the most politically active judges in Poland.

Similar measures had already been taken in the Warsaw Court of Appeal, where in August 2024 the VIII Criminal Division was abolished, and judges appointed or promoted after 2017 were transferred to a newly established division for complaints and motions within the II Criminal Division, effectively reducing their participation in adjudication. It is notable that such purges occur exclusively in criminal divisions. Despite the continued formal existence of the random assignment system, these changes have greatly facilitated political control over judicial panels in Warsaw's criminal courts—the very courts that handle high-profile, politically sensitive cases.

Another tool of manipulation, made possible by the complicity of court presidents subservient to the Minister of Justice, has been the delegation of judges sympathetic to political prosecutions to specific criminal divisions. These judges, often having few or no cases of their own, enjoy virtually a 100% chance of being "randomly" selected for new proceedings. This was precisely the case in one of the political criminal proceedings related to the *Justice Fund*, in which an indictment was filed in January 2025 before the Warsaw Regional Court against six defendants. Just before the indictment was submitted, several judges were delegated to the division to which the case would later be assigned. It was therefore no surprise that the case was "randomly" assigned to Judge Justyna Koska-Janusz—a person known for her personal conflict with former Minister of Justice Zbigniew Ziobro.

The cases concerning motions for the pre-trial detention of Marcin Romanowski provide a clear illustration of the methods used to manipulate judicial panels — attempts that failed in August 2024, but, under the unlawful direction of the courts from January 2025 onward, proved effective[23].

Shielding Tusk's Allies from Criminal Liability

The regulation abolishing the random selection of three-judge panels was quickly dubbed by commentators as "*Lex Gawłowski*." Stanisław Gawłowski—currently a senator and former Deputy Minister of the Environment and Secretary General of Donald Tusk's Civic Platform party—was effectively Tusk's right-hand man in organizational, personnel, and financial matters. In July 2025, he was sentenced (not yet final) to five years' imprisonment in a case initiated in 2013, which included charges of accepting bribes, money laundering, and rigging public tenders for water management projects funded in part by millions in EU grants.

The regulation could just as well be called "*Lex Nowak*," after Sławomir Nowak, Minister of Transport in Tusk's 2011–2013 government, who resigned after the scandal over his undeclared luxury watch but returned to public life in 2016 as head of Ukraine's state road agency. In 2021, the public prosecutor's office charged him with several offenses, mostly

[23] https://marcinromanowski.substack.com/p/juristocracy-in-action-the-weaponization (accessed: 20 October 2025).

corruption-related, based on evidence collected by the Ukrainian law-enforcement authorities as well as by the Polish prosecution service, concerning the period when he served as a member of Tusk's government and as the head of his political cabinet. The indictment was submitted to the court in 2023; however, in September 2025, the public was shaken by the news that, during a preliminary hearing of an organizational nature, Nowak's defense filed a motion to discontinue the "Polish" part of the case. The prosecutor in charge of the case was not present at the hearing, and was replaced by a senior prosecutor, Małgorzata Ceregra-Dmoch—holding her position unlawfully after the illegal takeover of the prosecution service in January 2024—who is affiliated with the politicized association *Lex Super Omnia*. She supported the motion, assuring the court that the prosecution would not appeal. As a result, 29-year-old judicial assessor Arkadiusz Domasat discontinued the Polish part of the case, citing an "obvious lack of grounds for prosecution," without hearing dozens of witnesses or reviewing the extensive body of evidence collected in the proceedings. Following widespread public outrage, however, the prosecution announced that it would file an appeal.

These cases—alongside others involving figures close to the ruling coalition, such as Roman Giertych, attorney for the Tusk family and a Civic Platform MP, accused of embezzling over 90 million PLN from the listed company Polnord (charges scandalously dropped in January 2025)—reveal the central motive behind the drive to seize political control of the judiciary. The concrete measures undertaken—the unlawful appointment of loyal court presidents, purges and reorganizations in criminal divisions, and the delegation to division heads of the power to select panel members in key criminal appeals—serve one dual purpose: to persecute the opposition on fabricated charges and to secure impunity for Tusk's allies accused of corruption, abuse of power, and other serious crimes.

5. Seizure of Political Control over the Judicial Disciplinary System

One of the essential pillars of a properly functioning judiciary—independent from political directives or the interests of informal power groups—alongside the rules governing access to the profession, promotions, and the organization of court work (in particular the random assignment of cases), is the disciplinary accountability of judges. For many years, until 2017, this sphere—like the rest of the judicial system—was governed by a closed, caste-like structure reinforcing *juristocracy*: an almost absolute power of a narrow judicial oligarchy immune to the democratic will of the Sovereign, the nation itself. In Poland, this structure also served as a mechanism of protection for the post-communist nomenklatura, as evidenced by the fact that virtually no judge who had served the totalitarian regime before 1989 was ever held accountable, even symbolically.

