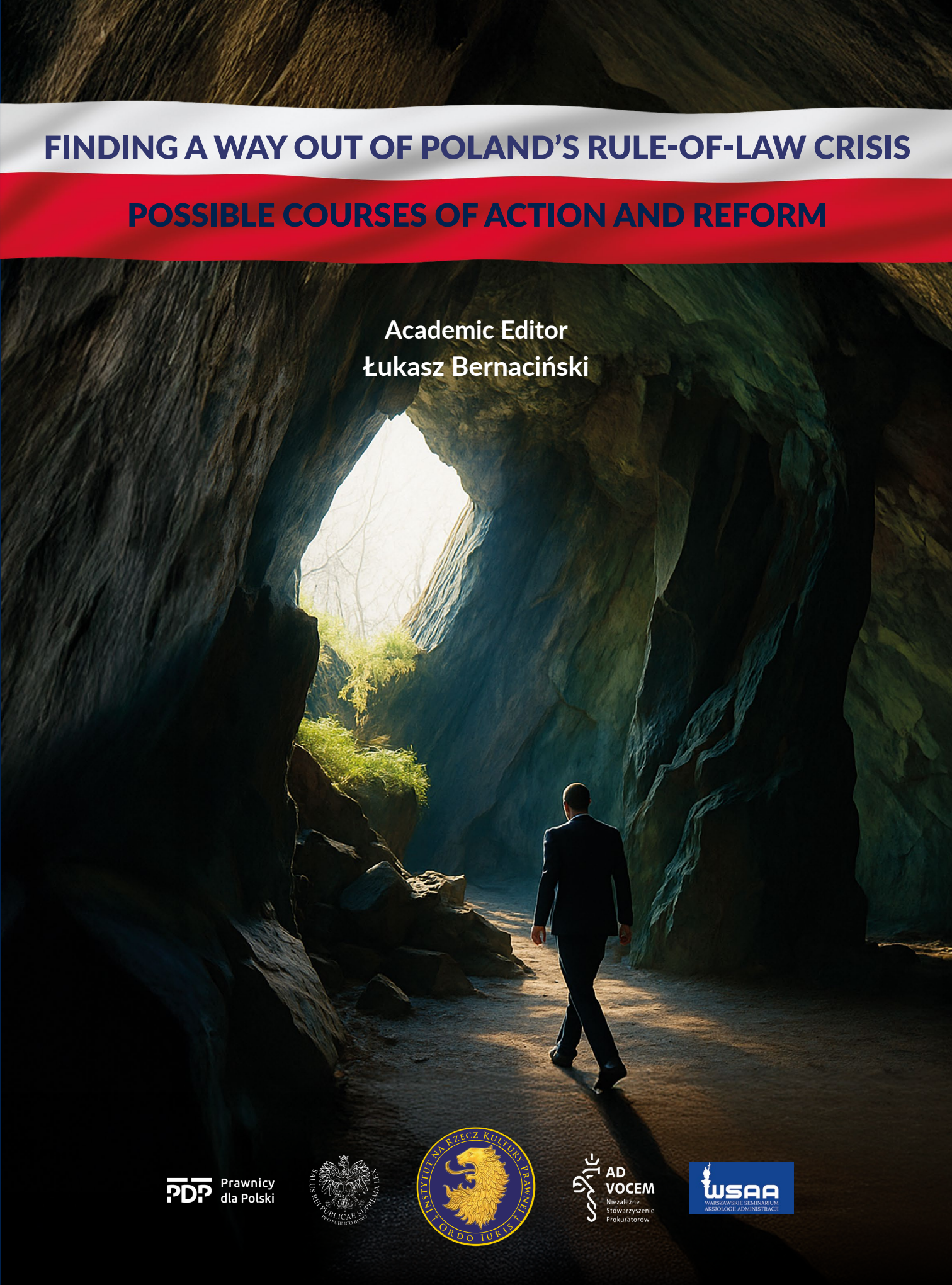
FINDING A WAY OUT OF POLAND'S RULE-OF-LAW CRISIS

POSSIBLE COURSES OF ACTION AND REFORM

Academic Editor
Łukasz Bernaciński



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Academic editor
Łukasz Bernaciński

Reviewers
Paweł Czubik
Anna Łabno

Authors
Łukasz Bernaciński (Introduction, Chapters III, IV, VII, Conclusion)
Katarzyna Gęsiak (Chapter VI)
Jędrzej Jabłoński (Chapters I–V, VIII)
Zygmunt Drożdżejko (Chapter I)
Andrzej Golec (Chapter V)
Łukasz Piebiak (Chapter II)
Krzysztof Wąsowski (Chapter VIII)

Editing and proofreading
Agnieszka Bernacińska
Monika Radecka

Graphic design, typesetting, and page layout
Ursines – Agencja Kreatywna. Błażej Zych
www.ursines.pl

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  - cease publicly questioning the status of judges;
  - notify all judges who have reached the age of 65 and have not obtained NCJ approval to continue holding office of their transition to retired status effective on the date they reach the required age.
- The disciplinary officer for ordinary courts and the public prosecutor's office should initiate appropriate proceedings against judges who, after reaching the age qualifying them for retired status, continue to hold their positions, as well as against court presidents who permit those judges to adjudicate.
- The public prosecutor's office should initiate proceedings to determine whether the Ministers of Justice have discharged their duties under Article 72 of the Law on the System of Common Courts.

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- All actions taken by judges appointed by the current and previous minister of justice to positions previously lawfully held by the former disciplinary officers should be deemed null and void.
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- Decisions of disciplinary courts issued with the participation of improperly appointed disciplinary judges should be vacated by operation of law, and the proceedings reopened.
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- All rulings of the Constitutional Tribunal that have been issued but have remained unpublished since March 2024 must be published immediately in the Official Journal.
- The opening of a preliminary inquiry into the constitutional, criminal, and disciplinary liability of those responsible for failing to publish the Constitutional Tribunal's judgments should be considered.
- The Sejm should enact legislation to suspend the running of the maximum time limits for reopening proceedings during the period from the issuance of an unpublished Constitutional Tribunal judgment until its publication.
- The Sejm should enact provisions suspending the running of the statute of limitations on a claim for damages caused directly by a repealed legal act or by a decision or ruling issued under such a legal act.

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- Dariusz Barski should immediately return to serving as the National Prosecutor, as should all prosecutors who were stripped of their positions by improperly appointed successors.

HOW TO OVERCOME THE RULE-OF-LAW CRISIS

POSSIBLE COURSES OF ACTION AND REFORM

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- The Minister of Health should revoke the Guidelines.
- The Minister of Health should issue a statement informing physicians that the previous Minister of Health misled them regarding the legal status of the Guidelines and confirming that the document has been non-binding from the outset.
- If the above actions are not taken, the Guidelines should be subjected to constitutional review by the Constitutional Tribunal.
- The Minister of Health should amend the regulation on the general terms and conditions of contracts for the provision of healthcare services by deleting unlawfully issued provisions that provide for financial penalties for actions by doctors and hospitals that are lawful but inconsistent with the Guidelines.

UNLAWFUL CHANGE TO THE CONDITIONS FOR ORGANIZING RELIGION CLASSES

- The judgments of the Constitutional Tribunal, which struck down improperly adopted regulations, must be published and those rulings must be complied with.
- The initiation of a preliminary investigation into the constitutional, criminal, and disciplinary liability of persons who permitted the issuance of legal acts in violation of the Constitution of the Republic of Poland should be considered.
- It is necessary to consider the possibility of compensating people whose rights have been violated as a result of unlawful actions by public authorities.
- The provisions contained in the Regulation on the Conditions and Manner of Organizing Religious Education in Public Preschools and Schools, as worded prior to July 26, 2024, should be enacted into law in order to ensure legal stability.

VIOLATIONS OF THE RIGHT TO OBTAIN INFORMATION – TAKEOVER OF PUBLIC MEDIA

- Decisions registering liquidators in the National Court Register (KRS) should be deemed ineffective, while leaving in force those of their acts that are protected by the presumption of the correctness of entries in the KRS.
- Those responsible for cutting off the signal of certain stations should be held civilly and criminally liable.
- The Minister of Justice should file a motion to initiate disciplinary proceedings against the notary who prepared the minutes of the General Meetings of Shareholders.

INTRODUCTION

We have been witnessing the erosion of the rule of law in Poland for quite some time, but what happened after December 13, 2023, violated the legal standards of the Third Republic of Poland, which had already been questioned, sparking outrage not only at home but also abroad (though this reaction did not occur immediately due to the government's takeover of the media, and thus the megaphone for the political narrative in Poland). The new government has brought about a profound crisis of citizens' trust in the state and the laws it enacts by declaring adherence to the principles of "transitional justice," which are characterized by both a departure from the letter and the foundations of the law and by its loose interpretation. It has also committed numerous violations of human freedoms and rights, with the right to life, freedom of conscience and religion, and freedom of speech at the forefront.

In recent months, we have observed a slowdown in the deepening of the crisis. Although legal chaos is spreading into more and more areas of the state's functioning, the pace of change is clearly slower. Every honest observer of political life must admit, regardless of political sympathies or worldview, that the loss of vigor among those in power was brought about to a large extent by the election of Karol Nawrocki as President of the Republic of Poland and by his policy of redefining the role of the head of state in the political system of the Republic of Poland. This policy is based on the use of the legal instruments conferred on the president by the Constitution of the Republic of Poland, as well as on a deep understanding of the president's constitutional role, which is not limited to being merely the guardian of the Constitution, but extends further to being an advocate of the sovereign, namely, the Nation. Although one can sometimes hear claims that the Constitution is the sovereign (e.g., E.-W. Böckenförde, M. Gersdorf), it should be recognized that, despite the passage of centuries, it still remains a legal instrument that protects the sovereign by curbing the overreach of power. It was the sovereign who, in the Constitution of the Republic of Poland, established the legal framework for the functioning of the state and delineated inviolable limits on interference with human freedoms and rights. Therefore, safeguarding the Constitution means protecting the will of the Nation in matters concerning the principles of the functioning of the state and the limits of the state apparatus's interference with human freedoms and rights.

The policy pursued by the current head of state creates favorable conditions for taking concrete action. The Ordo Iuris Institute has already twice described the most important violations in the aforementioned area that the current government has committed.[1] They are also continuously documented on the website rule-of-law-observer.pl. However, it is necessary to move from diagnosing the crisis to proposing remedial measures and far-reaching reforms, in order to avoid similar crises in

1 *A Year of Devastation of the Rule of Law in Poland. The Most Important Violations of the Rule of Law and Democratic Principles by the Government of Donald Tusk*, ed. Ł. Bernaciński, Warsaw 2024; *Violations of the Principles of a Democratic State Governed by the Rule of Law and of the Rule of Law by Donald Tusk's Government after December 13, 2023.*, ed. Ł. Bernaciński, Warsaw 2025.

the future. This is precisely the purpose served by the report we are placing in your hands. It concisely outlines possible courses of action and reforms aimed at preventing Poland from complete collapse as a democratic state governed by the rule of law.[2]

We address this report both to society at large and to every politician and lawyer for whom the welfare of Poland and its people is the highest goal guiding their work. Each chapter has been divided into three main parts: (1) outlining the problem in a way that reminds the reader of the most important facts relevant to the subject matter of the given chapter; (2) presenting remedial measures, that is, proposed actions aimed at restoring the rule of law in the area under discussion; and (3) presenting *de lege ferenda* proposals, that is, wide-ranging reforms intended to protect Poland against a return of the rule-of-law crisis. In this final section, possible directions for reform are identified at both the statutory and constitutional levels. Furthermore, the content has been organized to give precedence to "patient zero," that is, the justice system, but it was not possible to forgo discussing, if only by way of example, three selected areas of violations of human rights and freedoms.

This report, understood in the strict sense (in accordance with the definition of this type of publication), namely, as a report on the progress of specific work, constitutes a summary of a particular stage of deliberation on how to overcome the rule-of-law crisis in Poland. This publication is, to a large extent, a collection of ideas jointly developed by legal non-governmental organizations; accordingly, they are kept at an appropriately general level and sometimes are alternative or even mutually exclusive, in the sense that adopting one solution may preclude adopting another (or render others unjustified). The final ambition of the cooperating organizations is to draft a bill to restore the rule of law in the administration of justice, which will provide a more complete picture of the final decisions and recommended legislative actions.

***

In the Republic of Poland, there are still legal and patriotic circles that refuse to allow our homeland to be turned into a testing ground for transforming democracy into oligarchic rule by castes who exploit the last shreds of the state's authority to pursue special-interest political aims and to hold on to power at any cost. After December 13, 2023, these groups established new media outlets and expanded existing ones, organized marches and protests, and publicly commented on abuses of power in Poland and abroad. It was precisely these circles—viewing the candidacy of the president of Poland's National Memory Institute (IPN) as a kind of counterweight to destructive rule—that contributed to the election of Karol Nawrocki as President of Poland, and now some of them have prepared the outlines of actions and reforms to pull Poland out of the rule-of-law crisis. The following proposals were developed collaboratively by representatives of these groups.

2 Some of the issues identified in the report were also noted by the President of the Republic of Poland, Karol Nawrocki, and included in the president's draft Bill on Restoring the Right of Access to a Court and on the Hearing of a Case Without Undue Delay. The recommendations contained in the following report go far beyond the scope of the president's proposal.

I would like to thank the following associations for their involvement in the work on this report of the Ordo Iuris Institute: Lawyers for Poland, Judges of the Republic of Poland and Ad Vocem, as well as the Warsaw Seminar of Administrative Axiology. Your contribution to this publication, and above all the months of joint debates and work that inspired the creation of the report, are invaluable for the protection of the common good of Poland and the Polish people.

Łukasz Bernaciński
Member of the Management Board of the Ordo Iuris Institute for Legal Culture

Chapter I

CHALLENGING THE STATUS OF THE NATIONAL COUNCIL OF THE JUDICIARY

Main theses of the chapter

- The government of Donald Tusk challenges the status of the National Council of the Judiciary (NCJ), deeming the procedure for electing its judge members to be contrary to domestic and international law, even though this procedure meets international standards and the Constitutional Tribunal has found it to be consistent with the Constitution.

- As a result, the government prevents the NCJ from performing its essential functions, or even usurps its powers, as in the case of granting consent for judges to continue to hold judicial office after reaching retirement age.

