



HUNGARIAN-POLISH

FREEDOM INSTITUTE

"Both are valiant, both are brave,
Blessings on them both we crave."



HUNGARIAN-POLISH
FREEDOM INSTITUTE

"Both are valiant, both are brave,
Blessings on them both we crave."

**ILLEGAL TAKEOVER OF THE PUBLIC PROSECUTOR'S OFFICE BY TUSK'S
LEFT-LIBERAL GOVERNMENT IN POLAND
IMPUNITY FOR POLITICAL ALLIES AND PERSECUTION OF POLITICAL DISSENT**



Executive Summary

In Poland, after taking power on December 13, 2023, the left-liberal-globalist government led by Donald Tusk immediately began implementing measures that were contrary to the law, including the violent takeover of the Polish prosecutor's office.

\The globalist coalition's goal was nothing less than to bring the prosecutor's office under the direct political control of the government and use it as a tool of political repression against the opposition, while ensuring impunity for Donald Tusk's political allies.

Shortly after taking power, on January 12, 2024, Justice Minister Adam Bodnar unlawfully removed Dariusz Barski, the previously legally appointed chief prosecutor, from office. On the same day, Donald Tusk appointed a new head of the prosecutor's office, which was also done in violation of the law.. Although the Polish Constitutional Court and the Supreme Court later declared Barski's dismissal unlawful, the government refused to reverse its decision. Following Barski's violent removal, a widespread purge began in the prosecutor's office.

Tusk and his allies aim to intimidate their political opponents. The globalist leadership is using legal institutions to settle political scores to destroy their rivals once and for all. The justice system is being used, for example, to persecute former Polish Prime Minister Mateusz Morawiecki, former Polish Minister of Justice Zbigniew Ziobro, former Polish Deputy Minister of Justice Marcin Romanowski, as well as former leading politicians and numerous high-ranking officials. The consequences are clear: in Poland, the prosecution no longer serves to protect the rule of law, but rather the political and ideological interests of those in power.

While the Tusk government is acting unlawfully and applying the law "as we understand it," Brussels bureaucrats turn a blind eye to all the violations committed by the left-liberal-globalist coalition. Moreover, by lifting the blockade on EU funds, they are directly encouraging Tusk and his allies to continue committing these violations.

Unfortunately, the Polish legal system no longer fulfills its function of guaranteeing the rights of citizens, which is a fundamental pillar of the rule of law and the constitutional order, but has become a tool of oppression and intimidation. In any case, the Polish prosecutor's case highlights the globalist threat to the constitutional order and confirms Hungary's good decision to provide legal protection to Marcin Romanowski, a Polish MP who is under political persecution in his home country.



All this perfectly illustrates and exemplifies what happens when the enemies of the national interest, i.e. the globalists, come to power in a country. In Hungary, Péter Magyar, the leader of the left-wing, Brussels-biased opposition, has already made it clear that he intends to use similar methods if he comes to power, and it seems that he will receive all the necessary support from Manfred Weber, the European People's Party, and, it appears, Ursula von der Leyen. We can expect intimidation of political opponents, arrests, smear campaigns targeting right-wing figures, silencing media outlets associated with the conservative side, complemented by aspirations, warmongering politics, and, of course, unconditional support for Ukraine and its accelerated accession to the EU. Let there be no doubt: Donald Tusk's globalist agenda will reach Budapest if we do not stop it in the spring of 2026!



Introduction

One of the first unlawful actions undertaken by Tusk's left-liberal administration, which assumed power in Poland on December 13, 2023, was the illegal and forceful takeover of the National Public Prosecutor's Office, followed by the subjugation of local prosecutorial units across the country. This action aimed to subordinate a key institution of the justice system—responsible for prosecuting crimes—in order to ensure impunity for the liberal government's supporters on the one hand, and to turn the prosecution service into an instrument of political persecution against the opposition on the other.

The structure of the Polish prosecution service is hierarchical. Its organization, operating principles, and the status of prosecutors are governed by the Act on the Public Prosecutor's Office¹. At its head is the Prosecutor General, who, by law, is simultaneously the Minister of Justice—a member of the Council of Ministers and a political figure. However, the Prosecutor General's powers are of a general supervisory nature, ensuring that the direction of criminal justice policy reflects the will expressed in democratic elections, and safeguarding the rule of law. The Prosecutor General is not vested with authority to interfere in the daily functioning of the prosecution service, to influence the conduct of specific investigations, or to directly shape personnel policy. These operational duties fall to the Prosecutor General's First Deputy—the National Public Prosecutor—whose position was further strengthened by legal amendments in 2022, making him the de facto head of the prosecution service.

Pursuant to Article 13 of the Act on the Public Prosecutor's Office, the Prosecutor General directs the activities of the prosecution service either personally or through the National Public Prosecutor and other deputies. The Prosecutor General issues orders, guidelines, and instructions, which are binding in nature, and represents the prosecution at a strategic level in external relations.

According to Articles 13 § 3a and 18 of the Act, the National Public Prosecutor, as the First Deputy of the Prosecutor General, supervises and coordinates the work of regional, district, and local prosecution offices. He also exercises appellate oversight of preparatory proceedings (Article 29 § 1). Within his competencies, he issues binding service instructions and is the superior prosecutor to all other prosecutors—not the Prosecutor General (Article 31 § 1 pt 2)—which grants him supervisory authority in specific proceedings.

¹ <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20160000177/U/D20160177Lj.pdf>.



Importantly, it is the National Public Prosecutor—independent of the Prosecutor General's political influence—who decides on the appointment and dismissal of regional, district, and local prosecutors, as well as heads of organizational units (Article 15 § 1, § 4).

The National Public Prosecutor is appointed by the Prime Minister at the request of the Prosecutor General (who concurrently serves as Minister of Justice), after obtaining an opinion from the President of the Republic of Poland. Dismissal of the National Public Prosecutor is also carried out by the Prime Minister, upon request of the Prosecutor General and with the consent of the President (Article 14 § 1). These provisions regulating the appointment and dismissal process ensure the National Public Prosecutor a relatively strong legal position and afford him a degree of independence from the day-to-day pressure of the parliamentary majority, as the competencies involved are divided between members of the Council of Ministers (the Prime Minister and Minister of Justice) and the President, who is elected in separate, direct elections.