In 2017, the PiS parliamentary majority adopted—alongside the reform of the National Council of the Judiciary—a law intended to restore the balance of powers within the area of disciplinary responsibility. The bill was vetoed by the President, who introduced his own proposals. The President's projects, which partially yielded to pressure from the judicial establishment, were ultimately adopted by Parliament. Yet even these reforms proved intolerable to the left-liberal establishment because they provided for the creation of a

Disciplinary Chamber within the Supreme Court, an autonomous body competent to adjudicate disciplinary offenses of judges. Observing a lack of determination on the conservative side, the left-liberal opposition and its allied judicial circles—supported by *ultra vires* actions of the European Commission and the Court of Justice—launched an aggressive campaign against these reforms. Eventually, the PiS government gave in to this pressure and, contrary to its original electoral promises, diluted the system even further, replacing the Disciplinary Chamber with the Chamber of Professional Accountability. Predictably, this concession did not appease the opposition; instead, it emboldened it to further challenge the decisions of both Parliament and the President.

Following the formation of Donald Tusk's government on 13 December 2023, the Minister of Justice began, alongside other unlawful activities, to seize control of the disciplinary institutions of the judiciary[24]. The immediate goal was to ensure the dismissal or discontinuation of proceedings against liberal judges who had violated their judicial oath through overt political activism, while simultaneously initiating proceedings against independent judges who faithfully applied the laws enacted under the conservative government. The broader objective was to restore full control of the liberal judicial oligarchy over the disciplinary system.

Currently, the disciplinary liability of judges of common courts in Poland is regulated primarily by the *Law on the System of Common Courts* of 27 July 2001 (Journal of Laws 2024, item 1224, as amended), and in the case of Supreme Court judges—by the *Supreme Court Act* of 8 December 2017. The purpose of disciplinary responsibility is to ensure that the judicial office is exercised lawfully, ethically, and with dignity, while upholding judicial independence and the autonomy of the courts.

Disciplinary proceedings typically concern professional misconduct such as a manifest and gross violation of law, refusal to perform judicial duties, actions undermining the effectiveness of court rulings or state institutions, public activity incompatible with the principles of judicial independence and impartiality, or behavior detrimental to the dignity of the office. In such cases, jurisdiction usually lies with a single-judge panel of the Supreme Court's Chamber of Professional Accountability (formerly the Disciplinary Chamber), with appeals heard by a three-judge panel of the same chamber (Article 110 of the *Law on the System of Common Courts*). In less serious matters, disciplinary cases are handled by lower-level disciplinary courts operating at the appellate or regional court level.

The key role in this system is played by the Disciplinary Officer for Common Court Judges, who serves as the prosecutor before disciplinary courts. The Disciplinary Officer and his two deputies are appointed by the Minister of Justice for a four-year term from among common court judges. They act independently in their proceedings, with responsibilities including

[24] https://open.substack.com/pub/marcinromanowski/p/juristocracy-in-the-service-of-lawlessness?r=61yjgr&utm_campaign=post&utm_medium=web&showWelcomeOnShare=false, https://prawnicydla.pl/publikacja/raport-z-wrzesnia-2025/ (accessed: 20 October 2025).

conducting preliminary inquiries, initiating disciplinary proceedings, presenting charges, and prosecuting cases before disciplinary courts. At the appellate and regional levels, additional deputy disciplinary officers operate under the supervision of the main Disciplinary Officer, also appointed for four-year terms. Administrative support for their work is provided by the National Council of the Judiciary through its office. The law also allows for the appointment of *ad hoc* disciplinary officers by the Minister of Justice in specific cases concerning judges of common courts (Article 112b).

The entire disciplinary system thus constitutes a complex structure combining elements of judicial self-governance with oversight by both the executive branch and the National Council of the Judiciary. On the one hand, it guarantees protection of judicial independence through multi-instance review and formal autonomy of adjudicating bodies; on the other, it ensures the state's capacity to address cases of misconduct, negligence, or actions damaging the integrity of the judicial office. The disciplinary officers form the central link in this system—they initiate proceedings and ensure that judicial accountability is exercised in accordance with the rule of law, while the relevant chamber of the Supreme Court provides independent and final judicial oversight.

The current Disciplinary Officer for Common Court Judges, Judge Piotr Schab of the Warsaw Court of Appeal, was appointed in June 2022 for a four-year term by then-Minister of Justice Zbigniew Ziobro, who also appointed his two deputies, Judges Przemysław Radzik and Michał Lasota.