- The provisions concerning the NCJ's powers, particularly with respect to appointing judges and prohibiting challenges to their status, should be observed, and those who violate them should be held accountable as provided under applicable law.

- To restore the rule of law, it is not necessary to amend the provisions governing the system for electing judges to the National Council of the Judiciary. What is necessary, however, is their application by public authorities.

- In the longer term, one might consider making changes to the system for electing judge members of the NCJ as a way to resolve the political dispute, provided that such changes respect the principle of the Nation's sovereign power, which rules out a return to a system in which members of the NCJ are elected by judges.

1. Outline of the problem

Article 187 of the Constitution of the Republic of Poland[1] regulates the composition of the National Council of the Judiciary and—in part—the manner of its election. "In part" because, in the case of NCJ members elected from among judges, it is not specified which body elects them. Paragraph 4 of the indicated article provides that the structure, scope of activity, and rules of procedure of the National Council of the Judiciary, as well as the method of selecting its members, are defined by statute.

Pursuant to the Act of December 8, 2017, amending the Act on the National Council of the Judiciary (NCJ) and Certain Other Acts,[2] the principle governing the election of the members of the NCJ referred to in Article 187(1) point 2 of the Constitution of the Republic of Poland was amended and since the entry into force of the aforementioned act they have been elected by the Sejm (and not, as previously, by the judges themselves from among their number). This solution was found by the Constitutional Tribunal to be in compliance with the Polish Constitution in its judgment of March 25, 2019 (case no. K 12/18[3]). In another judgment (of June 20, 2017, case no. K 5/17[4]), the Tribunal held that the previous system for electing judges to the National Council of the Judiciary (NCJ) was inconsistent with the Constitution of the Republic of Poland. Despite this, the current government challenges the status of the National Council of the Judiciary, maintaining that its current composition is inconsistent with the Constitution of the Republic of Poland. This view is based on the assertion of the alleged incompatibility of the current procedure for selecting judge members of the NCJ with European Union law and the Convention for the Protection of Human Rights and Fundamental Freedoms,[5] which is supposedly confirmed by the case law of the CJEU (incl. judgment of December 21, 2023, in the case of *L.G. v. the National Council of the Judiciary*, case no. C-718/21 and the judgment of September 4, 2025, in the case *"R" S.A. v. AW "T" sp. z o.o.*, case no. C-225/22) and the ECtHR (including the judgment of November 8, 2021, in the case of *Dolińska-Ficek and Ozimek v. Poland*, application nos. 49868/19 and 57511/19, and the judgment of November 23, 2023, in the case of *Wałęsa v. Poland*, application no. 50849/21)—although the CJEU did not question *per se* the manner of selecting judges to the Polish National Council of the Judiciary. Donald Tusk's cabinet thus disregards the position of the Constitutional Tribunal, which held that both the CJEU,[6] and the ECtHR[7] are not competent to rule on the structure of the Polish judiciary, including on the rules governing the appointment of judges to the National Council of the Judiciary.

Since taking power, the current Polish government has been questioning the status of the National Council of the Judiciary and, as a consequence, has prevented that body from exercising its powers or has even outright usurped them. The Tusk government's actions in this regard are particularly

1 Constitution of the Republic of Poland (Official Journal of 1997, No. 78, item 864/483, as amended), hereinafter: Constitution of the Republic of Poland.
2 Act of December 8, 2017, amending the Act on the National Council of the Judiciary and Certain Other Acts (Official Journal of 2018, item 3).
3 Judgment of the Constitutional Tribunal of March 25, 2019, case no. K 12/18 (Official Journal, item 609).
4 Judgment of the Constitutional Tribunal of June 20, 2017, case no. K 5/17 (Official Journal, item 1183).
5 Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950, as subsequently amended by Protocols Nos. 3, 5 and 8 and supplemented by Protocol No. 2 (Official Journal of 1993, No. 61, item 284, as amended).
6 See the judgment of the Constitutional Tribunal dated October 7, 2021, case no. K 3/21 (Official Journal, item 1852).
7 See the judgment of the Constitutional Tribunal dated March 10, 2022, case no. K 7/21 (Official Journal, item 643).

evident in two areas. First, the Minister of Justice fails to discharge the duty referred to in Article 20a § 4 of the Act of July 27, 2001—the Law on the System of Common Courts,[8] that is, the duty to announce vacant judicial positions. Such public notice is a prerequisite for initiating the procedure for the appointment of judges, without which it is not possible to submit nominations for the office of judge and, consequently, for those nominations to be considered by the NCJ. As a result of the above practice of the Minister of Justice, there were—as of August 20, 2025—678 vacancies in judicial positions in the common courts, and it should be noted that since December 13, 2023, as indicated in the Ministry of Justice's letter of August 28, 2025, 117 judicial positions have been abolished.[9] A second manifestation of the Ministry of Justice's encroachment on the NCJ's powers is allowing judges over the age of 65 who, pursuant to Article 69 of the Law on the System of Common Courts, should be retired to serve as judges. Consent to continue holding judicial office may be granted by the National Council of the Judiciary if it is justified by the interest of the administration of justice or an important public interest.

Furthermore, it should be noted that the Minister of Justice undertook a series of actions challenging the status of judges appointed after 2017. These actions either took the form of unlawful factual measures (e.g., the dismissal of almost all court presidents; changes in the criminal divisions of Warsaw courts consisting of removing judges from adjudicating in cases that may involve politicians) or involved lawmaking (such as introducing regulations enabling the removal of judges from adjudicating in specific cases, which regulations were found to be inconsistent with the Constitution of the Republic of Poland[10]) or consisted of verbally questioning the status of judges in the media.

It should be of particular concern that part of the judiciary supports the government's actions in this area and also questions the status of individuals appointed to judicial office after 2017. In extreme cases, this has led to judgments being vacated (especially in criminal cases) solely due to the presence of a judge appointed after 2017 on the adjudicating panel.

It should also be noted that on July 12, 2024, the parliamentary majority passed an act amending the Act on the National Council of the Judiciary,[11] which explicitly challenged the status and resolutions adopted by the current National Council of the Judiciary. The act was held unconstitutional by the Constitutional Tribunal in a judgment dated November 20, 2025, case no. Kp 2/24, issued in preventive review proceedings. In addition, two bills have been submitted to the Sejm that directly or indirectly concern the National Council of the Judiciary and challenge its status: a bill amending the Act on the National Council of the Judiciary (Sejm paper No. 2108) and a bill on restoring the right to an independent and impartial court established by law by regulating the effects of resolutions of the National Council of the Judiciary adopted between 2018 and 2025 (Sejm paper No. 2107). These

8 Act of July 27, 2001—Law on the System of Common Courts (Official Journal of 2024, item 334, as amended), hereinafter: the "LSCC."

9 Letter from the Ministry of Justice dated August 28, 2025, ref. no.: DKO – IV.0820.108.2025.

10 For example, the Regulation of the Minister of Justice of February 6, 2024, amending the Regulation—Rules of Procedure of Common Courts (Official Journal of 2024, item 149), which was subsequently declared unconstitutional in the judgment of the Constitutional Tribunal dated March 6, 2025, case no. U 16/24).

11 Act of July 12, 2024, amending the Act on the National Council of the Judiciary, https://orka.sejm.gov.pl/opinie10.nsf/nazwa/219_u/$file/219_u.pdf, accessed: February 3, 2026.

proposals, due to their obvious incompatibility with the Constitution of the Republic of Poland, cannot be reconciled with the positions of the Constitutional Tribunal expressed in judgments already issued, as well as with the opinions of bodies such as, for instance, the Venice Commission.[12] The second of the above-mentioned bills was also sharply criticized by the Helsinki Foundation for Human Rights in its opinion on the draft.[13]

2. Restitution measures

The government should refrain from any action questioning the status of judges appointed by the President of the Republic, while the Sejm should halt the legislative process of the above two bills. Provisions prohibiting challenges to the status of judges (in particular Article 42a §§ 1 and 2 of the Law on the System of Common Courts) should be applied, and provisions that impede this (in particular the disciplinary defenses specified in Article 107 § 3 points 1 and 3 of the Law on the System of Common Courts) should be repealed or clarified in such a way that it is unambiguous that they do not apply in the event of a violation of the above prohibitions. The so-called judicial independence test (Article 42a §§ 3–14 of the Law on the System of Common Courts) should also be repealed as in practice it has not fulfilled its function—it is not applied to judges other than those appointed after 2017, and with respect to those judges, contrary to the Constitutional Tribunal's judgments, other procedures are used, in particular the recusal of a judge or provisions on the improper composition of the court, thereby preventing the review of a court judgment. The repeal of the provisions concerning this test is also envisaged by the draft Bill on Restoring the Right of Access to a Court and on the Hearing of a Case Without Undue Delay[14], which on February 19, 2026, was submitted to the Sejm by the President of the Republic of Poland, Karol Nawrocki.

The government should refrain from any action questioning the status of judges appointed by the President of Poland.

Furthermore, the Minister of Justice should without delay cease interfering with the competences of the NCJ and instead fulfill the obligations incumbent upon him: publish a list of vacant judicial posts in accordance with Article 20a § 4 of the Law on the System of Common Courts, as well as—in order to discharge the obligation set out in Article 72 of that Act—notify all judges who have reached the age of 65 and have not obtained the NCJ's consent to continue holding office, of their transition to retirement as of the day on which they attain the required age. He should also cease publicly questioning the status of judges.

12 See in particular CDL-AD(2024)029-e Poland—Joint Opinion of the Venice Commission and the Directorate General Human Rights and Rule of Law on European standards regulating the status of judges, adopted by the Venice Commission at its 140th Plenary Session (Venice, October 11–12, 2024), https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2024)029-e, accessed: February 3, 2026.

13 Opinion of the Helsinki Foundation for Human Rights dated November 25, 2025, reference no.: 310/2025/MPL.

14 Draft Bill on Restoring the Right of Access to a Court and on the Hearing of a Case Without Undue Delay, https://www.prezydent.pl/prawo/inicjatywy-ustawodawcze/projekt-ustawy-o-przywroceniu-prawa-do-sadu-oraz-rozpoznania-sprawy-bez-nieuzasadnionej-zwloki,115357, accessed: February 23, 2026, hereinafter: the "Presidential Bill."

The disciplinary officer of the common courts and the public prosecutor's office should initiate appropriate proceedings against judges who, after reaching the age qualifying them for retirement, continue to hold their posts, and against court presidents who allow them to adjudicate. These judges should return to the State Treasury their unduly received remuneration (pursuant to Article 100 § 2 of the Law on the System of Common Courts, a judge retiring due to age is entitled to remuneration amounting to only 75% of his/her salary).

The heads of divisions in individual courts should refuse to apply the Regulation of the Minister of Justice of February 6, 2024, amending the regulation—Rules of Procedure of Common Courts,[15] because it has been found to be inconsistent with the Constitution of the Republic of Poland.

The Prosecutor's Office should initiate proceedings to ascertain whether the Ministers of Justice complied with their obligations under Article 72 of the Law on the System of Common Courts, and also whether they encouraged judges to continue holding office.

MOST URGENT RESTITUTION ACTIONS

The Minister of Justice should:

- publish a notice of vacant judicial positions in courts of general jurisdiction;
- cease publicly questioning the status of judges;
- notify all judges who have reached the age of 65 and have not obtained NCJ approval to continue holding office of their transition to retired status effective on the date they reach the required age.

The disciplinary officer for the common courts and the prosecutor's office should initiate appropriate proceedings against judges who, after reaching retirement age, continue to hold their positions, and against court presidents who allow these judges to adjudicate.

The public prosecutor's office should initiate proceedings to determine whether the Ministers of Justice have discharged their duties under Article 72 of the Law on the System of Common Courts.

The Sejm should suspend the legislative process for the bill on restoring the right to an independent and impartial court established by law by regulating the effects of the resolutions of the National Council of the Judiciary adopted between 2018 and 2025.

15 Regulation of the Minister of Justice of February 6, 2024, amending the Regulation—Rules of Procedure of Common Courts (Official Journal of 2024, item 149).

3. *De lege ferenda* proposals

From a legal standpoint, there is no need to make changes to the current system for electing judges to the National Council of the Judiciary. The current system complies with the Constitution of the Republic of Poland and international standards. However, given that the dispute is political in nature, certain adjustments to this system could be considered. They are not necessary, but they could contribute to ending the conflict.

From a legal standpoint, there is no need to make changes to the current system for electing judges to the National Council of the Judiciary. The current system complies with the Constitution of the Republic of Poland and international standards.

One example of a change that would achieve the above objective would be to modify the rules to be followed by the Sejm committee that draws up the list of candidates for members of the National Council of the Judiciary (NCJ), a list that is then submitted to the Sejm for a vote. Currently, pursuant to Article 11d(4) of the Act on the National Council of the Judiciary,[16] the committee, in drawing up such a list on the basis of candidates put forward by individual parliamentary groups (each club may put forward no more than nine candidates), must include on it at least one candidate put forward by, as a rule, each parliamentary group, regardless of its size. This means that there may be a situation in which the list will include nine candidates from a parliamentary group with 15 members, while a parliamentary group with 180 members will have only one candidate. Instead, a rule should be introduced whereby the committee, when compiling such a list, would be required to include candidates nominated by each parliamentary group in a number proportional to the number of its members of parliament.

Another possible way to end the political dispute would be to introduce the election of judges to the NCJ by popular vote, while prohibiting, however, any election campaigning and imposing only a requirement to provide information on candidates' qualifications and their judicial service records to date. However, this measure should not be regarded as reducing political influence over the judiciary because political circles, using the mass media, will still influence public opinion in order to select the candidates they consider appropriate. Although this model introduces an additional decision-making intermediary between politicians and the judges being selected, it will not effectively shield the judiciary from the charge of politicization.

To prevent the Minister of Justice from obstructing the appointment of judges by failing to fulfill the obligation to announce judicial vacancies in the common courts, this function should be transferred to other authorities—preferably to the president of the Republic of Poland, who plays a special role in

16 Act of May 12, 2011, on the National Council of the Judiciary (Official Journal of 2024, item 1186).

the process of appointing judges and on whom the duty to announce vacancies in the Supreme Court and the Supreme Administrative Court already rests. Such a solution would simultaneously increase the independence of the judiciary from the government and, consequently, from the Sejm majority. It was also included in the president's bill.