The Decision to Unlawfully and Forcefully Seize Control of the National Public Prosecutor's Office

At the time the left-liberal "December 13 Coalition" took in Poland power in autumn 2023, the National Public Prosecutor, appointed in accordance with the above provisions, was Prosecutor Dariusz Barski, previously an advisor to Minister of Justice and Prosecutor General Zbigniew Ziobro.

One week after the Tusk government assumed power, on December 20, 2023, the process of the unlawful and forceful takeover of public media and Polish Press Agency began. The independent regional and district prosecution offices in Warsaw launched investigations in response to notifications of abuse of power by the Minister of Culture and other officials (Article 231 of the Polish Criminal Code)², as well as assaults on the personal inviolability of opposition MPs and journalists. During the investigation, it was determined that the notarial deed documenting the proceedings of the general meeting of shareholders in companies managing public media had been falsified. The prosecution actively engaged in proceedings before registration courts, successfully blocking the

² Article 231

§ 1. A public official who, by exceeding their authority or failing to fulfill their duties, acts to the detriment of the public or private interest shall be subject to a penalty of imprisonment for up to 3 years.

§ 2. If the perpetrator commits the act referred to in § 1 with the intent of obtaining a material or personal benefit, they shall be subject to a penalty of imprisonment from 1 to 10 years.



actions of the Minister of Culture, who attempted to enter new, illegal management boards of the media companies into the public registers.

Faced with the effectiveness of the independent prosecution's actions, the Tusk government took aggressive steps to seize control over law enforcement authorities. Tusk recognized that prosecutors' actions would not only prevent the illegal takeover of public media and lead to the punishment of those responsible (including at least the Minister of Culture), but would also block or significantly hinder the government's further unlawful actions, which had become its primary method of governance. Since December 2023, the left-liberal ruling coalition has lacked the parliamentary majority necessary to pass legislation in the event of presidential opposition. The President has the power to veto bills, and this veto can only be overridden by a 3/5 parliamentary majority, which Tusk does not possess.

The operation aimed at removing Dariusz Barski from the position of National Public Prosecutor took place on January 12, 2024. On that day, Minister of Justice and Prosecutor General Adam Bodnar, during a meeting with Barski, handed him a document stating that his reinstatement to active service—carried out on February 16, 2022, by then-Prosecutor General Zbigniew Ziobro—had allegedly been performed in violation of applicable law and therefore had no legal effect. As a result, Bodnar declared that from January 12, 2024, Dariusz Barski was formally in retirement, which prevented him from continuing in the role of National Public Prosecutor.³

It is worth noting that Adam Bodnar, who has served since 2023 as Minister of Justice and Prosecutor General, is a Polish lawyer closely associated with the circles of George Soros. He gained public prominence as the Polish Ombudsman from 2015 to 2021, elected by the liberal-agrarian parliamentary majority of 2011–2015. During his term in office, he became known as an aggressive promoter of woke ideology and its applications within the legal system. He is known for promoting unjustified privileges for LGBTQ+ individuals and for attacking people with conservative or Christian beliefs. In the 2023 elections, he was elected to the Senate with the support of Civic Platform and subsequently appointed Minister of Justice and Prosecutor General, bearing direct responsibility for many of Tusk's government's illegal actions. These acts—according to the mentioned below January 2025 criminal complaint filed by the President of the Constitutional Court—may constitute serious

³ <https://www.gov.pl/web/sprawiedliwosc/informacja-o-uznaniu-przywrocenia-prokuratora-dariusza-barskiego-do-sluzby-czynnej-za-akt-dokonany-z-naruszeniem-przepisow>.



crimes against the state and official misconduct, carrying potential penalties of many years' imprisonment, including life imprisonment.⁴

Prosecutor Dariusz Barski, a distinguished figure in Poland's justice system, served from 2007 to 2010 as Deputy Prosecutor General and as National Public Prosecutor. Following the 2010 reform carried out under the so-called first Tusk government (2007–2015), which abolished the National Public Prosecutor's Office, Barski retired—an outcome of the organizational restructuring of the prosecution service. On February 16, 2022, he was reinstated to active duty by decision of Prosecutor General Zbigniew Ziobro, pursuant to Article 47 of the Act of January 28, 2016—Provisions Introducing the Law on the Public Prosecutor's Office (Journal of Laws, item 178, as amended).⁵

According to this provision, a retired prosecutor may return to active service, upon his own request, to his previously held position or an equivalent one. This right does not apply to prosecutors who retired for health reasons. The decision is made by the Prosecutor General (Article 47 §§ 1 and 2). At the same time, a prosecutor may at any moment return from active service to retirement status (Article 47 § 3).⁶

Three Private Legal Opinions as the "Legal Basis"

Due to the inability to dismiss the National Public Prosecutor without the consent of the President—as stipulated by the Act on the Public Prosecutor's Office—and the lack of a parliamentary majority to amend the provisions concerning the procedure for appointing and dismissing the National Public Prosecutor, the Tusk government resorted to actions based on private legal opinions. Minister Adam Bodnar commissioned three legal opinions authored by Professor Anna Rakowska from the University of Łódź, Professor Sławomir Patyra from Maria Curie-Skłodowska University in Lublin, and

4

https://trybunal.gov.pl/fileadmin/content/uroczystosci_spotkania_wizyty/2025/2025_02_24/NOTIFICATION_of_31_January_2025_translated_from_Pol_into_Eng.pdf.

⁵ <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20160000178/U/D20160178Lj.pdf>.

⁶ **Article 47**

§ 1. A public prosecutor who, on the day of entry into force of this Act, remains in retirement, may, upon his or her request, return to service in the last-held position or in an equivalent position. This entitlement does not apply to prosecutors who retired for health reasons.

§ 2. The decision regarding the request referred to in § 1 shall be made by the Public Prosecutor General.

§ 3. A prosecutor reinstated to service pursuant to the request referred to in § 1 may, at any time, return, upon his or her request, to the previously held retirement status with one month's notice.

§ 4. The Public Prosecutor General may not refuse to grant the request referred to in § 3.



Professor Grzegorz Kuca from the Jagiellonian University in Kraków.⁷ These scholars opined that the reinstatement of Prosecutor Barski had no legal effect. According to their assessment, Article 47 of the Act Introducing the Law on the Public Prosecutor's Office was allegedly a temporary provision—introduced solely to resolve an incidental problem arising from the 2010 abolition of the National Public Prosecutor's Office and appellate prosecutor's offices. The aforementioned 2016 law, which reinstated the National Public Prosecutor's Office, allegedly permitted the return to active service only within a strictly defined two-month period following its entry into force, i.e., from March 4 to May 4, 2016.