In order to gain political control over the disciplinary system, the ultra-liberal Minister of Justice Adam Bodnar initially exploited the institution of *ad hoc* disciplinary officers. He did so to transfer cases against liberal judges to trusted appointees who would promptly discontinue them. In 2024, Minister Bodnar appointed, among others, *ad hoc* disciplinary officers to take over proceedings concerning well-known judicial activists such as Waldemar Żurek (currently Minister of Justice), Igor Tuleya, Paweł Juszczyszyn, Marzanna Piekarska-Drążek, Ewa Gregajtys, and Ewa Leszczyńska-Furtak. The purpose was clear: to secure impunity for politicized judges facing serious disciplinary charges.

At the same time, these *ad hoc* officers were tasked with initiating disciplinary proceedings against Piotr Schab and his deputies, Przemysław Radzik and Michał Lasota—for nothing other than fulfilling their statutory duties under laws with which the Minister politically disagreed. Judge Schab and his deputies challenged not only the merits but also the legality of these ministerial decisions.

Beyond the substantive unconstitutionality of these actions, the process was riddled with procedural irregularities rendering the *ad hoc* appointments void. For instance, the appointments were signed not by the Minister himself but by Deputy Minister Arkadiusz Myrcha (who is also a Civic Platform MP), despite long-standing Supreme Court jurisprudence holding that this is an exclusive and personal competence of the Minister of Justice. Moreover, the documents were signed electronically, a form not permitted under the *Code of Criminal*

Procedure—which applies to disciplinary proceedings and requires traditional written form, unlike civil or administrative procedures.

In response to this abuse of the *ad hoc* disciplinary officer mechanism by the executive branch, on 23 April 2024 the National Council of the Judiciary submitted a motion to the Constitutional Tribunal (ref. K 16/24)[25] to review the constitutionality of the provisions allowing the Minister of Justice to make such *ad hoc* appointments and interfere in ongoing disciplinary proceedings. The Council argued that these provisions violated the constitutional principles of judicial independence, the separation of powers, and the autonomy of the judiciary.

Rapid Seizure of Disciplinary Case Files and Unlawful Dismissal of the Disciplinary Officers

In order to quickly take over all disciplinary case files that the Minister of Justice intended to remove from the competent Disciplinary Officers and transfer to his ad hoc appointees, the Internal Affairs Department of the National Public Prosecutor's Office launched an investigation in March 2024 against the incumbent officers for allegedly refusing to hand over those files. Without waiting for clarification of the procedural irregularities raised in connection with the appointment of the ad hoc officers, on the morning of 3 July 2024, prosecutor Piotr Myszkowiec of the National Public Prosecutor's Office, accompanied by police officers, forcibly entered the offices of the Disciplinary Officers located within the building of the National Council of the Judiciary, broke open filing cabinets, and seized the disciplinary case files.

In response to this unlawful intervention, the Presidium of the National Council of the Judiciary issued a statement the same day, expressing firm opposition to the appointment of *ad hoc* disciplinary officers and condemning both the Minister of Justice's actions and the police entry as a violation of the autonomy of the Council as a constitutional body.

On 9 January 2025, the Constitutional Court issued an interim order suspending the application of the contested provisions concerning ad hoc disciplinary officers and prohibiting their further appointment or operation until the case was adjudicated on its merits. This decision imposed an obligation to halt all proceedings conducted by ad hoc disciplinary officers appointed directly by the Minister of Justice and to refrain from any further appointments in this mode. Nevertheless, the Minister and the ad hoc officers ignored the ruling—they continued to appoint new officers, while the previously appointed ones carried on their activities and refused to return the case files seized on 3 July 2024. These acts constituted clear violations of the Constitution and fulfilled the statutory elements of public-office and anti-state crimes.

The escalation of these unlawful activities culminated on 4 April 2025, when then-Minister of Justice Adam Bodnar announced the dismissal of one of the two Deputy Disciplinary Officers, judge Przemysław Radzik. On 25 April 2025, he issued an analogous decision removing the

[25] https://trybunal.gov.pl/sprawy-w-trybunale/katalog/k-16-24 (accessed: 20 October 2025).

Chief Disciplinary Officer, judge Piotr Schab. The second deputy, judge Michał Lasota, was dismissed on 31 July 2025 by the new Minister of Justice, Waldemar Żurek.