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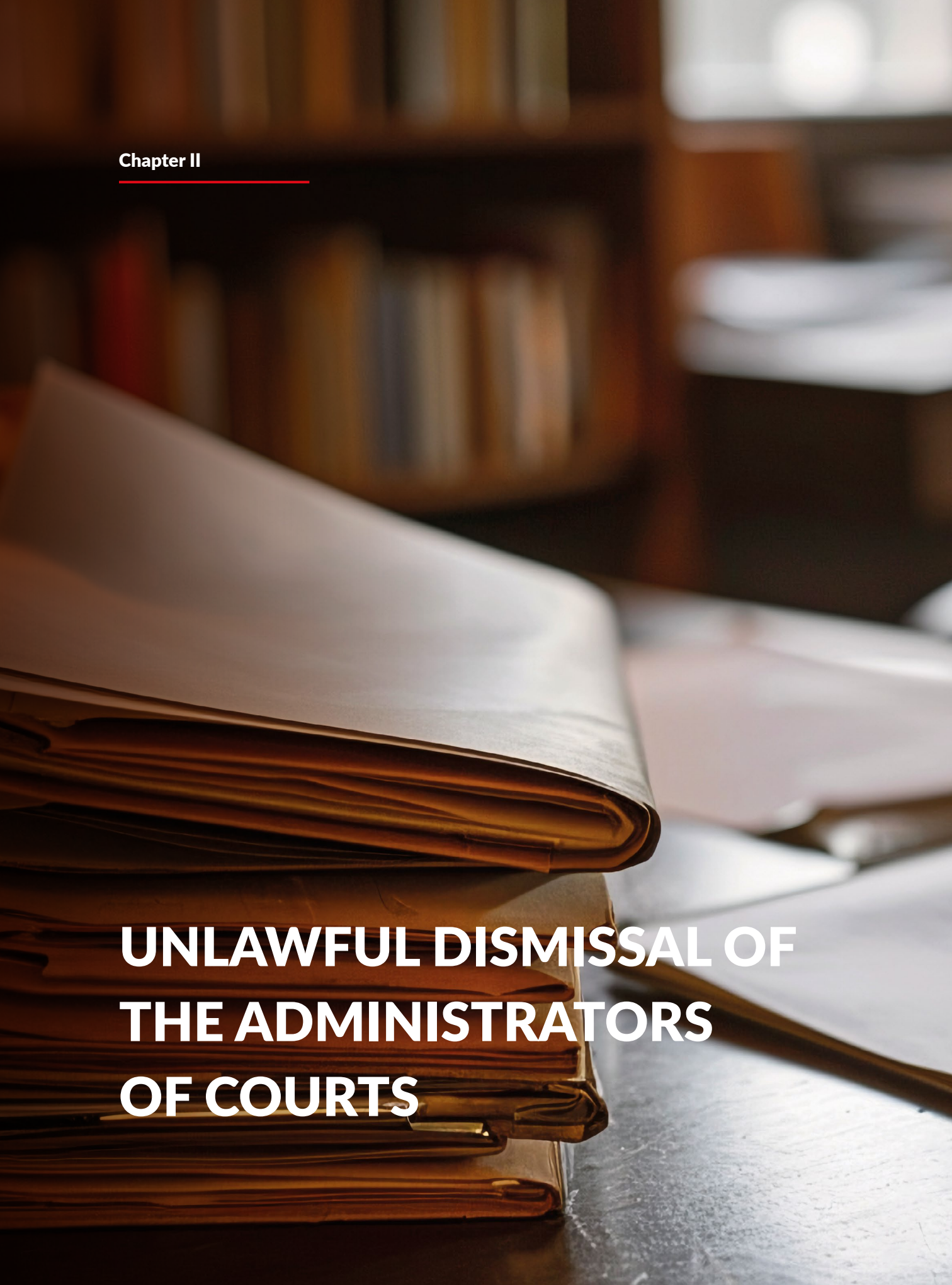
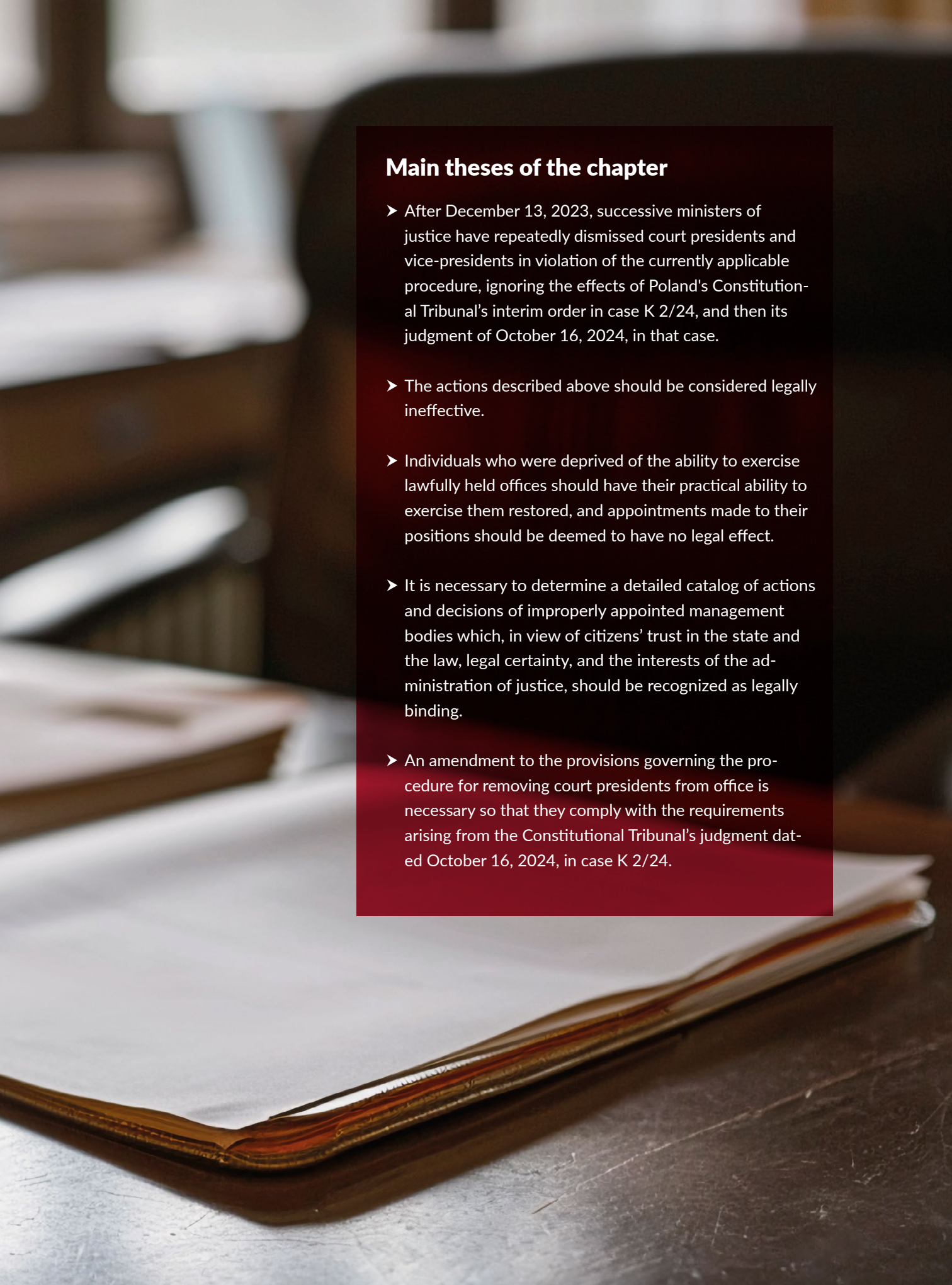
Should circumstances arise that make it possible to amend the Constitution of the Republic of Poland, it would be worth reconsidering the model for appointing and promoting judges, under which the president's prerogative is less constrained by the actions of the National Council of the Judiciary (NCJ). It would be advisable to consider introducing measures providing that the decision on the first appointment as a judge should belong exclusively to the president, while the president's decisions on promoting judges and on appointing lawyers from outside the judiciary to judicial positions in the Supreme Court and the Supreme Administrative Court should be subject—in the interest of, and to preserve, the independence of the judiciary—to oversight by a body that checks the head of state's political motivations.



Chapter II

UNLAWFUL DISMISSAL OF THE ADMINISTRATORS OF COURTS



Main theses of the chapter

- After December 13, 2023, successive ministers of justice have repeatedly dismissed court presidents and vice-presidents in violation of the currently applicable procedure, ignoring the effects of Poland's Constitutional Tribunal's interim order in case K 2/24, and then its judgment of October 16, 2024, in that case.
- The actions described above should be considered legally ineffective.
- Individuals who were deprived of the ability to exercise lawfully held offices should have their practical ability to exercise them restored, and appointments made to their positions should be deemed to have no legal effect.
- It is necessary to determine a detailed catalog of actions and decisions of improperly appointed management bodies which, in view of citizens' trust in the state and the law, legal certainty, and the interests of the administration of justice, should be recognized as legally binding.
- An amendment to the provisions governing the procedure for removing court presidents from office is necessary so that they comply with the requirements arising from the Constitutional Tribunal's judgment dated October 16, 2024, in case K 2/24.

1. Outline of the problem

Under the currently applicable wording of Article 27 of the Act of July 27, 2001—Law on the System of Common Courts, the Minister of Justice, in order to dismiss the president or vice-president of a court, must obtain the opinion of the college of judges of that court (which is composed of: the president of that court and the presidents of the courts of the immediately lower level within that court's territorial jurisdiction). When requesting such an opinion, the Minister of Justice must provide justification for the intended dismissal and may also simultaneously suspend the president or vice-president of the court from performing their duties.

If the college of judges issues a negative opinion within 30 days, the minister still may dismiss the president, but only provided that the intention to dismiss is resubmitted, together with a written justification, this time to the National Council of the Judiciary, and that the Council does not issue, within 30 days, a negative opinion adopted by a two-thirds majority.

Almost from the beginning of his tenure, the Minister of Justice Adam Bodnar announced the dismissals of court presidents and vice presidents, trying to circumvent the applicable regulations in various ways. In order to remove unwanted individuals from the above positions, he manipulated the composition of the colleges of judges, for example, by suspending, before submitting a motion to remove the president of a regional court, the presidents of district courts who were members of the regional court's college of judges. He also approved allowing persons he had designated as deputies for suspended presidents to participate in meetings of colleges of judges and to vote in them or outright ignored the opinions of those bodies, invoking non-existent procedural requirements, for example, a non-existent obligation to provide reasons for a college of judges' resolution.

In terms of flouting the law to seize control of the courts, however, Adam Bodnar's successor as Minister of Justice, Waldemar Żurek, has gone even further, openly announcing the removal of several dozen court presidents despite negative opinions from the colleges of judges that were binding on him, justifying this by the fact that their members had been appointed to their posts during the previous term of the Sejm. At the same time, the Minister declared that he would not attempt to refer to the National Council of the Judiciary those cases in which a court's college of judges refused to grant the Minister of Justice consent to remove court presidents and vice-presidents from office.

The abuses committed by Minister Adam Bodnar led the Constitutional Tribunal to issue first an interim order and then a judgment dated October 16, 2024 (case K 2/24), in which it held that key elements of the then-applicable procedure for removing presidents of courts were unconstitutional. In particular, the Constitutional Tribunal found that it contradicts constitutional guarantees regarding the independence of judges, the independence of courts and the systemic role of the National Council of the Judiciary as guardian of the above values, to the extent that:

- it allows the Minister of Justice to suspend the president or vice-president of a court from performing their duties without the participation of the National Council of the Judiciary (NCJ) and does not specify a maximum duration of this suspension,
- it allows the Minister of Justice to dismiss the president or vice-president of a court without the participation of the NCJ (in a situation where the college of judges of the relevant court issues a positive opinion or fails to issue an opinion within 30 days),
- it limits the binding effect on the Minister of Justice of a negative opinion of the National Council of the Judiciary (NCJ) regarding the intention to dismiss the president or vice-president of a court solely to NCJ resolutions adopted by a two-thirds majority,
- it provides that the failure of the National Council of the Judiciary (NCJ) to issue an opinion within 30 days does not prevent the Minister of Justice from dismissing the president or vice-president of a court.

The effect of the judgment is essentially that, from the moment of its announcement, there is no procedure consistent with the Constitution of the Republic of Poland for removing presidents or vice-presidents of courts from office without their consent, and therefore it is not possible to lawfully remove members of court administration for any reason other than their resignation.

2. Restitution measures

All court presidents and vice-presidents whose removal from office before the Constitutional Tribunal issued an interim order occurred in violation of procedure—and, from the moment that order was issued (later confirmed by a Constitutional Tribunal judgment), whose removal occurred in any manner whatsoever (i.e., whether in violation of procedure or in compliance with it)—were removed unlawfully, that is, without legal effect. All individuals who, from a formal standpoint, should still lawfully hold their offices must have the genuine ability to exercise their functions restored, and their terms of office, in fact interrupted at the time of the minister's decision to suspend them from their duties (or at the time the decision to dismiss them was made, in those cases where the dismissal was not preceded by suspension), must be continued.

The Minister of Justice should prepare a list of court presidents and vice-presidents to whom the above circumstances apply, while also specifying, for each of them, the date of their return to holding office and the date their term of office ends, taking into account that the period during which they were actually deprived of the ability to hold office is not counted toward the term of office. Illegal appointments of new individuals to positions that were still filled should be deemed null and void, as should the official acts of those individuals. However, broad exceptions should be applied due to the harm that declaring all acts of illegally appointed court presidents and vice-presidents invalid would cause to litigants, courts and judges, as well as to bodies cooperating with the courts. As a rule, the following should be deemed to remain in force: administrative decisions (unless they have been appealed), acts within the scope of labor law and of civil law concerning civil-law obligations, and acts arising under the LSCC (except when appointing or changing a panel of judges outside the random case

assignment system), activities under special laws relating to notaries, bailiffs, probation officers, and detectives, as well as activities under the Mental Health Act. At the same time, the Minister of Justice should issue administrative decisions ordering the repayment of unlawfully received allowances for the entire period of the illegal exercise of office by the usurpers.