How was such a conclusion possible, given that the provision contained no time limitation on its application or duration? The experts hired by the Prosecutor General engaged in an "interpretation" of the provisions that blatantly contradicted both their wording and the accepted principles of legal interpretation and reasoning. In practice, they fabricated a new, previously nonexistent legal norm via their private opinions, providing the Minister of Justice with an alleged "legal basis" for his actions. These experts simply assumed a priori that the issue of returning from retirement was transitional and episodic, and that the absence of an express time limitation in the provision was a glaring legislative error that should be corrected by reference to general principles. Despite the lack of an explicit time restriction in the law, the experts claimed it should be interpreted in light of the legislative context and purpose. They argued that the law's purpose indicated the provision was intended primarily for use in the initial phase of implementing the new organizational model for the prosecution service.

The experts emphasized that transitional provisions of this kind aim to regulate exceptional situations arising from reform. They identified a two-month period because such a timeframe was specified in other episodic provisions. Consequently, they concluded that the legislature had implicitly established a general deadline of two months for restructuring the prosecution service. The experts also argued that since the procedure under Article 47 was an exceptional method of appointing prosecutors, it should be interpreted in light of the maxim *exceptiones non sunt extendendae* (exceptions must not be interpreted broadly). They further classified the provision as intertemporal and asserted that the presumption of the applicability of new law should be adopted.

Additionally, relying on the fact that the law allowed a prosecutor to return from active service to retirement "at any time," and that a corresponding phrase was absent in the provision regulating the

⁷ <https://www.gov.pl/web/sprawiedliwosc/opinie-prawne-dot-zmiany-na-stanowisku-prokuratora-krajowego>.



return from retirement to active service, the experts concluded that return "at any time" was not possible and that such a return was time-limited.

The actions in this case are a scandalous example of the left-liberal legal establishment engaging in conduct that blatantly violates the law—particularly the law as understood in its literal sense, in accordance with the intent of the democratically elected legislator, rather than the objectives of legal elites.

The Standards of "Militant Democracy" According to Tusk

Curiously, the result of delivering the Prosecutor General's letter to Dariusz Barski on January 12 was purportedly the immediate expiration of his mandate as National Public Prosecutor, a position he had held since March 2022. This legal construction is astonishing, given that—according to the Prosecutor General—Barski had allegedly not been a prosecutor for 13 years. Decisions made by Barski during his term were deemed effective only to the extent that they were based on an authorization from the Prosecutor General. Decisions made independently were to be subjected to detailed review to assess their legality.

This approach is inconsistent with the logic and principles of the legal system. Its use, however, is less surprising in light of the fact that earlier that same day, in the morning, Dariusz Barski—acting as National Public Prosecutor—promoted one of Adam Bodnar's trusted prosecutors to the National Public Prosecutor's Office at Bodnar's request. According to the law, only the National Public Prosecutor had the authority to perform such an act. That evening, the promoted prosecutor assumed the position "vacated" by Barski. Only a prosecutor already assigned to the National Public Prosecutor's Office may serve as its head—and thereby head the entire prosecution service—i.e., as National Public Prosecutor. Thus, Bodnar required the legal validity of Barski's decisions, despite challenging his legal authority just hours later.

When analyzing the so-called "legal basis" for the takeover of the prosecution service, it is worth noting that the unlawful and forceful seizure of public media by Tusk's administration was preceded by a resolution of the Sejm—which is not a source of law but merely a political declaration. By comparison, the "basis" for the unlawful—and likewise forceful—takeover of the prosecution service consisted of three private legal opinions. These two examples have become symbols of the Tusk



government's lawless actions, with the Prime Minister himself openly admitting that his government would act "in accordance with the law—as we understand it."

Donald Tusk, in his concept of "militant democracy" presented in September 2024, directly announced that "we will commit acts which, according to some legal authorities, will be unlawful or not entirely lawful, but nothing exempts us from the duty to act. Every day I must make decisions that can be very easily criticized and challenged legally, but without these decisions, it would make no sense for me to accept the responsibility of leading the government." Addressing lawyers and constitutional scholars, Tusk stated bluntly that "lacking legal instruments," the executive must "find within itself the strength and determination (...) to take risks and make decisions that will sometimes be challenged even by you." He declared that the government would act "with full awareness of the risk that not all of our actions will meet the criteria of full rule of law from the point of view of purists."

These declarations were made during a sui generis programmatic conference held in the Polish Senate titled "*Paths Out of the Constitutional Crisis*." ⁸ The event was co-organized and hosted by the Speaker of the Sejm, the Speaker of the Senate, and the Prime Minister. The meeting, held on September 10, 2024, was attended by current and former Ombudsmen, former Presidents of the Constitutional Tribunal, and retired judges of Poland's and Europe's highest courts and tribunals. Among the participants were leading liberal judges and constitutionalists, including former Presidents of the Constitutional Tribunal Andrzej Zoll (1993–1997), Bohdan Zdziennicki (2008–2010), Jerzy Stępień (2006–2008), and Marek Safjan (1998–2006); Ombudsman from 1988–1992 Ewa Łętowska; current Ombudsman Marcin Wiącek; Minister of Justice Adam Bodnar; Professor Leszek Garlicki of the University of Warsaw's Department of Constitutional Law; Chairs of the Senate's and Sejm's Legislative Committees and Minister and member of the Council of Ministers Maciej Berek.

In reality, the seizure of control over the prosecution structure (just as earlier over the public media, and later over the judiciary) was carried out without any legal basis and in clear violation of the constitutional system of sources of universally binding law.

It is worth noting that the same method of illegal action "based on legal opinion" was employed several months later in the case of Marcin Romanowski. In that instance, entirely untrustworthy,

⁸ <https://www.senat.gov.pl/aktualnoscilista/art,16395,w-senacie-odbylo-sie-spotkanie-drogi-wyjscia-z-kryzysu-konstytucyjnego.html>.



purpose-driven legal opinions were used to justify his detention, the filing of charges, and his arrest, despite his immunity as a member of the Parliamentary Assembly of the Council of Europe.