These actions were patently illegal, as no provision of the Law on the System of Common Courts grants the Minister of Justice—or any other state authority, especially an executive body—the competence to dismiss a Disciplinary Officer or his deputies before the expiry of their term. The dismissals were issued in blatant violation of Article 112 § 3 of that law, which explicitly provides that "The Disciplinary Officer for Common Court Judges and his two Deputies shall be appointed by the Minister of Justice for a four-year term." This provision clearly establishes the non-interruptible nature of the term and does not provide for any procedure of early removal. The absence of such a procedure is not a legislative omission but a deliberate safeguard designed to ensure the independence of disciplinary officers from political influence and to protect them against arbitrary interference by the Minister.

The Ministry of Justice, lacking any statutory basis, nonetheless claimed that Article 112 § 3 contained an alleged "legal gap" that would violate constitutional standards and therefore required a "remedial" interpretation or legal inference. According to this reasoning, if there is no explicit provision allowing for the dismissal of a disciplinary officer and, in the Minister's opinion, an important reason arises, the power to dismiss should be inferred as belonging to the same authority that made the appointment. Such an interpretation, unsupported by any legal provision, is manifestly contrary to the principle of legality (Article 7 of the Constitution of the Republic of Poland), which requires that public authorities act solely on the basis of and within the limits of the law.

The absence of a ministerial power to dismiss disciplinary officers—protected by the principle of fixed terms—is not a gap but a deliberate legislative safeguard preventing arbitrary and politically motivated interference by the executive branch, which would undermine judicial independence. Even if such a gap existed, according to the universally accepted canon of legal interpretation and constitutional principles, it could not be filled through inferential reasoning but only by legislative initiative and statutory amendment. Executive powers cannot be presumed or derived through interpretative manipulation. This point was paradoxically confirmed by the Minister of Justice himself, who began preparing a draft legislative amendment, which, however, has no chance of entering into force due to the President's opposition to the Tusk government's unlawful actions and the ruling coalition's lack of a three-fifths majority in the Sejm to override the presidential veto.

The lack of a legal basis for such decisions explains why none of them was ever formally justified. Particularly scandalous were the explanations given by then-Minister of Justice Adam Bodnar, who claimed that the accumulation of various proceedings against the disciplinary officers made it impossible for them to continue in office. In his view, those holding such important positions must be "beyond any doubt," and since the number of disciplinary proceedings had allegedly reached a certain scale, he had to act. What he failed to mention was that those proceedings were initiated either by handpicked ad hoc officers or by the

unlawfully seized and politically directed prosecution service, which he himself had turned into a political weapon. The alleged grounds for dismissal were, in reality, the officers' adherence to laws duly enacted by Parliament, signed by the President, and deemed constitutional—laws whose content the Minister simply disliked.

This constitutes a textbook case of acting contra legem—outside and against the explicit provisions of the law. The Minister's claim that he could unilaterally remove an official appointed for a fixed term based solely on his own unverifiable interpretation represents not only a violation of statutory law but a direct attack on the foundations of independence within the judicial disciplinary system. Such arbitrary actions undermine the rule of law and demonstrate that the current ruling majority is willing to violate the law to subjugate yet another element of the justice system.

At the same time, on 16 July 2025, Minister of Justice Adam Bodnar appointed Mariusz Ulman as Disciplinary Officer and Tomasz Ładny as his deputy to replace the allegedly "dismissed" Piotr Schab. In early September 2025, Mariusz Ulman resigned from his position; ministry sources cited personal reasons, though commentators pointed to his fear of criminal liability for usurpation of public office and abuse of power. He was replaced on 16 September 2025 by Joanna Raczkowska, and on 18 September 2025 Waldemar Żurek appointed Grzegorz Kasicki as the second deputy, alongside the previously appointed Tomasz Ładny.

These unlawful actions by the Ministers of Justice under the Tusk government were not recognized by the Supreme Court. The allegedly "dismissed" disciplinary officers continued to appear in disciplinary proceedings before the Court, which acknowledged their statutory status and did not recognize the "dismissals" issued by Ministers Adam Bodnar and Waldemar Żurek.

Meanwhile, the National Council of the Judiciary submitted a criminal complaint against the Minister of Justice and other public officials. The described acts of unlawfully terminating the officers' fixed terms and appointing political nominees to their posts constitute, according to the Council, offenses under Article 231 of the Criminal Code—abuse of power by a public official to the detriment of public or private interest, punishable by up to ten years' imprisonment. Additionally, the actions of the usurping officers meet the elements of the offense of unlawful assumption of public office under Article 227 of the Criminal Code, punishable by up to one year of imprisonment, which, in connection with the offense of participation in an organized group with the intent to commit crimes (Article 258), increases the upper limit of liability to eight years.