THE MINISTER OF JUSTICE SHOULD:

prepare a list of court presidents and vice presidents unlawfully removed from office, specifying, for each, the date of resumption of duties and the date their term of office ends;

declare invalid the unlawful appointments of new individuals to positions that were continuously occupied, as well as the official acts of those individuals, subject to broad exceptions.

3. *De lege ferenda* proposals

It is essential to implement the judgment of the Constitutional Tribunal issued in case K 2/24 and to amend the procedure for dismissing court presidents and vice-presidents so that it meets the requirements specified by the Tribunal.

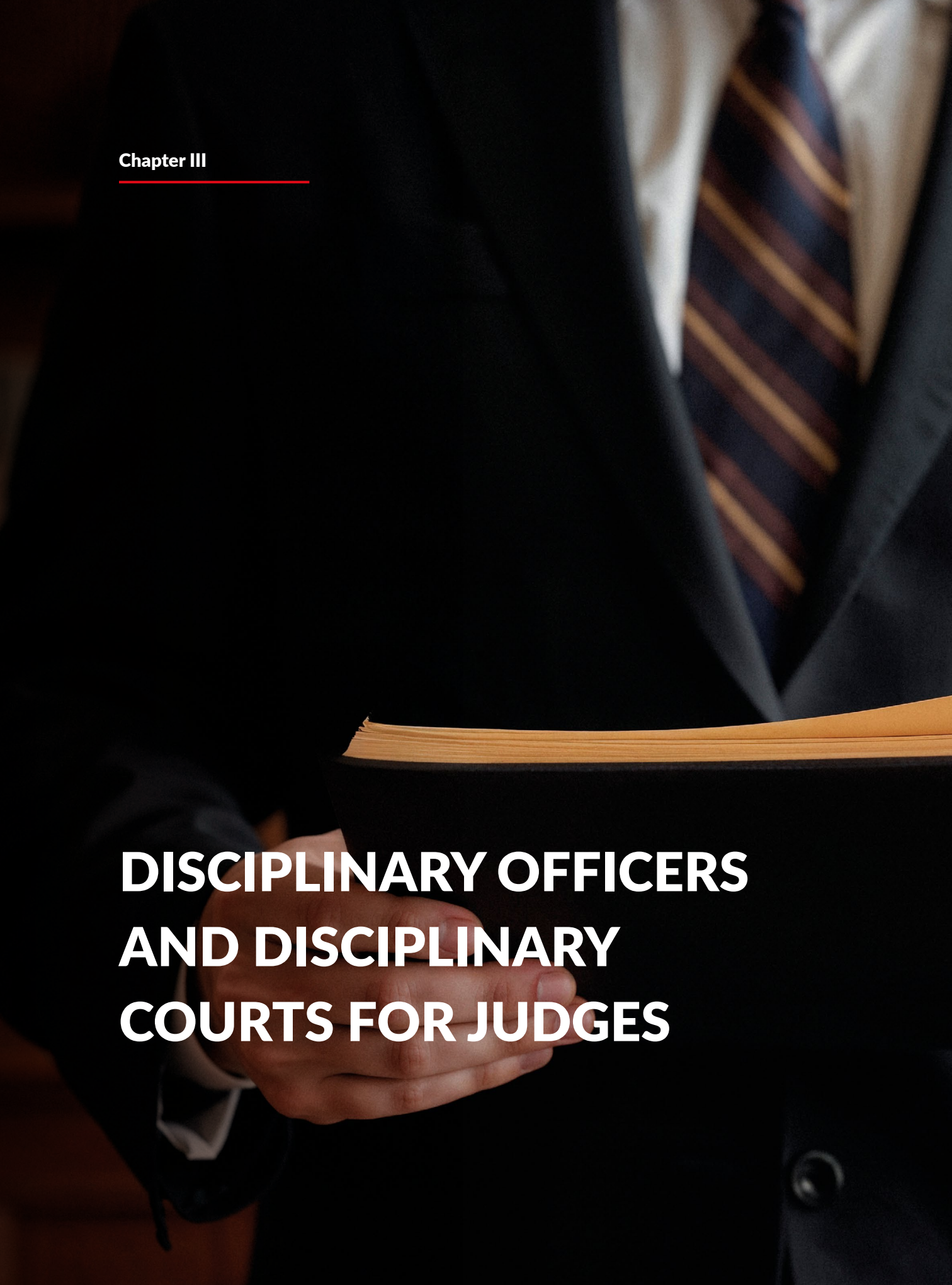
First, it is necessary to ensure the mandatory participation of the NCJ in the procedure for dismissing presidents or vice-presidents. This solution may take the form of a dual-consent mechanism that limits the ability to remove a court president or vice-president solely to situations in which both the court's college of judges (first) and the National Council of the Judiciary (subsequently) issue a favorable opinion in this regard. A lack of such consent by the deadline should, contrary to current practice, be treated as an expression of a negative opinion. Alternatively, one could also consider extending the deadline for the NCJ to issue an opinion, for example, to 90 days.

It is essential to implement the judgment of the Constitutional Tribunal issued in case K 2/24 and to amend the procedure for dismissing court presidents and vice-presidents so that it meets the requirements specified by the Tribunal.

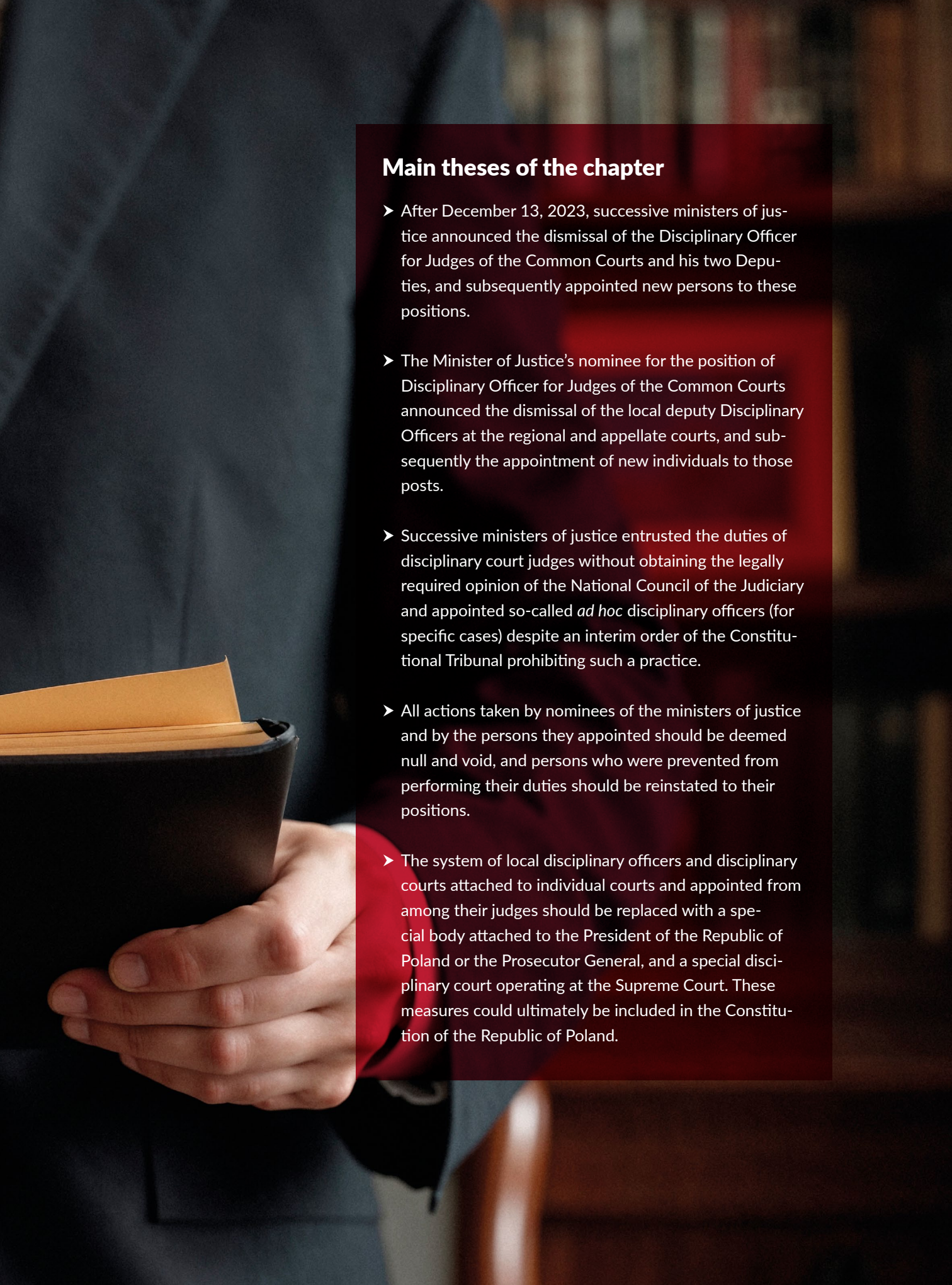
A model is also possible under which, in the absence of the college of judges' consent, consent from the NCJ would suffice; however, in that case it should be considered whether obtaining it should require a qualified majority, for example, two-thirds of the votes. However, for the NCJ to issue a negative opinion, a simple majority should always suffice.

Suspending a court president or vice-president from the performance of duties should also be limited to a maximum period, for example, 30 days, after which, unless the court's college of judges or the NCJ issues a negative opinion on removal within that time, the NCJ should decide whether to extend the suspension period. It should also be clearly stated that a renewed suspension is not possible if previously, for example, within the last three or six months, the NCJ did not consent to an extension of the suspension or issued a negative opinion regarding a dismissal, unless the dismissal is based on circumstances other than those previously presented in the application. Finally, suspension from duties should not extend to the court president's participation in the work of the court's college of judges, so that it is not possible to manipulate the college of judges' composition by suspending its members. It should also be explicitly confirmed that individuals temporarily performing the duties of a suspended president (a vice president or a designated judge) do not have voting rights at meetings of the court's college of judges.

Chapter III



DISCIPLINARY OFFICERS AND DISCIPLINARY COURTS FOR JUDGES



Main theses of the chapter

- After December 13, 2023, successive ministers of justice announced the dismissal of the Disciplinary Officer for Judges of the Common Courts and his two Deputies, and subsequently appointed new persons to these positions.

- The Minister of Justice's nominee for the position of Disciplinary Officer for Judges of the Common Courts announced the dismissal of the local deputy Disciplinary Officers at the regional and appellate courts, and subsequently the appointment of new individuals to those posts.

- Successive ministers of justice entrusted the duties of disciplinary court judges without obtaining the legally required opinion of the National Council of the Judiciary and appointed so-called *ad hoc* disciplinary officers (for specific cases) despite an interim order of the Constitutional Tribunal prohibiting such a practice.

- All actions taken by nominees of the ministers of justice and by the persons they appointed should be deemed null and void, and persons who were prevented from performing their duties should be reinstated to their positions.

- The system of local disciplinary officers and disciplinary courts attached to individual courts and appointed from among their judges should be replaced with a special body attached to the President of the Republic of Poland or the Prosecutor General, and a special disciplinary court operating at the Supreme Court. These measures could ultimately be included in the Constitution of the Republic of Poland.

1. Outline of the problem

On April 4, 2025, the Minister of Justice announced the dismissal of Judge Przemysław Radzik from the position of Deputy Disciplinary Officer for Judges of the Common Courts, and then, on April 25 of the same year, announced the dismissal of Judge Piotr Schab from the position of Chief Disciplinary Officer for Judges of the Common Courts. Following in his footsteps was Adam Bodnar's successor in the role of minister, Waldemar Żurek, who on July 31, 2025, announced the dismissal of the second deputy, Judge Michał Lasota. It should be emphasized here that there is no legal provision that would allow the Minister of Justice to dismiss any disciplinary officers. Article 112 § 3 of the Law on the System of Common Courts only authorizes the minister to appoint a disciplinary officer and two deputies for a four-year term. Nevertheless, Minister Bodnar, unlawfully deeming his decision effective, announced on July 16, 2025, the appointment of Judge Mariusz Ulman as the new Disciplinary Officer for Judges of the Common Courts and Judge Tomasz Ładny as his deputy.

Following the September 4, 2025, announcement of Judge Ulman's resignation, Minister Żurek announced on September 16, 2025, the appointment of another person—Judge Joanna Raczkowska—as the Disciplinary Officer for Judges of the Common Courts. On November 4, 2025, the minister's appointee announced the dismissal of nine deputies to the Disciplinary Officer at regional and appellate courts, even though, in this case as well, no legal provision grants such authority even to the legitimate Disciplinary Officer for Judges of the Common Courts. She also appointed new people to these positions. Further dismissals and appointments were announced on November 19, 2025, and January 20, 2026.

Concurrently with the foregoing, successive ministers of justice entrusted judges with the duties of judges of the disciplinary court attached to the appellate court, without seeking the opinion of the National Council of the Judiciary, that is, in contravention of the requirements set forth in Article 110 § 1 of the Law on the System of Common Courts. At the same time, the ministers made use of their power to appoint disciplinary officers of the Minister of Justice, i.e., so-called *ad hoc* disciplinary officers designated to conduct a specific case concerning a particular judge, even though the Constitutional Tribunal, in response to an application by the National Council of the Judiciary to examine the conformity of the institution of *ad hoc* disciplinary officers with the Constitution of the Republic of Poland, issued an oder on January 8, 2025, granting interim relief in case no. K 16/24, in which it ordered the suspension of any actions by those officers and prohibited the Minister of Justice from further appointing them.

Successive ministers of justice assigned the duties of judges of the disciplinary court without seeking the opinion of the NCJ as required by law.