In the case of the three legal opinions used to justify the unlawful takeover of the prosecution service, we observe elaborate argumentative hyperbole with one fundamental, insurmountable flaw: they completely ignore the clear and unambiguous wording of the statute. In effect, these opinions were legislative in nature. While the interpretive tradition may, in exceptional cases, permit such deviations, they must be justified by weighty reasons. In this case, however, no such justification existed apart from the political objective of taking control over the prosecution service—an aim that, of course, cannot in itself justify ignoring the literal meaning of a statutory provision.

The quality of the argumentation presented in the three legal opinions commissioned by the Prosecutor General clearly indicates that they were intended to justify—by any means necessary—a predetermined thesis that directly contradicts the applicable legal provision, which constitutes a blatant violation of the principles of professional integrity. Without question, the provision in question remains in force, as it has not been repealed in any way. Nor can it be considered an episodic provision, since such a provision must contain an expressly defined period of applicability. Regarding its application, because the law does not specify any deadline limiting the ability of a prosecutor to request a return from retirement to active service, this means that such a return is possible “at any time.” If the statute does not specify a deadline, determining one by way of statutory interpretation would be tantamount to granting the Prosecutor General a presumed power to reject such a request after the “inferred” deadline—something that is incompatible with Article 7 of the Constitution, which prohibits the presumption of powers by public authorities.

The “interpretation” of this provision as proposed by the Prosecutor General’s “experts” also violates other fundamental principles and values of the constitutional order in a democratic state governed by the rule of law: namely, the reliability and efficiency of public institutions, trust in the state, legislative rationality, and the principles of legal certainty and predictability.

Furthermore, the provision does not even appear to be transitional in nature; rather, it is a substantive norm, which further undermines the claim that it has limited temporal effect. Even assuming it were a transitional provision, that alone would not mean it was time-limited. The provision remains in force and may be applied as long as there are prosecutors who retired before the law entered into force and who may theoretically apply to return to active service. The construction of the provision contains no intertemporal element. It may appear transitional only



because the factual situations it regulates will eventually cease to exist—namely, when no such prosecutors remain. However, this does not make the provision transitional, let alone episodic.

In this case, the only actual flaw—though a common one—is that a substantive provision was placed in an introductory act rather than in the Act on the Public Prosecutor's Office itself, contrary to legislative drafting rules. Yet this frequently occurring technical inconsistency has no bearing on the nature or scope of application of a provision whose wording is clear. Even if there were any doubts in interpretation (which there are not), they would still have to be resolved in favor of the prosecutors, in line with the principle of respect for acquired rights.

Unlawful Appointment of the New Head of the Prosecution Service

On the same day—January 12, 2024—on which Adam Bodnar carried out the de facto “dismissal” of Dariusz Barski, Prime Minister Donald Tusk appointed Prosecutor Jacek Bilewicz as acting First Deputy Prosecutor General—National Public Prosecutor—without obtaining the statutorily required opinion of the President of the Republic of Poland. This constituted a direct violation of statutory law by circumventing the President's constitutionally defined role in the appointment procedure. Moreover, the function of “acting” National Public Prosecutor is not recognized in law. The only lawful way to entrust someone with the responsibilities of the National Public Prosecutor—provided the position were vacant, which was not the case here—would be to appoint a new National Public Prosecutor with the participation of the President.

A few days later, through a *fait accompli*, Prosecutor General Adam Bodnar blocked Dariusz Barski from accessing his office and the premises of the National Public Prosecutor's Office, thereby preventing him from performing his duties as National Public Prosecutor. This action constituted use of force against a public official—a senior state authority.

Two months later, Prime Minister Donald Tusk, at the request of Prosecutor General Adam Bodnar, formally appointed Dariusz Korneluk as National Public Prosecutor.⁹ This, again, occurred in flagrant violation of statutory law, as it was done without the participation of the President of the Republic of Poland, whose opinion is mandatory.

⁹ <https://www.gov.pl/web/sprawiedliwosc/dariusz-korneluk-nowym-prokuratorem-krajowym?>



The case was also the subject of proceedings before the Constitutional Tribunal. The proceedings (case no. SK 13/24) were initiated following a constitutional complaint filed by Dariusz Barski on January 15, 2024, along with a request for an interim order. On February 5, 2024, the Constitutional Tribunal ordered the Prosecutor General and all public authorities to refrain from any actions that would prevent Dariusz Barski from exercising the rights, responsibilities, and powers vested in a prosecutor of the National Public Prosecutor's Office in active service, including performing the function of National Public Prosecutor. In particular, the Tribunal ordered the suspension of the implementation of the Prosecutor General's letter of January 12, 2024. Additionally, the Tribunal stayed the enforcement of the Prime Minister's decision of January 12, 2024, appointing Prosecutor Jacek Bilewicz to perform the duties of National Public Prosecutor, and prohibited any person appointed to perform the duties of National Public Prosecutor from taking action without a legal basis. The purpose of this ruling was to ensure that, pending a final decision by the Tribunal, Dariusz Barski could continue to perform his duties without interference. The government refused to comply with this ruling, thereby committing yet another violation of the law and disregarding a binding decision of the Constitutional Tribunal—one of the state's highest constitutional authorities.

Purges in the Organizational Units of the Prosecution Service

The decision to unlawfully deprive Dariusz Barski of the ability to perform his function as National Public Prosecutor was met from the outset with opposition from three Deputy Prosecutors General: Robert Hernand, Michał Ostrowski, and Krzysztof Sierak. During the initial attempt to seize the building of the National Public Prosecutor's Office, Robert Hernand recorded and later made public a conversation with Adam Bodnar, informing him during the conversation that it was being recorded. In the course of that conversation, Hernand expressed categorical opposition to the unlawful actions. It is noteworthy that Robert Hernand had held the position of Deputy Prosecutor General for many years, having been appointed during the previous governments of Donald Tusk, before 2015. Without his recording, the public would have had a significantly more limited understanding of the irregularities that occurred in the prosecution service as a result of Adam Bodnar's actions. In response, at the request of the Prosecutor General, disciplinary proceedings were initiated against Robert Hernand. In November 2024, he was charged with conduct unbecoming a public official, namely recording a conversation without the other party's consent.



Following the unlawful changes in the National Public Prosecutor's Office, a series of replacements was carried out in the leadership of subordinate territorial units: regional, district, and local prosecution offices. However, these dismissals and appointments were tainted by a fundamental legal defect. As previously noted, such changes can be made only by the National Public Prosecutor—whereas the person lawfully holding that position had been unlawfully and forcibly prevented from performing her duties, and was replaced by someone unauthorized.