Furthermore, the unlawfully appointed disciplinary officer Joanna Raczkowska, in September 2025, initiated procedures—also not provided for by law—to shorten the terms of disciplinary officers at the appellate and regional court levels, continuing the same pattern of illegality.

6. Summary

As a consequence of the unlawful takeover—first of the prosecution service and subsequently of the court administration—the system of justice in Poland has been transformed into an instrument of political repression, used both to persecute the political opposition and to shield government allies from serious financial and even corruption-related charges. This has been made possible through a systematic purge within the organizational structures of the prosecution service and the criminal divisions of key courts—especially the Warsaw courts, where most criminal cases involving politicians are adjudicated. The result was the manipulation of judicial panels in criminal and pre-trial detention proceedings of political significance, and, ultimately, a regulatory amendment—issued by the Minister of Justice in defiance of statutory law—abolishing the principle of random case assignment and granting the power to determine the composition of three-judge panels to the politically subordinated court leadership. The long-term goal of these unlawful actions has been the restoration of an oligarchic system within the judiciary, designed to ensure that, regardless of electoral outcomes, power remains securely in the hands of the left-liberal establishment.

The restoration of this oligarchic system has also extended to the sphere of disciplinary responsibility for judges. By unlawfully shortening the statutory terms of office of the Disciplinary Officers and appointing in their place individuals politically loyal to the current administration, the Minister of Justice has provided himself with the means to exercise political repression against independent judges, while ensuring impunity and protection for those actively supporting the left-liberal authorities. In doing so, he has completed the process of subordinating the judiciary to political control.

Throughout this process, the authorities have disregarded both interim and final rulings of the Constitutional Court, ordered the violent entry of law enforcement officers into the premises of another constitutional body—the National Council of the Judiciary—and committed numerous violations of statutory law that fulfill the elements of criminal offenses such as abuse of power and unlawful assumption of public office.

All these actions represent—though deeply rooted in the specific Polish context of a late post-communist state—a textbook example of the wider tension that defines the political conflicts of the contemporary West. On one side stand genuinely democratically legitimized political forces of a conservative and national character, grounded in the defense of national identity and the sovereignty of their own state. On the other side operates a left-liberal oligarchy of a globalist identity—often carefully concealed from its own society—which gains and maintains power through manipulation, by a long and calculated “march through the institutions,” and by capturing key spheres of social life: culture, media, education, and, in the political domain, the judiciary. In most Western countries, this “march” has, unfortunately, proved successful — at least for now. In Poland—after eight years of conservative rule and a partial disruption of the globalist monopoly—there is now an aggressive reaction aimed at eliminating this threat once and for all. Poland, and in particular its justice system, thus serve as a testing ground. A similar configuration of forces and threats—though differing in intensity, stage of

development, and, of course, local specificity—can be observed in Hungary, Israel, and the United States.

The analysis of the structure and scope of these unlawful actions in Poland demonstrates that, following the removal of the current left-liberal administration of Donald Tusk from power, it will be absolutely necessary to exclude from the exercise of professions of public trust all those who participated in building the system of lawlessness of this liberal autocracy. This is an indispensable step toward the effective and lasting restoration of the rule of law. In particular, it concerns politicians, high-ranking officials, public functionaries, and legal professionals (including unlawfully appointed court presidents and heads of prosecutorial offices), for whom adherence to the principles of justice constitutes the sine qua non condition of professional suitability. In a system grounded in the classical understanding of law and its relation to justice, the true measure of competence lies not only in the knowledge of statutory texts but—above all—in the constant and perpetual will to render to each his *ius*: that which is his in justice (which, of course, presupposes familiarity with legal texts as a necessary, though not sufficient, condition). Nearly two years of Tusk's rule have demonstrated that the current left-liberal legal and bureaucratic establishment has failed this most fundamental test.

The long-term objective of the political instrumentalization of the justice system by Tusk's administration is to guarantee impunity, power, and influence for the left-liberal political elite. Therefore, from a political standpoint—and in light of Poland's past experience with the destructive consequences of failing to hold the communist apparatus accountable—it must be concluded that the exclusion of a limited yet sufficiently broad group of public officials and other individuals who have played a deliberate and qualified role in constructing this lawless regime is absolutely necessary to ensure the durable and effective functioning of a lawful state after the fall of such a system. At the same time, the gravity and scope of the alleged crimes committed by those belonging to this apparatus of lawlessness, together with the relatively straightforward evidentiary process based primarily on documentary material, make it possible to achieve this objective within a relatively short period of time and without the need—at least as a rule—to resort to the extraordinary mechanisms characteristic of the paradigm of transitional justice.