The culmination of the above actions by the Ministry of Justice was the forcible entry by the Prosecutor's Office, on January 21, 2025, into the NCJ headquarters, as a result of which, after drilling out the locks on the door of the office of the Disciplinary Officer for Judges of the Common Courts and on the safes located there, the disciplinary case files were seized for transfer to the Minister of Justice's nominee for the position of Disciplinary Officer for Judges of the Common Courts and to the *ad hoc* disciplinary officers. In taking these actions, the prosecutor's office explicitly cited the Ministry of Justice's narrative affirming the legality of the dismissal of the Disciplinary Officer for Common Court Judges and his deputies, and also accused the officer and his deputies of impersonating public officials. In doing so, the Prosecutor's Office completely ignored numerous Supreme Court decisions finding, directly or implicitly (by allowing the lawful disciplinary officer or his deputies to participate in the proceedings), such dismissals unlawful. This concerns the decisions of the following dates: August 6, 2025, case no. I ZI 24/24; September 04, 2025, case no. I ZI 62/24 and I ZI 42/24; September 18, 2025, case no. I ZI 65/23; November 20, 2025, case no. II ZOW 4/25; December 8, 2025, case no. II ZOW 80/22, as well as the above-cited interim relief order of the Constitutional Tribunal concerning *ad hoc* disciplinary officers, case no. K 16/24.[17]

2. Restitution measures

All actions taken by judges appointed by the current and the previous minister of justice to positions previously filled legally by disciplinary officers must be deemed invalid. Persons who agreed to assume these positions should be held criminally liable under Article 227 of the Criminal Code[18] (impersonating a public official) and return to the State Treasury any unduly received functional allowances. The persons who appointed them should be held liable under Article 231 of the Criminal Code (exceeding authority, failure to discharge duties).

The term of office of deputy disciplinary officers at the appellate and regional courts, who were effectively prevented from performing their functions, should be restored. It should be acknowledged that these persons were hindered in the performance of their functions.

All decisions of disciplinary courts rendered with the participation of improperly appointed disciplinary judges should be vacated by operation of law and the proceedings reopened. All cases taken over by disciplinary officers on an *ad hoc* basis should be returned to the rightful Disciplinary Officer for the Judges of the Common Courts.

17 On February 11, 2026, the Supreme Court, sitting as a single judge, issued an order in case II ZO 36/22, in which it attempted to justify the legality of the Minister of Justice's removal of disciplinary officers from office. See further *The Ministry ignores the Supreme Court's consistent case law, clinging to a single ruling that contains propositions contrary to the fundamental principles of law*, Rule of Law Observer, February 23, 2026, https://obserwator-praworzadnosci.pl/pl/ministerstwo-ignoruje-konsekwentna-linie-orzecznicza-sn-chwytajac-sie-jednego-postanowienia-w-ktorym-zawarto-tezy-sprzeczne-z-podstawowymi-zasadami-prawa [in Polish only], accessed: February 23, 2026.

18 Act of June 6, 1997—Criminal Code (Official Journal of 2025, item 383, as amended), hereinafter: the "CC."

JUDGES' DISCIPLINARY COURT SYSTEM
RESTITUTION MEASURES

All actions taken by judges appointed by the current and previous minister of justice to positions previously lawfully held by the former disciplinary officers should be deemed null and void.

The term of office of deputy disciplinary officers at the appellate and regional courts, who were effectively prevented from performing their functions, should be restored.

Decisions of disciplinary courts issued with the participation of improperly appointed disciplinary judges should be vacated by operation of law, and the proceedings reopened.

Cases taken over by *ad hoc* disciplinary officers should be returned to the rightful Disciplinary Officer for Common Court Judges.

At the same time, as indicated in the chapter concerning the NCJ, judges who violated the statutory prohibition against questioning the status of other judges should also be subject to disciplinary liability for that reason.

3. *De lege ferenda* proposals

The system of both disciplinary officers and disciplinary courts attached to the courts should be regarded as imperfect, as should the concept of a central Disciplinary Officer appointed from among judges for a fixed term and, upon its expiration, returning to ordinary adjudication. The foregoing measures plainly entangle judges exercising disciplinary functions in various professional arrangements, which may effectively discourage them from taking actions likely to arouse the disfavor of the judicial community, especially at the local level.

For this reason, to replace the current model, a special body should be established that operates under the President of the Republic of Poland or the Prosecutor General (only if that office is separated from

that of the Minister of Justice), tasked with conducting preliminary inquiries, initiating disciplinary proceedings, and acting as prosecutors before the disciplinary court. Not only judges but also representatives of other legal professions should be appointed as officers of such a body.

Regional disciplinary courts should be replaced by a disciplinary court attached to the Supreme Court. It could be another chamber of the Supreme Court, provided that the initial panel is drawn by lot from among the Supreme Court judges who have so far volunteered. A similar procedure should apply to the filling of a vacancy in this chamber.

In place of the current model, a special body should be established under the authority of the President of the Republic of Poland or the Prosecutor General, tasked with carrying out preliminary checks, initiating disciplinary proceedings, and acting as prosecutors before the disciplinary court.

It is also necessary to remove from the legal order the institution of *ad hoc* disciplinary officers—as regards the provisions of the Law on the System of Common Courts that provide for the possibility of appointing them, this issue will presumably be resolved by the Constitutional Tribunal. However, similar provisions are also contained in the other statutes on the organization of the judiciary (on military courts,[19] administrative courts,[20] and the Supreme Court[21]), which were not covered by the application to the Constitutional Tribunal; these provisions should also be repealed by way of the ordinary legislative process. At a minimum, those provisions that provide that appointing an *ad hoc* disciplinary officer excludes a regular officer from taking action in a given case must be repealed.

19 Article 40a of the Act of August 21, 1997—Law on the System of Military Courts (Official Journal of 2025, item 1614).
20 Article 48 § 5 of the Act of July 25, 2002—Law on the System of Administrative Courts (Official Journal of 2024, item 1267).
21 Article 76 §§ 8 and 9 of the Act of December 8, 2017, on the Supreme Court (Official Journal of 2024, item 622).

Chapter IV

NON-PUBLICATION OF CONSTITUTIONAL TRIBUNAL JUDGMENTS AND ITS CONSEQUENCES

Main theses of the chapter

- As of March 2024, the government of Donald Tusk has stopped publishing Constitutional Tribunal rulings, contrary to its unequivocal obligation under the Polish Constitution.

- The non-publication of the Constitutional Tribunal's rulings leads to a de facto inconsistency as to the effects of judgments and, among other things, raises doubts about whether civil, criminal, administrative, or administrative court proceedings may be reopened when their decisions were issued on the basis of provisions struck down by the Constitutional Tribunal in unpublished judgments.

- To avoid procedural and legal uncertainties and to protect citizens from potentially inconsistent practices by authorities and courts, it is necessary to enact legislation suspending the maximum time limits for reopening the relevant proceedings until the unpublished judgments of the Constitutional Tribunal are published.

- The transfer of the authority to publish in official journals to other bodies, for example, the Constitutional Tribunal, without the intermediation of the Government Legislation Center, should be considered.

- In the event of an amendment to the Constitution of the Republic of Poland, it would be possible to grant each authority that issues acts subject to publication the right to publish its own promulgation journal.

1. Outline of the problem

On March 6, 2024, the Sejm of the Republic of Poland adopted a resolution regarding the removal of the consequences of the 2015–2023 constitutional crisis in the context of the Constitutional Tribunal's activities[22]. From that moment on, Prime Minister Donald Tusk ceased to discharge the obligation referred to in Article 190, para. 2 of the Constitution of the Republic of Poland, namely, the prompt publication of Constitutional Tribunal judgments in the Official Journal. This practice was explicitly confirmed in the Council of Ministers' resolution of December 18, 2024, on counteracting the negative effects of the constitutional crisis in the area of the judiciary[23], which declared the publication of Constitutional Tribunal judgments impermissible and required the Prime Minister to continue to withhold their publication. It should be emphasized, however, that resolutions of the Sejm of the Republic of Poland or the Council of Ministers do not constitute sources of universally binding law in Poland and the views expressed therein are not legally binding on other state organs. Such resolutions also may not abrogate the obligations imposed on public authorities by the Constitution of the Republic of Poland or by statutes.

Since March 2024, the government has stopped publishing Constitutional Tribunal judgments, contrary to the clear obligation under the Constitution of the Republic of Poland.

The Constitutional Tribunal addressed the above practice in its judgment of September 23, 2025, case no. P 3/25, finding it unconstitutional to make both the legal effectiveness of a Constitutional Tribunal judgment and the obligation to apply it conditional on the publication of the judgment in the relevant official journal.

The practice adopted by the Prime Minister led to the destruction of citizens' trust in the state and the law and struck at the foundations of legal certainty in legal transactions. Legal experts are divided on the issue of whether entities are bound by the effects of an issued but unpublished judgment of the Constitutional Tribunal, which the public began to perceive not as a legal dispute (and rightly so) but solely as a political one. Doubts may be raised, for example, about the possibility of resuming validly concluded proceedings in which a decision was issued on the basis of regulations declared unconstitutional by the Constitutional Tribunal in a judgment that has not been published. Provisions such as Article 407 § 2 of the Code of Civil Procedure,[24] Article 145a § 2 of the Code of Administrative Procedure[25] and Article 272 § 2 of the Law on Proceedings before Administrative Courts[26] tie the

22 Resolution of the Sejm of the Republic of Poland of March 6, 2024, on eliminating the consequences of the constitutional crisis of 2015-2023 in the context of the activities of the Constitutional Tribunal (Monitor Polski – Official Gazette, item 198).

23 Resolution No. 162 of the Council of Ministers of December 18, 2024, on counteracting the negative effects of the constitutional crisis in the area of the judiciary (Monitor Polski – Official Gazette, item 1068).

24 Act of November 17, 1964—Code of Civil Procedure (Official Journal of 2024, item 1568, as amended), hereinafter: the "CCP."

25 Act of June 14, 1960—Code of Administrative Procedure (Official Journal of 2025, item 1691), hereinafter: the "CAP."

26 Act of August 30, 2002—Law on Proceedings before Administrative Courts (Official Journal of 2024, item 935, as amended), hereinafter: the "LPAC."

possibility of reopening proceedings to the entry into force of a judgment of the Constitutional Tribunal, which, pursuant to Article 190(3) in conjunction with paragraph 2 of the Constitution of the Republic of Poland, generally takes effect on the day of publication in the official journal.

2. Restitution measures

As a first step, it is necessary to immediately publish in the Official Journal all Constitutional Tribunal judgments that have been issued since March 2024.

The opening of an inquiry into the constitutional, criminal, and disciplinary liability of those responsible for the failure to publish the Constitutional Tribunal's judgments should be considered.

All judgments of the Constitutional Tribunal issued since March 2024 should be published in the Official Journal immediately.

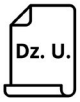
In view of doubts concerning the legal effect of the Constitutional Tribunal's judgment in case P 3/25, both with regard to the possibility of reopening proceedings and in connection with a possible divergence in the practice of courts and public administration authorities regarding the application of that judgment in this respect, it is advisable to enact statutory provisions that would provide for the suspension of the maximum time limits for reopening proceedings[27] for the period from the issuance of an unpublished Constitutional Tribunal judgment to the moment of its publication. This will avoid a situation in which, due to the expiration of the above maximum time limit (five or ten years) between the date a judgment is rendered and the date it is published, a party would be deprived of the possibility of reopening civil, administrative, or administrative court proceedings.

An analogous suspension should be applied with respect to the running of the statute of limitations for a claim for damages caused directly by a legal act annulled by the Constitutional Tribunal (Art. 4171 § 1 of the Civil Code[28]) or by a decision or judgment issued on the basis of such a legal act (Art. 4171 § 2 of the Civil Code).

27 These time limits are ten years from the date a judgment becomes final (Art. 408 of the CCP), five years from the date a ruling becomes final (Art. 278 of the LPAC), or five years from the date a decision is served or announced (Art. 146 § 1 of the CAP).

28 Act of April 23, 1964—Civil Code (Official Journal of 2025, item 1071, as amended), hereinafter: the "CC."

REQUIRED ACTIONS



Immediate publication in the Official Journal of all Constitutional Tribunal judgments that have been issued since March 2024.

Initiation of explanatory proceedings concerning the constitutional, criminal, and disciplinary liability of persons responsible for the non-publication of the Constitutional Tribunal's judgments.

Enactment of legislation that would suspend the running of the maximum time limits for resumption of proceedings in the period between the issuance of an unpublished Constitutional Tribunal ruling and its publication.

Enactment of legislation suspending the running of the statute of limitations for a claim to repair damage caused directly by a repealed law or a decision or ruling based on such a law.

3. *De lege ferenda* proposals

A change in the law is necessary that would prevent the government from engaging in obstruction by not publishing Constitutional Tribunal rulings (and, similarly, from arbitrarily not publishing acts of other authorities). In the current legal and factual state of affairs, the issue of the critical role of the Head of the Government Legislation Center has emerged. Although the publication of a Constitutional Tribunal judgment is ordered by the President of the Tribunal, and the obligation to publish it rests with the Prime Minister, it ultimately depends on the internal position and decision of the Head of the Government Legislation Center (GLC) whether a judgment (or a normative act) will be published in the appropriate official journal.

A reasonable solution to the above problem would be to transfer the authority to publish promulgation journals—which is currently specified in Article 21(1)(1) of the Act of July 20, 2000, on the Publication of Normative Acts and Certain Other Legal Acts[29] as vested in the Prime Minister acting with the assistance of the Government Legislation Center—to other authorities. Given the need to ensure legal certainty and the effectiveness of their actions, the principal state bodies exercising the legislative, executive, and judicial powers should be able to publish their own official acts. However, this would

29 Act of July 20, 2000, on the Publication of Normative Acts and Certain Other Legal Acts (Official Journal of 2019, item 1461).

require an amendment to the Polish Constitution due to the requirement of publication in a specific *expressis verbis* publication. Alternatively, one could consider the possibility of technically allowing multiple entities to publish in the (electronic, after all) Official Journal (e.g., in the relevant sections of the Journal), which would not require an amendment to the Polish Constitution, but would meet the goal of the proposed reform.