Thus, prosecutors who assumed leadership roles in local prosecution units following the appointments made by Jacek Bilewicz and Dariusz Korneluk, and who undertook actions associated with those leadership roles, fulfilled at a minimum the elements of the criminal offense defined in Article 227 of the Polish Penal Code. According to this provision, anyone who pretends to be a public official or exploits another person's mistaken belief that he or she is such an official and performs an act associated with that office shall be subject to a fine, restriction of liberty, or imprisonment of up to one year.

The illegal leadership of the prosecution service also launched a campaign of immediate recalls of prosecutors from delegation and imposed "punitive" transfers of inconvenient prosecutors to other local units or to positions two ranks lower. One example of such retaliation is the case of Professor Przemysław Ostojki, an internationally recognized expert in administrative law and a prosecutor at the National Public Prosecutor's Office, who handled cases before administrative courts on behalf of the Prosecutor General. Professor Ostojki was reassigned to a lowest-level unit handling simple criminal matters. It is worth noting that one of his main areas of activity was defending the Polish legal order against strategic litigation attempts by LGBT-affiliated groups. These efforts sought to circumvent the law and, with the help of liberal judges, register same-sex individuals as parents in Polish civil records. These cases involved cross-border situations in which one of the "spouses"—a Polish citizen—had entered into a same-sex union abroad and "acquired" a child. Under the conservative government, the Prosecutor General effectively blocked such attempts to smuggle "same-sex parenthood" into the Polish legal system through the back door.

Concerns over "punitive delegations" were also expressed by the Polish Ombudsman, Professor Marcin Wiącek. He emphasized that the sudden revocation of a prosecutor's delegation may infringe upon the right to respect for private and family life (Article 47 of the Constitution, Article 8 of the ECHR). Such actions may require immediate relocation, which can entail, for example, changes to the school environment for the prosecutor's children. At the same time, such revocations may negatively



affect the efficiency and reliability of investigations conducted or supervised by the transferred prosecutors.

Rulings of the Supreme Court and the Constitutional Tribunal

On 27 September 2024, a three-judge panel of the Supreme Court's Criminal Chamber reviewed a legal question submitted by a lower court regarding the status of National Public Prosecutor Dariusz Barski (case no. I KZP 3/24).¹⁰ The Supreme Court resolved the legal issue concerning the validity of the provisions that enabled Barski's return to active duty from retirement in 2016. The Court confirmed that Barski's reinstatement and appointment were legally effective and binding. All decisions taken based on those provisions, including Barski's appointment and his subsequent actions, were deemed valid and lawful.

The consequence of this ruling was confirmation that Dariusz Barski remained the National Public Prosecutor—not Jacek Bilewicz ("acting National Public Prosecutor" from January to March 2024) nor Dariusz Korneluk (appointed by Prime Minister Donald Tusk in March 2024 as "National Public Prosecutor").

Government representatives, including Prosecutor General and Minister of Justice Adam Bodnar, declared that they did not recognize this ruling on the grounds that the judges who issued it were appointed to the Supreme Court by the National Council of the Judiciary after 2017. Such a position is a flagrant breach of Polish law. Moreover, it lacks any grounding even in the case law of the Court of Justice of the European Union, which—acting *ultra vires*—issued rulings concerning Poland's National Council of the Judiciary, cited by Polish authorities as justification for their unlawful actions. Notably, the Criminal Chamber of the Supreme Court has never had its status questioned, and each of the three judges involved has served between 20 and 30 years, with extensive experience in appellate courts, academic credentials, and recognition as distinguished authorities in criminal law doctrine.

In November 2024, the matter became the subject of a hearing before the Constitutional Tribunal, in connection with the constitutional complaint filed by Dariusz Barski in January of that year. In the proceedings before the Tribunal, the Prosecutor General maintained his earlier argument regarding the episodic nature of Article 47 of the Act Introducing the Law on the Public Prosecutor's Office. In

¹⁰ <https://www.sn.pl/sites/orzecznictwo/OrzeczeniaHTML/i%20kzp%203-24-1.docx.html>.



contrast, Dariusz Barski argued that his dismissal from the position of National Public Prosecutor in January 2024 was unconstitutional and violated his right to access public service. He contended that Article 47(1) and (2) of the aforementioned Act did not contain a time limitation, and thus prosecutors in retirement could return to active service in their previously held or equivalent positions regardless of the time that had elapsed since the Act's entry into force.

In its judgment of 22 November 2024 (case no. SK 13/24)¹¹, the Constitutional Tribunal ruled that the interpretation of Article 47 as providing only a two-month window for application was incompatible with the right of equal access to public service (Article 60 of the Constitution) and with the principle of proportionality (Article 31(3)), which permits the limitation of rights and freedoms only to the extent necessary, proportionate in the strict sense, and serving the protection of democratic values.

As with all rulings issued by the Constitutional Tribunal since April 2024, this judgment was not published in the Journal of Laws and is not recognized by government representatives.

Interestingly, on 27 November 2024, the Supreme Court reviewed further legal questions concerning the legality of the appointments of Jacek Bilewicz and Dariusz Korneluk to positions within the National Public Prosecutor's Office, which were directly connected to the case of Dariusz Barski. The case (no. I KZP 7/24) was adjudicated by a three-judge panel appointed to the Supreme Court before 2018. Two of the three judges were considered overtly sympathetic to the Tusk government. Nevertheless, they declined to issue a resolution, arguing that the legal questions submitted by the Warsaw Court of Appeal failed to meet the formal criteria—specifically, that the questions were of an individual rather than fundamental nature, exceeding the jurisdiction of the Supreme Court.¹²

The refusal to issue a resolution left intact the prior Supreme Court decision of 27 September 2024, which found the removal of Dariusz Barski from the position of National Public Prosecutor to be legally ineffective. The decision on 27 November 2024 elicited a variety of reactions within legal and political circles. Notably, the panel's refusal to render a ruling favorable to the government—despite its composition including a majority of pro-government judges—has been interpreted by commentators as an attempt to avoid the negative consequences of issuing a ruling that would legitimize the blatantly unlawful dismissal of Barski. This is also one of many examples in which officials, judges, or prosecutors are increasingly reluctant to uncritically enact government directives.