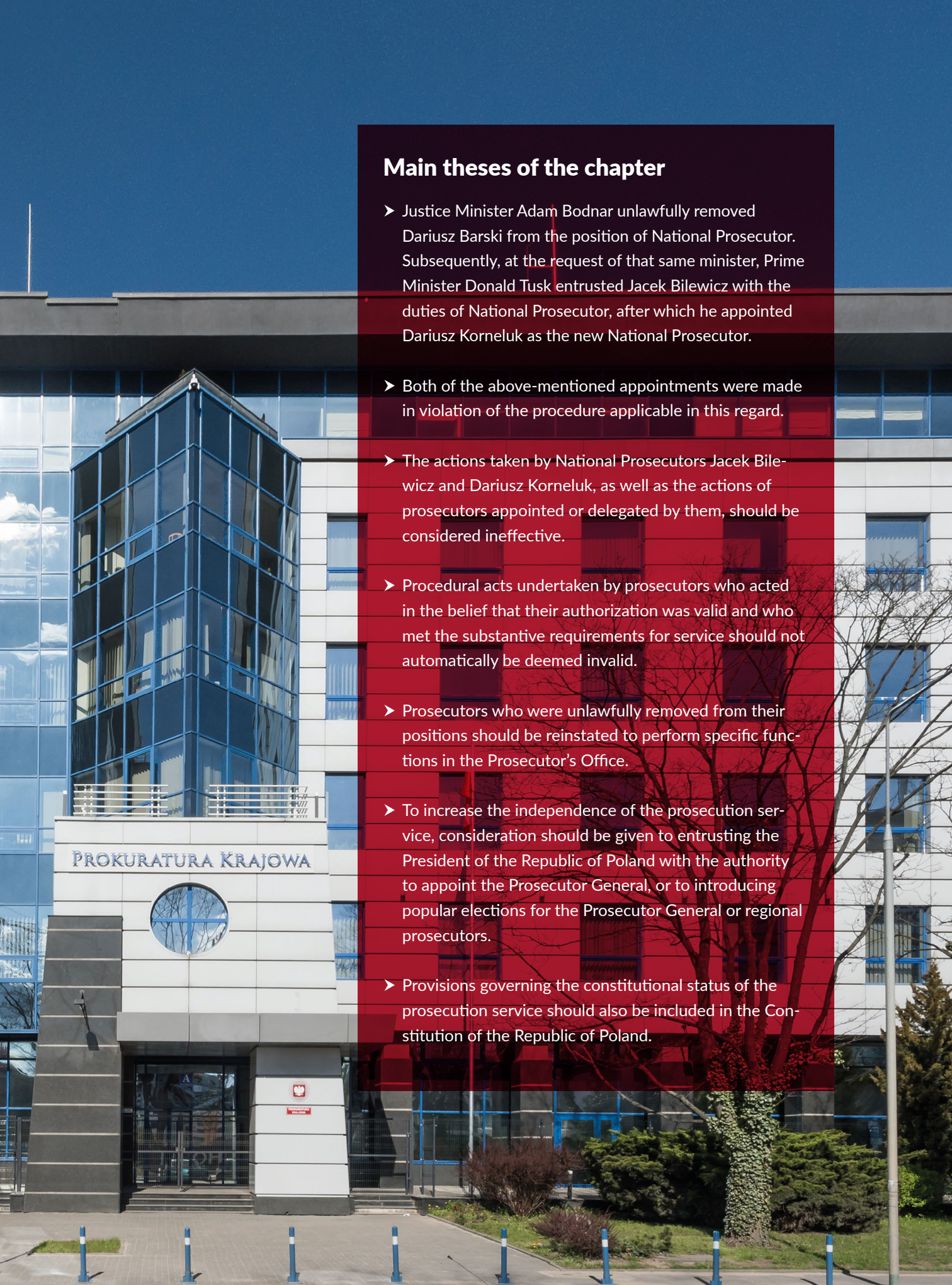
A solution to the problem under discussion would be to transfer to other authorities either the authority to issue official gazettes or to publish in them independently.

A separate issue that warrants clarification in the provisions of the relevant statutes when introducing the above changes is the clear determination of the admissibility of reopening civil, criminal, administrative, or administrative court proceedings upon the issuance of a judgment by the Constitutional Tribunal, provided that the judgment's effective date has not been deferred.

If circumstances arise that make it possible to amend the Constitution of the Republic of Poland, consideration should be given to abolishing the Constitutional Tribunal and transferring its powers listed in Articles 188-189 of the Constitution to a new chamber of the Supreme Court, which would make it possible to end the political dispute over appointments to the Tribunal.

Chapter V

TAKEOVER OF THE NATIONAL PROSECUTOR'S OFFICE



Main theses of the chapter

- Justice Minister Adam Bodnar unlawfully removed Dariusz Barski from the position of National Prosecutor. Subsequently, at the request of that same minister, Prime Minister Donald Tusk entrusted Jacek Bilewicz with the duties of National Prosecutor, after which he appointed Dariusz Korneluk as the new National Prosecutor.

- Both of the above-mentioned appointments were made in violation of the procedure applicable in this regard.

- The actions taken by National Prosecutors Jacek Bilewicz and Dariusz Korneluk, as well as the actions of prosecutors appointed or delegated by them, should be considered ineffective.

- Procedural acts undertaken by prosecutors who acted in the belief that their authorization was valid and who met the substantive requirements for service should not automatically be deemed invalid.

- Prosecutors who were unlawfully removed from their positions should be reinstated to perform specific functions in the Prosecutor's Office.

- To increase the independence of the prosecution service, consideration should be given to entrusting the President of the Republic of Poland with the authority to appoint the Prosecutor General, or to introducing popular elections for the Prosecutor General or regional prosecutors.

- Provisions governing the constitutional status of the prosecution service should also be included in the Constitution of the Republic of Poland.

1. Outline of the problem

On January 12, 2024, during a meeting with Dariusz Barski, the National Prosecutor, the Minister of Justice presented him with a document stating that his appointment as National Prosecutor two years earlier had been made in violation of applicable law and had no legal effect. Thus, the minister determined, without following the required procedure and acting solely on the basis of—as he stated—external legal opinions, that Prosecutor Barski had ceased to hold his office. The purpose of this decision of the Minister of Justice was to circumvent the provisions of the Act of January 28, 2016—the Law on the Public Prosecutor's Office,[30] under which the National Prosecutor may be removed from office only with the written consent of the President of the Republic of Poland. On the same day, Prime Minister Donald Tusk entrusted Prosecutor Jacek Bilewicz with performing the duties of National Prosecutor, even though the Law on the Public Prosecutor's Office does not provide for the position of an "acting National Prosecutor." On January 24, 2024, Jacek Bilewicz physically took over Dariusz Barski's office in the presence of the Minister of Justice, who also serves as Prosecutor General, Adam Bodnar, with the assistance of Prison Service officers. Finally, on March 14, 2024, Donald Tusk—also in violation of the law, without obtaining the legally required opinion of the President of the Republic of Poland—appointed Dariusz Korneluk as the National Prosecutor.

As a consequence of the above actions related to changes in the leadership of the prosecution service, there were numerous, and at the same time entirely unfounded, dismissals of department directors and prosecutors at the regional level, which violated the principle of stability in the public service and the independence of subordinate prosecutors, contributed to delays in the prosecution of crimes, and also undermined confidence in the prosecution service.

The decisions in question clearly bear the hallmarks of political action taken in violation of applicable law, as confirmed by court rulings. In the judgment dated September 27, 2024, case no. I KZP 3/24, the Supreme Court ruled that the actions of Minister Bodnar and Prime Minister Tusk were unlawful, and that Dariusz Barski still remains the National Prosecutor. The Constitutional Tribunal took the same position in its judgment of November 22, 2024, case no. SK 13/24.

2. Restitution measures

The ineffectiveness of the actions taken by Jacek Bilewicz and Dariusz Korneluk—as individuals unauthorized to perform the duties of the National Prosecutor—necessitates determining the legal consequences of the acts of prosecutors who were appointed, seconded, or assigned to specific managerial positions by those individuals.

30 Act of January 28, 2016—the Law on the Public Prosecutor's Office (Official Journal of 2024, item 390, as amended).

First, it should be emphasized that acts of appointment, delegation, or entrustment of functions made by an entity lacking constitutional authority cannot be treated as ordinarily defective (voidable), but rather as tainted by the defect of original ineffectiveness (*actus non existens*). The source of this defect is not a violation of procedural rules, but rather the taking of action by an entity that is not the competent authority to take the action in question. In this sense, we are dealing with a situation analogous to that which, in the case law of the administrative and constitutional courts, is termed "action by a non-existent authority" or "action by a person who is not a public authority." Since—as determined in the case law of the Supreme Court and the Constitutional Tribunal—Dariusz Barski remained the National Prosecutor, Jacek Bilewicz and Dariusz Korneluk lacked any institutional basis from which they could derive authority to determine the service status of other prosecutors.

Consequently, it must be concluded that:

1) appointments, secondments, assignments to functions, and removals from office effected by Jacek Bilewicz and Dariusz Korneluk are null and void *ex tunc*;
2) persons who were thereby assigned to managerial positions or had their scope of duties changed did not validly acquire office-holder status, and their legal situation should be assessed as if those acts had never occurred;
3) the same ineffectiveness applies to further cascading acts (the so-called chain of authorization), that is, to personnel decisions made by those prosecutors whose position was based on a defective act of appointment.

A separate issue—one that requires a clear distinction—is the validity of procedural acts undertaken by prosecutors in specific criminal proceedings. In this regard, the principle of protecting legal certainty and the welfare of justice applies. Procedural acts performed by a prosecutor who acted in the belief that their authority was valid and who met the substantive requirements for holding office, despite not having been lawfully appointed, should not be considered invalid, provided that the parties' procedural safeguards were not violated.

However, this does not change the fact that the defectiveness of the institutional mandate remains relevant for constitutional, criminal, and disciplinary liability, and it also warrants the full restoration of legality with respect to the structure and the filling of offices in the Prosecutor's Office.

Dariusz Barski should immediately return to performing the duties of the National Prosecutor, as should all prosecutors who were stripped of the ability to perform their functions by Jacek Bilewicz and Dariusz Korneluk. This applies in particular to the Deputy Prosecutors General and department directors who were suspended from carrying out their duties in violation of the law, as well as to the dismissed members of the National Council of Prosecutors in the composition appropriate for the relevant term of office.

In addition, the government should immediately abandon the idea of "prosecutorial settling of accounts," whose underlying premises could, in practice, be used to exercise political control over the prosecutorial community.

DISCIPLINARY COURT SYSTEM FOR JUDGES
RESTITUTION MEASURES

Acts of appointment, delegation, or entrustment of functions carried out by entities lacking the constitutional authority to do so, as well as by persons appointed, delegated, or designated by them to hold office, should be deemed nonexistent.

Procedural acts performed by prosecutors who acted in the belief that their authority was valid and who met the substantive requirements for holding office should not automatically be deemed invalid, unless the parties' procedural guarantees were violated.

The Prosecutor's Office must be brought back into compliance with the law regarding its organizational structure and staffing.

Dariusz Barski should immediately return to serving as the National Prosecutor, as should all prosecutors who were stripped of their positions by improperly appointed successors.

The government should refrain from actions aimed at exerting political control over the prosecutorial community.

3. *De lege ferenda* proposals

Prosecutorial independence has long been called for in public debate. However, entrusting the Sejm with the authority to elect the Prosecutor General, as provided for in the government bill amending the Law on the Public Prosecutor's Office and Certain Other Acts (list No. UD95), does not seem to be the proper means of ensuring it. Such a model could raise questions about the Prosecutor General's independence from the parliamentary, and therefore governmental, majority. It should be considered a more advantageous solution for the Prosecutor General to be

appointed by the President of the Republic of Poland—the body that, pursuant to Article 126(2) of the Constitution of the Republic of Poland, ensures the observance thereof.

Alternatively, consideration could be given to having the Prosecutor General chosen directly by the public through popular elections from among candidates who meet statutory formal requirements and are nominated by the communities that support them (for example, third-sector organizations, higher education institutions, etc.) after securing the requisite number of citizens' signatures of support.

The Prosecutor General should be appointed by the President of the Republic of Poland or by the public in general elections.

An independent body to oversee the prosecution service should also be established and personnel audit procedures should be introduced (for the review and, where appropriate, invalidation of decisions made by persons who do not meet the requirements for office). This audit should also include monitoring the workload of prosecutors to ensure an even distribution of work.

4. Defining in the Constitution of the Republic of Poland the role of the prosecution service as an independent authority

The current lack of regulation of the functioning of the prosecution service at the constitutional level is a legacy of its merely formal regulation in the Constitution of the Polish People's Republic[31]. This obvious error by the framers of the constitution should be promptly corrected. The Independent Association of Prosecutors Ad Vocem (NSP Ad Vocem) has prepared several versions of the provision's wording and of its placement within the structure of the 1997 Constitution of the Republic of Poland. The proposals correspond to different models for the functioning of the prosecution service; however, each is a step in the right direction relative to the status quo.

The various options developed by NSP Ad Vocem for rendering the prosecution service constitutional differ in particular in the scope of interference with the existing systemic model. However, they all have a common premise: insulating the core elements of the prosecution service's institutional framework from short-term political maneuvering and elevating them to the status of constitutional norms that are resistant to the arbitrary actions of the parliamentary majority.

31 Constitution of the Polish People's Republic adopted by the Legislative Sejm on July 22, 1952 (Official Journal No. 33, item 232).

The first option envisages extending Chapter IX of the Constitution of the Republic of Poland by expressly distinguishing the Prosecutor's Office of the Republic of Poland as an independent state body alongside the bodies of state control and legal protection. In this model, the Constitution of the Republic of Poland would set out the fundamental tasks of the prosecution service, its constitutional status, and the principle of independence, while at the same time imposing a constitutional obligation on it to cooperate with the Council of Ministers in protecting the interests of the State Treasury and the internal and external security of the Republic of Poland. A key element of this solution is the clear separation of the sphere of cooperation from the sphere of subordination, which would prevent the instrumentalization of the public prosecution service by the executive branch.

The second option is limited and minimalist in constitutional terms. It provides for including in the Constitution of the Republic of Poland only the basic structure of the prosecution authorities (the Prosecutor General, the National Prosecutor, deputies, and prosecutors), while leaving the ordinary lawmakers broad discretion with respect to regulations concerning internal organization, specific powers, and the official status of prosecutors. This solution would provide the minimum constitutional protection to prevent the existence or staffing of the chief prosecuting authorities from being undermined on the basis of ad hoc legal interpretations or political decisions.

The third, most far-reaching option provides for ending the personal union between the Minister of Justice and the Prosecutor General while simultaneously constitutionally strengthening the position of the National Prosecutor as the central authority directing the Prosecutor's Office of the Republic of Poland. In this model, the National Prosecutor would assume key procedural and systemic powers, including the authority to appear before the Constitutional Tribunal, the Supreme Court, and the Supreme Administrative Court, and at the same time would be bound by the constitutional duty to cooperate with the Minister of Justice in matters concerning national security and public order. This solution aims to permanently separate the task of leading the prosecutor's office from current affairs and political conflicts without risking its institutional isolation from other public authorities.

All the options presented are based on a single conclusion: that leaving the prosecutor's office to be regulated exclusively by statute makes its constitutional position weak and susceptible to abuse, as was unequivocally revealed by the events surrounding the unlawful takeover of the National Prosecutor's Office in 2024. Regardless of the model adopted, constitutionalizing the prosecutor's office would serve as a constitutional safeguard, preventing the arbitrary questioning of the existence of prosecution bodies and cascading challenges to the legality of personnel and organizational decisions.

The proposals presented are not merely alternative doctrinal concepts, but a response to real threats to the rule of law that have been exposed in the practical operation of public authorities. Each of the proposed models—regardless of the legislature's final decision—represents a qualitative

step forward toward restoring the institutional stability of the prosecutor's office, strengthening its independence and restoring citizens' trust in state institutions.

Chapter VI

UNLAWFUL ISSUANCE OF THE "GUIDELINES ON THE APPLICABLE LEGAL PROVISIONS REGARDING ACCESS TO THE PROCEDURE FOR TERMINATING A PREGNANCY"

Main theses of the chapter

- The issuance by the Minister of Health, Izabela Leszczyna, of the “Guidelines on the Applicable Legal Provisions Regarding Access to the Procedure for Terminating a Pregnancy” was unlawful and led to abortions being performed in hospitals without medical indications and without any gestational age limits.
- Restoring compliance with the law requires the immediate recognition of the Guidelines of the Minister of Health as non-binding and an amendment to the regulation on the general terms of contracts for the provision of health care services that would enforce the operation of hospitals consistent with the Guidelines.
- It is recommended to standardize the statutory terminology concerning the unborn child as a subject of the right to life.

1. Outline of the problem

The Polish legal system protects human life (Article 38 of the Constitution of the Republic of Poland). The Constitutional Tribunal, already in its judgment of May 28, 1997, case no. K 26/96, held that the obligation incumbent on the Polish State to ensure the legal protection of human life also extends to the prenatal stage since the source of this obligation is the inherent and inalienable dignity of the human person (Article 30 of the Constitution of the Republic of Poland).

On August 30, 2024, the then Minister of Health, Izabela Leszczyna, issued a statement entitled "Guidelines on the Applicable Legal Provisions Regarding Access to the Procedure for Terminating a Pregnancy" (hereinafter: the "Guidelines").[32] The statement was then sent to hospital directors, presidents and heads of the relevant hospital departments in order to impose on healthcare entities the interpretation of the applicable regulations adopted in the Guidelines, creating, in fact, a new legal state fraught with the prospect of severe financial sanctions for those facilities that do not comply with the content of the Guidelines. The Minister of Health introduced these sanctions by making amendments in 2024[33] to the regulation dated September 8, 2015, on the general terms and conditions of contracts for the provision of healthcare services.

The Minister of Health's document as a whole and the nature of the amendments introduced in the provisions of the regulation regarding the General Terms and Conditions of Insurance (GTC) clearly indicate that the purpose of the ministerial Guidelines is, contrary to the Constitution of the Republic of Poland and statutes, to open the way for broad access to abortion in Poland. The content of the Guidelines clearly suggests that, contrary to applicable law, the basis for performing abortions is to be certificates issued en masse stating that a woman's mental health has deteriorated and that doctors working in obstetrics wards should serve solely as abortion providers with abortion, in the Minister of Health's view, intended as a therapeutic measure for the mental health problems of pregnant women. The issuance of the Guidelines is, in fact, a circumvention of the existing law, which the ruling coalition had previously, in July 2024, failed to change through a democratic vote in the Sejm.[34] The Guidelines themselves, although they neither have the character of universally binding law (an exhaustive list of which is defined in Article 87(1) of the Constitution of the Republic of Poland) nor meet the requirements for an act of domestic law (as set out in Article 93 of the Constitution of the Republic of Poland), are currently, in practice, mistakenly perceived as a source of law by medical professionals (primarily physicians) and by managers of medical facilities, who expect employees to act in accordance with the provisions of the Guidelines. Furthermore, it should be emphasized that the 2024 amendment to the regulation concerning the GTC was adopted in violation of Article

32 Ministry of Health, Guidelines on the Applicable Legal Provisions Regarding Access to the Procedure for Terminating a Pregnancy, https://www.gov.pl/web/zdrowie/wytyczne-w-sprawie-obowiazujacych-przepisow-prawnych-dotyczacych-dostepu-do-procedury-przerwania-ciazy, accessed: February 10, 2026.

33 § 30(1)(1)(g) and § 36(1)(5b) in conjunction with § 3(6) of the Annex to the Regulation of the Minister of Health of September 8, 2015, on the general terms and conditions of contracts for the provision of healthcare services of September 8, 2015 (Official Journal of 2025, item 400), hereinafter: the "Regulation on General Terms and Conditions of Insurance."

34 In July 2024, a vote was held in the Sejm on a bill to amend the Criminal Code (Sejm paper No. 477), primarily aimed at abolishing criminal liability for an illegal abortion up to the 12th week of pregnancy. The bill was authored by MPs from the New Left, a party that is part of the governing coalition; however, the initiative failed to secure the required majority of votes in the Sejm and was ultimately rejected at the third reading during the Sejm's 15th sitting.

68(2), sentence 2 of the Constitution of the Republic of Poland, which sets out the principles for determining the conditions and scope of the provision of healthcare services.

The above-described measures, undertaken by public authorities in flagrant violation of the principle of the rule of law (Article 7 of the Constitution of the Republic of Poland) and other provisions of the Constitution of the Republic of Poland and laws guaranteeing the protection of human life, constitute deliberate actions directed against the legal protection of human life at the prenatal stage and aimed at its complete abolition. In practice, they result not only in abortions being carried out on a mass scale, but also in them being performed without restrictions, including in advanced stages of pregnancy. A particularly dramatic illustration of this state of affairs is the case at the County Hospital Complex in Oleśnica, where a doctor, under the pretext of responding to a threat to a woman's mental health, killed her child in the ninth month of pregnancy.[35]

2. Restitution measures

The persistent state of lawlessness, which strikes at the foundations of the state, requires the immediate undertaking of specific, decisive remedial measures. Such measures should primarily involve the Minister of Health revoking the unlawful Guidelines. The Guidelines not only impose an unconstitutional interpretation of abortion regulations, but their issuance has in fact caused a change in medical practice lacking any legal basis, toward a drastic weakening of the protection of human life in the prenatal stage of development. This situation arose in circumvention of the required legislative process.

The Minister of Health should immediately revoke the Guidelines.

It should also be noted that, given the considerable extent of the harmful changes in physicians' awareness and clinical practice caused by the Guidelines, it is necessary for the Minister of Health to issue a statement informing physicians that the previous Minister of Health misled them regarding the legal status of the Guidelines. The release of the statement should be accompanied by a clear and unambiguous confirmation by the Minister of Health that the Guidelines are non-binding *ex tunc*.

If the Minister of Health is unwilling to revoke the defective Guidelines, they should be promptly subjected to constitutional review by the Constitutional Tribunal. Although the Guidelines are not a legal act in the strict sense, under the guise of an (unconstitutional) interpretation of the current law

35 *Late-term Abortions in Poland: Ordo Iuris Notifies Prosecutor and Demands Suspension of Dr. Gizela Jagielska's License to Practice Medicine*, Ordo Iuris, July 25, 2025, https://ordoiuris.pl/en/press-newsdesk/late-term-abortions-in-poland-ordo-iuris-notifies-prosecutor-and-demands-suspension-of-dr-gizela-jagielskas-license-to-practice-medicine, accessed: December 8, 2025.

governing termination of pregnancy, they impose unlawful directives regarding physicians' conduct.[36] The repeal of the Guidelines is therefore necessary to restore the rule of law.

Another indispensable remedial measure to be indicated is the amendment of the Regulation on General Terms and Conditions of Insurance pursuant to Article 137(2) of the Act of August 27, 2004, on Healthcare Services Financed From Public Funds.[37] The essence of the proposed amendments should be the deletion of the unlawfully issued provisions of § 30, section 1, point 1, letter g and § 36, section 1, point 5b, in conjunction with § 3, section 6, of the annex to the Regulation on General Terms and Conditions of Insurance that provide for financial penalties for actions by physicians and hospitals that comply with the law, but are inconsistent with the content of the Guidelines.

THE PROPOSED SOLUTIONS AIMED AT RESTORING THE RULE OF LAW IN THE AREA OF THE PROTECTION OF HUMAN LIFE

Revocation by the Minister of Health of the unlawful Guidelines that contain an unconstitutional interpretation of abortion laws and, in practice, create a new legal regime while also bypassing the democratic legislative process.

The issuance by the Minister of Health of a statement in which the Minister will inform physicians that they were misled by the previous Minister of Health regarding the legal nature of the Guidelines and will confirm the lack of binding effect of this document *ex tunc*.

Subjecting the Guidelines to review by the Constitutional Tribunal if the Minister of Health is unwilling to rescind the Guidelines.

Amendment of the Regulation on General Terms and Conditions of Insurance, involving the deletion of the unlawfully issued provisions that stipulate financial penalties for actions by doctors and hospitals that are lawful but inconsistent with the Guidelines.

Furthermore, it is advisable for the Ministry of Health to cooperate with the community of physicians and psychologists to develop—consistent with current medical knowledge and respecting the

36 See the appeal of the Ordo Iuris Institute regarding the need to conduct a constitutional review of the Guidelines and the relevant provisions of the Act of January 7, 1993, on Family Planning, Protection of the Human Fetus, and the Conditions for the Admissibility of Termination of Pregnancy, available at: https://stopzabijaniudzieci.pl/#petition, accessed: December 8, 2025.

37 Act of August 27, 2004, on Healthcare Services Financed From Public Funds (Official Journal of 2025, item 1461).

constitutional principle of the protection of human life in the prenatal period—standards of healthcare for pregnant women experiencing mental health issues. In light of the harm the Guidelines have already done to physicians' understanding of the applicable standards concerning termination of pregnancy, the call to organize mandatory training for healthcare workers—particularly physicians—reminding them of the value of human life and the duties this entails for medical teams is justified.

3. *De lege ferenda* proposals

To prevent a recurrence of violations of the constitutional guarantees of the protection of life at the prenatal stage of development, it is necessary to implement systemic measures aimed at, on the one hand, ensuring the coherence of the law in the area of protecting unborn life and, on the other, at increasing public awareness of the value of human life.

The means of achieving the above-mentioned objectives should be to amend the law: both the Constitution itself—by clarifying that the constitutional guarantees of the protection of life also cover persons in the prenatal stage of development—and statutory provisions—by eliminating the possibility of their expansive interpretation to include cases in which termination of pregnancy is equated with the intentional killing of a conceived child. It is also necessary to subject the normative Guidelines and the imprecise provisions of the Act of January 7, 1993, on Family Planning, Protection of the Human Fetus, and Conditions for the Admissibility of Termination of Pregnancy[38] to constitutional review so as to eliminate the permissibility of terminating a pregnancy on the basis of the vague ground of a threat to a woman's health (including mental health).

It is necessary to introduce systemic solutions that prevent the unconstitutional interpretation of provisions concerning the protection of life.

Furthermore, the need to take action to ensure the consistency of the law regulating the principles for the protection of unborn life is addressed by a bill prepared by the Ordo Iuris Institute amending the Act on Family Planning, Protection of the Human Fetus and Conditions for the Admissibility of Termination of Pregnancy and Certain Other Acts, which provides for the harmonization of statutory terminology referring to an unborn child. Such an initiative also aligns with the need to increase society's sensitivity to matters of values and respect for human life by replacing the ambiguous and dehumanizing term "fetus" with a term that precisely defines the subject of the right to life—"conceived child," as adopted by the legislature in the Criminal Code.

38 Act of January 7, 1993, on Family Planning, Protection of the Human Fetus and Conditions for the Admissibility of Termination of Pregnancy (Official Journal of 2022, item 1575).

Chapter VII

VIOLATIONS OF FREEDOM OF CONSCIENCE AND RELIGION IN THE SPHERE OF RELIGIOUS EDUCATION IN SCHOOLS

Main theses of the chapter

- The violations of religious freedom described in this chapter were the result of pursuing a policy aimed at the systemic restriction of that freedom.
- Restoring the rule of law in the exercise of freedom of conscience and religion in the sphere of religious education in schools requires the immediate publication of the Polish Constitutional Tribunal's judgments and adherence to them, redress for those harmed, and the introduction of systemic legislative changes.
- A solution to ensure the stability of regulations covered by public consent and agreement with religious communities is to transfer the content of the existing regulation on the conditions for organizing religious lessons to the level of the law. This demand is implemented by the citizens' bill currently being processed in the Sejm (Print No. 1603/X term).

1. Outline of the problem

Freedom of conscience and religion is one of the fundamental human rights that is protected both at the constitutional level and under international law. Article 53 of the Constitution of the Republic of Poland guarantees everyone freedom of conscience and religion, including the right to manifest it publicly through worship, prayer, participation in rites, practice, and teaching (paras. 1–2). In turn, Article 25 of the Constitution of the Republic of Poland sets forth the constitutional principles governing the state's relations with religious communities. Under it, relations between the state and churches and other religious associations are shaped on principles, *inter alia*, of respect for their autonomy and mutual independence—each within its own sphere—as well as of cooperation for the good of the human person and the common good (para. 3), and also of the consensual regulation of those relations (paras. 4–5). In addition, the conditions for organizing religion classes in schools are established in consultation with the authorities of the Catholic Church and the Polish Autocephalous Orthodox Church, as well as other churches and religious organizations.[39]

Over the past two years, there have been a number of actions by public authorities that have blatantly violated constitutional guarantees. In this chapter, only one, albeit very clear, aspect of the violations will be described, namely, the one concerning the actions of the Minister of Education, Barbara Nowacka, who on three occasions has issued regulations governing the organization of religion classes in schools without obtaining the constitutionally and statutorily required agreement with churches and other religious organizations.

The measures taken by the minister are aimed at lowering the status of religion classes and discouraging students from attending them. The timeline of events presented on the next page confirms this.

The measures taken by the minister are aimed at lowering the status of religion classes and discouraging students from attending them.

This systematic and consistent nature of the actions, carried out despite the rulings of the Constitutional Tribunal or the objections of representatives of churches and other religious associations, indicates a deliberate and carefully considered program to restrict freedom of religion in the sphere of education, implemented in contravention of the applicable constitutional and statutory provisions.