¹¹ <https://trybunal.gov.pl/postepowanie-i-orzeczenia/wyroki/art/ograniczenie-do-dwoch-miesiecy-prawa-prokuratora-w-stanie-spozynku-do-powrotu-na-swoj-wniosek-do-sluzby-3>.

¹² <https://www.sn.pl/sites/orzecznictwo/orzeczenia3/i%20kzp%207-24.pdf>.



This process has been interpreted as the erosion of the state of lawlessness—driven by a growing unwillingness to bear responsibility for illegal acts in the face of the anticipated collapse of the current liberal, autocratic regime. This sentiment has been reinforced by the government's incompetence, the unexpectedly strong social and institutional resistance, and disastrous economic policy leading to rising public dissatisfaction. The catalyst for this process is, without doubt, the return of Donald Trump to power in the United States and the reversal of the previous trend of Washington imposing liberal rule.

This intriguing phenomenon—especially characteristic of the early and final phases of a lawless state—has been termed the “risk effect” by renowned German legal theorist Robert Alexy. It rests on the seemingly true premise that ordinary officials or civil servants in a lawless state are generally neither outright villains nor heroes or saints. As a rule, they avoid active participation in unlawful conduct, but are also unwilling to risk their careers—or their safety—by openly resisting those in power. Their aim is to survive within a system they had the misfortune to inhabit during a period of lawless governance.

However, during a crisis in such a state, their risk-calculating posture may contribute to the regime's erosion. And at the initial stage of its formation, before the system becomes fully entrenched, if the decision-makers are not sufficiently ruthless, such behavior may even prevent its consolidation. The “risk effect” manifests in reduced engagement in unlawful activities and milder decisions than what the regime's most zealous supporters would expect. All of this is motivated, of course, by fear of future accountability should the regime collapse or fail to take root. For Alexy, this is an argument “from lawlessness” in favor of the greater utility of non-positivist legal theory. However, it may also serve as a broader argument in favor of clearly and unequivocally declaring the intent to prosecute lawlessness. Such an approach is not driven by a thirst for vengeance but constitutes a rational strategy that accelerates the fall of a lawless regime.

Prosecutor Ostrowski's Investigation into the Constitutional Coup d'État

The three Deputy Prosecutors General – Robert Hernand, Michał Ostrowski and Krzysztof Sierak - consistently opposed the unlawful conduct taking place within the prosecution service. In December 2024, Adam Bodnar, continuing his reprisals against his deputies, decided to transfer Robert Hernand and Michał Ostrowski to branch departments of the National Public Prosecutor's Office, effectively



removing them from their roles as Deputies to the Prosecutor General. In response to these actions, Hernand and Ostrowski filed appeals in court, challenging the legality and validity of the decisions, asserting that they prevented them from performing their statutory duties.

A distinctive summary of Tusk's slightly over a year in power is the notification of suspected criminal activity filed by the President of the Constitutional Tribunal.¹³ On 31 January 2025, Bogdan Świączkowski, President of the Constitutional Tribunal, submitted the notification to Deputy Prosecutor General Michał Ostrowski. The document alleged that since 13 December 2023, Prime Minister Tusk, along with other senior state officials, had been acting as part of an organized criminal group whose objective was to alter the constitutional system of the Republic of Poland and paralyze the operations of key constitutional institutions, including the Constitutional Tribunal, the National Council of the Judiciary, and the Supreme Court.

The notification identified a number of actions aimed at undermining the authority of key constitutional institutions. Among other points, the President of the Constitutional Tribunal emphasized that the government, without any legal basis, challenged the legal status of the Supreme Court's Chamber of Extraordinary Control and Public Affairs, as well as the legality of the appointment of certain Supreme Court judges. The Government Legislation Center ceased publishing the rulings of the Constitutional Tribunal, which in effect amounted to a rejection of the status of the Tribunal's current judges. Furthermore, on 6 March 2024, the Sejm adopted a resolution allegedly intended to resolve the constitutional crisis of 2015–2023, which further undermined the authority of the Constitutional Tribunal.

Following this notification, Deputy Prosecutor General Michał Ostrowski initiated an investigation. As part of the proceedings, he conducted interviews with a number of individuals named in the notification, including Bogdan Świączkowski, First President of the Supreme Court Małgorzata Manowska, Chair of the National Council of the Judiciary Dagmara Pawełczyk-Woicka, former President of Telewizja Polska Michał Adamczyk, Chair of the National Broadcasting Council Maciej Świrski, and others. The purpose of these interviews was to gather detailed information regarding the actions in question and to assess the merits of the allegations presented by Świączkowski. The testimonies of key witnesses confirmed the suspicions laid out in the criminal complaint.

¹³https://trybunal.gov.pl/fileadmin/content/uroczystosci_spotkania_wizyty/2025/2025_02_24/NOTIFICATION_of_31_January_2025_translated_from_Pol_into_Eng_.pdf.



Initially, Tusk and his inner circle attempted to downplay the matter—during a game of ping-pong (notably unprofessional in context), the Prime Minister remarked: "Come on, we have serious matters, we'll deal with it later." However, they soon realized the gravity of the situation. On 11 February 2025, the Minister of Justice and Prosecutor General Adam Bodnar—one of the main suspects identified in the complaint—suspended Prosecutor Michał Ostrowski for six months, accusing him of conducting the investigation without proper registration in the prosecution system. In reality, the Office of the Deputy Prosecutor General, headed by Michał Ostrowski, has a valid registration unit, and the case had been duly registered. Prosecutor Ostrowski had also requested the assignment of a DS number; however, the absence of such a number does not preclude the conduct of procedural actions. Disciplinary and criminal proceedings were subsequently initiated against Ostrowski. In addition, Prosecutor Ostrowski and his family became targets of personal attacks by the prosecution service and government-aligned media.

The Public Prosecutor's Office as a Tool of Political Persecution

As a result of the unlawful takeover of the prosecution service, it was turned into a tool of political persecution against the opposition.

One of the first politically motivated investigations was the case concerning the Justice Fund—directed de facto against former Minister of Justice Zbigniew Ziobro and the ministry's leadership, most of whom were affiliated with Sovereign Poland, the party forming the sovereignist and firmly anti-woke right wing of the former conservative government. The intensity and absurdity of the political persecution was evidenced by the fact that Prosecution Team No. 2 was designated to conduct the investigation (Team No. 1 was handling the most important case in Poland—the 2010 Smolensk air crash that claimed the lives of the President of the Republic and nearly 100 senior officials and military officers). The team was staffed with prosecutors motivated by personal revenge for previous dismissals. This led to a series of mass searches and arrests in March 2024, including at the homes of Members of Parliament, as well as the seven-month pre-trial detention of two civil servants—Urszula Dubejko and Karolina Kucharska—and of Fr. Michał Olszewski, head of a foundation implementing one of the projects. The purpose of these arrests was to extract false testimony incriminating conservative opposition politicians.



As a result of these actions, in December 2024 the Polish Ombudsman identified numerous violations of rights and freedoms, as well as inhuman and degrading treatment of the three detainees.¹⁴ The European Court of Human Rights (ECtHR) admitted for consideration a complaint alleging the use of torture against Fr. Michał Olszewski (no. 6726/25). A violation of international law also occurred when Marcin Romanowski—protected by immunity as a member of the Parliamentary Assembly of the Council of Europe—was deprived of liberty and charged. One day after Marcin Romanowski was released—following the intervention of the Chair of the PACE, a member of the EPP like Tusk—Justice Minister Bodnar threatened his defense attorney, Bartosz Lewandowski, with inspections at the university where he served as rector. The ECtHR has also admitted for consideration his complaint concerning searches and the seizure of his equipment (no. 22940/24). Ultimately, in December 2024, Romanowski was granted political asylum in Hungary. In April 2025, despite requests from Polish authorities, Interpol refused to issue a Red Notice for him, thereby deeming the charges against him to be untrustworthy and politically motivated.

Indeed, the authorities accuse him of participation in an organized criminal group (allegedly the Ministry of Justice), purportedly influencing grant-awarding procedures (even though, by law, such decisions were made not by commissions but by him directly), and misappropriation (not for personal use, but in the form of grants awarded to organizations). The bulk of the charges are based on the claim that Romanowski acted outside the scope of his competence as Deputy Minister—on the grounds that the Minister of Justice conferred authority upon him via an amendment to an existing internal order, rather than issuing an entirely new one. This thesis is patently absurd. Interestingly, neither Romanowski nor anyone else has been accused of corruption. Romanowski is accused only of allegedly gaining a personal benefit in the form of satisfaction from financing projects of a Christian or conservative nature, aligned with his worldview. According to the prosecution, these charges could carry a sentence of up to 25 years' imprisonment. In April 2025, the American watchdog organization Judicial Watch launched a formal inquiry into the persecution of Marcin Romanowski.¹⁵

In recent months, the so-called "Two Towers" case has taken on significant political weight, with left-liberal politicians treating it as a pretext to target the leader of the Law and Justice party (PiS),

¹⁴ See the extensive statements regarding Father Michał: <https://bip.brpo.gov.pl/pl/content/komunikat-sprawa-ks-michala-o-brpo> and the two officials: <https://bip.brpo.gov.pl/pl/content/komunikat-traktowanie-urzedniczki-ms-zatrzymanie> on the Polish Ombudsman's website.

¹⁵ <https://www.judicialwatch.org/persecuted-ex-minister-romanowski-to-lead-hungarian-polish-institute-of-freedom/>.



Jarosław Kaczyński. The case was reopened in 2025, despite having previously been closed—not only by the prosecution but also by a court ruling (issued by a judge known to be unsympathetic to PiS)—which found no grounds to suspect any criminal offense. The case involved ultimately unrealized plans to build an office tower on land owned by a foundation associated with PiS, intended to provide financial and infrastructural support for its activities. The dispute stemmed from an unpaid fee to one of the individuals involved. The attorney for the private accuser in this case is Roman Giertych, now a Member of Parliament for the ruling coalition and a contender for the post of Minister of Justice. Giertych is one of the most zealous proponents of the “reckoning with PiS” agenda.

Amid political jockeying within the ruling coalition, the case was assigned to one of the most politicized prosecutors—Ewa Wrzosek—closely associated with Roman Giertych and known for her public political activism, particularly against the previous government. She had previously leaked investigative information during the campaign to Rafał Trzaskowski, who was seeking reelection as Mayor of Warsaw—information concerning drug tests of a municipal bus driver involved in a fatal accident, which proved helpful to his campaign.

The decision to reopen the investigation and assign it to Ewa Wrzosek triggered sharp reactions from the opposition, which argued that the case was politically motivated and aimed at discrediting the leader of the largest opposition party at the climax of the presidential campaign.

The situation escalated dramatically in March 2025 when, two days after being questioned as a witness, Barbara Skrzypek—longtime and close associate of Jarosław Kaczyński—died of a massive heart attack. The circumstances surrounding her death sparked controversy: she had been denied the presence of legal counsel during her questioning (despite a formal request based on poor health and vision problems); no official transcript with a court clerk was produced; and the session was not recorded. It later emerged that contrary to participants’ claims, there had been no break granted for her to rest. The transcript itself raised concerns due to the use of two different fonts. These irregularities, combined with the political context of the case, pressure from the legal representatives of the private accuser (including Roman Giertych and Jacek Dubois), and public statements by Prosecutor Wrzosek, led to accusations of investigative misconduct and contributing to the death of Barbara Skrzypek.

Another example of a politically motivated investigation is the case concerning the so-called “Vistula Line Defense Plans.” In March 2025, the prosecution filed charges against Mariusz Błaszczak, former



Minister of National Defense and head of the PiS parliamentary caucus. The case revolves around the alleged unlawful disclosure of Poland's defense plans. In 2023, while PiS was still in power, Błaszczak—then Minister of Defense—declassified and publicized a 2011 document created during the first Tusk liberal government. The document, known as the "Vistula Line defense plan" or "Tusk's Line of Shame," envisioned a defense strategy in which, in the event of a Russian invasion, Polish forces would retreat behind the Vistula River and concentrate defense efforts on the western part of the country—effectively abandoning Eastern Poland to the enemy. Błaszczak revealed the plan publicly, denouncing it as proof of the Tusk government's weakness and appeasement in the face of Eastern threats.

The prosecution accuses Mariusz Błaszczak of abuse of power and disclosure of classified information, which allegedly could have endangered state security. The prosecution relies on articles of the Penal Code concerning the disclosure of classified information (Article 265 of the Penal Code – disclosure of state secrets) and abuse of power by a public official (Article 231 of the Penal Code). According to the prosecution, by declassifying and publishing the document in 2023, Błaszczak acted without the required consent of the competent authorities and endangered national security by disclosing details of a defense strategy that could have been exploited by foreign states. Mariusz Błaszczak asserts that he not only had the right but the duty to disclose the plan in order to inform the public about the harmful strategy of the PO-PSL government. In a post on X dated 6 March 2025, he wrote: "The Vistula line of defense is also Tusk's line towards Russia. I not only had the right but also the duty to disclose this plan of the first PO-PSL government."

Since January 2024, the prosecution has been used on a mass scale for actions targeted against politicians, particularly opposition MPs, with dozens of investigations underway. Many brutal, disproportionate, and even unlawful actions by the prosecution target ordinary individuals who have stood in the way of the left-liberal authorities. This affects hundreds of officials subjected to procedural actions aimed at intimidation, intended to pressure them into providing false testimony against politicians. In the Justice Fund case alone, dozens of non-governmental organizations – mainly of a conservative and Christian nature – are subjected to audits by the prosecution, the National Revenue Administration, or the Supreme Audit Office, effectively hindering their activities, while hundreds of individuals implementing the projects are harassed by the prosecution. Part of the Fund's activities included financing life- and health-saving equipment used by volunteer fire brigades. Hundreds of firefighters have been summoned for questioning for months.



However, the actions of law enforcement authorities also serve as tools of persecution in cases entirely unrelated to politicians. One notable example is that of a seriously ill 66-year-old woman, Izabela Majewska from Toruń, who wrote a critical Facebook comment under a post by a liberal celebrity, the head of the Great Orchestra of Christmas Charity foundation. The foundation became infamous in 2023 for its extraordinarily vulgar involvement in the parliamentary election campaign on the liberal side, organizing a large-scale billboard campaign allegedly against sepsis. In reality, due to the use of posters prominently featuring the slogan "Together we will defeat this EVIL," and in light of the well-known and openly communicated views of Jerzy Owsiak and interpretations by liberal media, the campaign was unequivocally understood as an attack on the ruling right-wing party. In January 2025, the 66-year-old woman commented on a WOŚP post: "Get lost man, and do it as quickly as possible, enough of robbing, enough of enriching yourself on the naivety of Poles, your villas abroad, your villa in Poland, your children study abroad, and your and your wife's salaries, enough, account for yourself and change your glasses because LGBT people wear such ones."

This prompted an immediate response from the Central Bureau for Combating Cybercrime, criminal police, and the prosecution. The next day at 6 a.m., officers from the criminal division entered the woman's apartment, and she was detained due to concerns about "obstruction and hiding." After being questioned by the prosecution and charged with, among other things, making criminal threats against Jerzy Owsiak, preventive measures were imposed on her, including the obligation to report to the police. Crucially, in the unanimous opinion of criminal law experts, there were no grounds for either an unlawful threat or incitement to commit a crime. A threat must involve a promise to commit a crime against another person, and in the context of this case, the phrase "Get lost"—even if, in isolation, it could be interpreted as "drop dead"—did not constitute such a promise according to established legal practice. At the very least, this amounted to a grossly disproportionate reaction by law enforcement, which, instead of pursuing actual criminal activity, devotes time and resources to political persecution, the prosecution of legitimate criticism, and the protection of liberal politicians and celebrities.

Guarantees of Impunity for Corrupt Liberal Politicians

A key aim of the takeover of the prosecution structures was to block or even dismiss investigations concerning or targeting politicians linked to Donald Tusk. Several high-ranking politicians from the current ruling coalition, including close associates of Donald Tusk such as Sławomir Nowak, Stanisław



Gawłowski, Tomasz Grodzki, Roman Giertych, and Włodzimierz Karpiński, were under investigation before 2023 over serious corruption allegations.

For instance, Roman Giertych, an active politician of the ruling coalition, Member of Parliament, and lawyer connected to the Justice Fund case, was suspected by the prosecution of involvement in the embezzlement of PLN 92 million (USD 24 million) from a publicly listed company. The investigation was discontinued in January 2025, and the prosecution – in violation of its duty – did not disclose the rationale for the discontinuation. Commentators suggest this was due to an intent to conceal the lack of substantive grounds for such a decision.

The investigation concerning Tomasz Grodzki, former Speaker of the Senate from the Civic Platform party, includes allegations of obstructing the determination of the criminal origin of funds obtained through fraud. Additional accusations include accepting financial benefits for the Transplant Assistance Foundation in Szczecin under the guise of voluntary donations. The total amount of benefits obtained in this manner could exceed PLN 1.5 million (USD 400,000). In February 2024, the prosecution withdrew its request to lift Senator Grodzki's immunity, thereby preventing the continuation of the proceedings, even though a trial against his associates had already begun. In a related private prosecution case, dozens of witnesses confirmed testimonies incriminating Grodzki.

Stanisław Gawłowski is accused of accepting at least PLN 733,000 (USD 200,000) in financial benefits, money laundering, and plagiarism in his doctoral dissertation. He faces a total of seven charges, four of which are related to corruption. The indictment was submitted to the court before the change in government, and the trial is ongoing, although surprising events have occurred, such as the retraction of key prosecution witness statements.

It is worth noting that the criminal suspicions against the two politicians mentioned above were brought to light by Szczecin-based journalist Tomasz Duklanowski, who, following Tusk's return to power, became one of the most persecuted journalists in Poland.

Sławomir Nowak, a close associate of Prime Minister Donald Tusk, is accused of leading an international organized criminal group operating in Warsaw, Gdańsk, and Ukraine, linked to 17 offenses in total. In his home, authorities found PLN 5 million (USD 1.3 million) obtained through corruption. The indictment was filed in 2023, and the trial is ongoing.

Włodzimierz Karpiński is accused of rigging tenders and soliciting financial benefits amounting to PLN 5 million (USD 1.3 million). In October 2023, he assumed a vacant seat in the European Parliament,



which led to his release from pre-trial detention and the granting of immunity. After the unlawful takeover of the prosecution, the request to lift his immunity was withdrawn, and the case remains at a standstill.

Despite serious allegations, the ruling coalition shows no willingness to investigate corruption cases involving high-ranking Civic Platform politicians. Instead, it focuses its efforts on using the prosecution service to persecute opposition politicians from Law and Justice and to pursue ordinary citizens who come into conflict with the current government.