39 See Article 12 of the Act of September 7, 1991, on the Education System (Official Journal No. 95, item 425).

TIMELINE

- **December 13, 2023** – as early as the day Donald Tusk's government was sworn in, the Minister of Education announced a reduction in the number of hours of religion classes, the exclusion of the religion grade from the overall grade average, and the scheduling of religion classes before or after mandatory classes;
- **January 2, 2024** – Secretary of State at the Ministry of National Education Katarzyna Lubnauer confirmed the announcements about not counting grades in religion toward the grade point average;[40]
- **January 26, 2024** – a draft regulation was published removing the religion grade from the grade point average;
- **March 22, 2024** – a regulation was issued in this matter[41] (which, by the judgment of the Constitutional Tribunal dated May 22, 2025, case no. U 11/24,[42] was declared unconstitutional);
- **April 30, 2024** – a draft regulation on grouping students into groups was published;
- **July 26, 2024** – a regulation was issued in the above-mentioned matter[43] (which, by the judgment of the Constitutional Tribunal of November 27, 2024, case no. U 10/24,[44] was ruled unconstitutional);
- **August 30, 2024** – the Ministry of National Education refused to comply with the Constitutional Tribunal's interim order;[45]
- **October 1, 2024** – another draft regulation was published that reduces the weekly number of hours of religion classes by half and additionally requires that religion classes be scheduled before or after mandatory classes;
- **January 17, 2025** – despite the Constitutional Tribunal's judgment of November 27, 2024, the Minister of Education signed another regulation[46] in violation of the same procedure (which, by the Constitutional Tribunal's judgment of July 3, 2025, case no. U 2/25,[47] was declared unconstitutional).

40 Cf. Ł. Bernaciński, "Issuance by the Minister of Education of a decree on the organization of religious instruction in school without the required consent of churches and other religious associations" [in:] *A Year of Devastation of the Rule of Law in Poland. The most important violations of the rule of law and democratic principles by the government of Donald Tusk*, ed. Ł. Bernaciński, Warsaw 2024, p. 73.

41 Regulation of the Minister of Education of March 22, 2024, amending the Regulation on the Assessment, Classification and Promotion of Students and Adult Learners in Public Schools (Official Journal, item 438).

42 Judgment of the Constitutional Tribunal dated May 22, 2025, case no. U 11/24, OTK-A 2025, no. 52.

43 Regulation of the Minister of Education of July 26, 2024, amending the Regulation on the Conditions and Manner of Organizing Religious Education in Public Preschools and Schools (Official Journal, item 1158).

44 Judgment of the Constitutional Tribunal dated November 27, 2024, case no. U 10/24, OTK-A 2024, no. 118.

45 Cf. Ł. Bernaciński, op. cit., p. 75.

46 Regulation of the Minister of Education of January 17, 2025, amending the Regulation on the Conditions and Manner of Organizing Religious Education in Public Preschools and Schools (Official Journal, item 66).

47 Judgment of the Constitutional Tribunal dated July 03, 2025, case no. U 2/25, OTK-A 2025, no. 75.

2. Restitution measures

Restoring the rule of law in the area in question requires decisive action at both the practical and systemic levels. The proposals presented below are intended to remedy the harm caused and restore full respect for the constitutional guarantees of freedom of religion.

The primary instrument for restoring a state consistent with the law—and, at the same time, the state prior to Minister Nowacka's harmful and unconstitutional changes—is the publication of and compliance with the judgments of the Constitutional Tribunal, which eliminated the improperly adopted regulations from the legal order.

The opening of an investigation into the constitutional, criminal, and disciplinary liability of those responsible for issuing legal acts in violation of the Constitution of the Republic of Poland, in particular Minister Barbara Nowacka for issuing regulations on three occasions without the constitutionally and statutorily required agreement with churches and other religious organizations, should be considered.

The actions described above may take the form of:

- proceedings before the State Tribunal (Article 198(1) of the Constitution of the Republic of Poland);
- prosecutorial proceedings regarding the failure to perform duties (Article 231 § 1 of the Criminal Code);
- disciplinary proceedings under the relevant civil service procedures;
- the political assessment periodically made by the Nation at the ballot box.

The Polish state should also consider providing redress to individuals whose rights were violated as a result of unlawful actions by government authorities. Reparations can take the form of an official, public apology or a symbolic gesture of acknowledgment of the harm, or in extreme, justified cases, financial compensation.

Those primarily harmed by Minister Nowacka's actions are:

- students who were forced to withdraw from religion classes due to their improper placement in the schedule or because the classes were not conducted properly as a result of merging groups, or who experienced discrimination and a deterioration in their legal standing in connection with religion grades not being counted toward the grade point average;
- catechists who lost working hours due to unlawful changes in the organization of classes or whose employment contracts were terminated or not renewed in connection with the implementation of unconstitutional regulations.The government of the Republic of Poland should also issue an official apology to representatives of churches and other religious associations for violating the principle of consensual regulation of mutual relations. This apology should be

public and unequivocal and recognize both the violation of the law and the principles of mutual respect and partnership. In addition, dialogue with representatives of churches and other religious associations regarding the organization of religion classes in schools should be resumed without delay, this time with full respect for the constitutional requirement to reach an agreement.

3. *De lege ferenda* proposals

To prevent a recurrence of violations of freedom of conscience and religion in the future, it is necessary to introduce systemic solutions that strengthen the stability of consensus-based regulations and provide for an amendment procedure that takes into account oversight by the sovereign and public debate.

These objectives are addressed by the citizens' bill amending the Act on the Education System and the Education Law (Sejm paper no. 1603/10th term),[48] which provides for a return to the conditions for organizing religion classes that existed before Minister Nowacka's changes, while simultaneously transferring the regulation of those conditions from the level of a regulation to the statutory level. This will prevent making unilateral decisions that would violate the social consensus of more than thirty years' standing, which is additionally enshrined in an agreement with the relevant churches and other religious associations.

Moreover, the bill contains provisions that:
a) eliminate the option of not attending either religion or ethics classes,
b) eliminate the possibility of holding religion and ethics classes in mixed-grade groups,
c) make a student's advancement to the next grade contingent on receiving a passing grade in the selected subject (religion or ethics),
d) enable religion teachers to serve as a homeroom teacher.

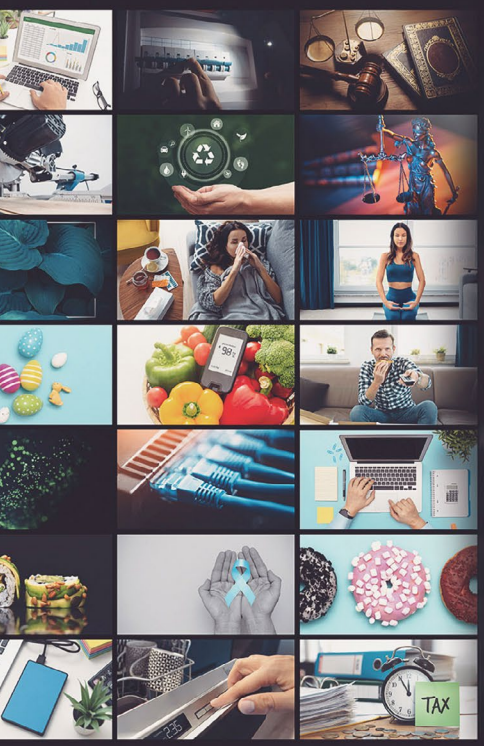
The listed changes, although desirable and justified by values other than the mere implementation of the principles of a democratic state governed by the rule of law, do not, strictly speaking, contribute to restoring a lawful state of affairs. That is why even the adoption of an act that does not include them will achieve the purpose described in this publication.

On September 26, 2025, after the Sejm voted down a motion to reject the bill at first reading, the bill was referred to the Education and Science Committee and the Local Government and Regional Policy Committee, where it is still awaiting the start of further work.

48 The content of the bill and the course of the legislative process can be reviewed in Polish at: https://www.sejm.gov.pl/Sejm10.nsf/PrzebiegProc.xsp?id=E5CC1B1BFDCC13D8C1258CDC005F37CC, accessed: December 4, 2025.

Chapter VIII

VIOLATIONS OF THE RIGHT TO ACCESS INFORMATION—TAKEOVER OF PUBLIC MEDIA



Main theses of the chapter

- Minister of Culture and National Heritage Bartłomiej Sienkiewicz dismissed members of the management boards and supervisory boards of public media companies, disregarding the specific provisions governing these matters, and appointed new individuals in their place. Subsequently, in view of doubts about the effectiveness of these appointments, he announced the placing of the companies into liquidation and appointed their liquidators.

- The appointment of new supervisory boards and management boards under the provisions of the Commercial Companies Code, while disregarding special provisions concerning public media, was declared contrary to the Constitution of the Republic of Poland by the Constitutional Tribunal.

- People who took part in the illegal takeover of public media should face appropriate consequences for it, and their actions should, as a rule, be deemed ineffective.

- The only solution that would remove doubts about the legality of the appointment of public media management and supervisory boards is to restore the participation of the National Broadcasting Council in this procedure.

1. Outline of the problem

Article 54(1) of the Constitution of the Republic of Poland guarantees freedom of speech, the freedom to express opinions, and the freedom to obtain and disseminate information. It pertains both to an individual's right and to the standard for how the media operate. The primary function of the latter is to provide reliable information. Equally important is the opinion-shaping function, whereby the media shape their audience's views by presenting information appropriately (for example, by clearly separating facts from opinions). In a democratic state governed by the rule of law, the media's watchdog role, which involves informing the public about detected irregularities, for example, in the operation of state institutions, remains equally important.[49] Although the rise of so-called new media has reduced the influence of television and radio on public debate, they still remain very powerful tools with the potential to shape public opinion, especially among certain groups.

On December 19, 2023, Bartłomiej Sienkiewicz, the Minister of Culture and National Heritage in Donald Tusk's government, announced the appointment of new supervisory boards for Polish Television, Polish Radio, and the Polish Press Agency, citing the provisions of the Commercial Companies Code[50] as the legal basis for his decisions. Subsequently, these councils, acting under the same act, appointed new company management boards, which was done in complete disregard of the provisions of Articles 27 and 28 of the applicable Act of December 29, 1992, on Radio and Television Broadcasting,[51] under which both the supervisory boards and the management boards of public radio and television companies are appointed and dismissed by the National Media Council. On December 20, 2023, authorities designated by the Minister of Culture and National Heritage took control of public radio and television by force. That day, the broadcasting of some channels was also suspended, notably TVP Info, which was not resumed until December 29, 2023. Meanwhile, on December 27, 2023, the minister announced that the public media companies were being placed into liquidation and appointed liquidators in place of their management boards.

The Minister's actions violated an interim order issued by the Constitutional Tribunal on December 14, 2023, which prohibited the government from making changes to public media under the provisions of the Commercial Companies Code. Following the order, on January 18, 2024, the Constitutional Tribunal issued a judgment (case no. K 29/23), in which it held that neither making changes to the management board or supervisory board of public media pursuant to the provisions of the Commercial Companies Code, nor—in light of the Constitution of the Republic of Poland—placing the public radio and television companies into liquidation is permissible.

The current government's takeover of public media has undoubtedly contributed to a reduction in balance within the Polish media landscape. The bias of these media in favor of the ruling

49 For more, see. Ł. Bernaciński, "Pluralizm mediów i pluralizm w mediach" (Media Pluralism and Pluralism in the Media) [in:] B. Bałazy, Ł. Bernaciński, *Funkcjonowanie rynku medialnego w Polsce i innych wybranych państwach europejskich. Przeciwdziałanie koncentracji kapitału i ochrona pluralizmu mediów* (The Functioning of the Media Market in Poland and Other Selected European Countries. Counteracting Capital Concentration and Protecting Media Pluralism), Warsaw 2021, pp. 20–21.

50 Act of September 15, 2000—the Commercial Companies Code (Official Journal of 2024, item 18, as amended).

51 Act of December 29, 1992, on Radio and Television Broadcasting (Official Journal of 2022, item 1722, as amended).

camp—speaking in this respect with one voice with part of the private media—was noted by OECD representatives in a report on observations of the conduct of the election campaign and of the 2025 presidential election itself.[52] The most striking example of this bias was the broadcast by, among others, Telewizja Polska (TVP), of the so-called election debate in Końskie, organized by the campaign team of one of the candidates (Rafał Trzaskowski), which constituted a violation of a number of legal obligations incumbent upon public broadcasters.

2. Restitution measures

In light of the Constitutional Tribunal's judgment of January 18, 2024, the actions of the Minister of Culture and National Heritage indicated above are clearly illegal. For this reason, the decisions to enter the liquidators in the National Court Register (KRS) should be deemed ineffective, while at the same time upholding the validity of those acts of the liquidators that are protected by the presumption of the correctness of an entry in the KRS. Persons who have suffered losses as a result of the minister's unlawful actions (for example, former employees of those companies) may seek compensation.

Taking certain stations (including, in particular, TVP Info) off the air on December 20, 2023, caused the companies concerned to incur losses exceeding one million zlotys due to the inability to broadcast purchased advertisements. Those responsible—led by Minister Sienkiewicz— in addition to having to pay damages, may also face criminal liability for causing significant financial loss.

Also to be clarified is the role of the notary who drew up the minutes of the general shareholders' meetings at which new boards of directors of media companies were appointed on December 19, 2024. Regardless of the issue of certifying an untruth in those minutes (they initially stated that the meetings were held at the notary's office, whereas in reality they were held at the offices of the Ministry of Culture and National Heritage; the public prosecutor's office opened an investigation into this matter in January 2024, but it discontinued it in December of that year, finding that an "obvious clerical error" had been made[53]), they relied on an incorrect legal basis—a resolution of the Sejm and the provisions of the Commercial Companies Code, which, as indicated above, was unlawful. In view of the foregoing, the Minister of Justice should file a motion to initiate disciplinary proceedings against the notary who prepared the specified minutes.

Minister Sienkiewicz should also be held criminally liable under Article 231 § 1 of the Criminal Code (exceeding authority to the detriment of a public or private interest).

52 *International Election Observation Mission in the Republic of Poland—second round of the presidential election on June 1, 2025. Statements of preliminary findings and conclusions. Preliminary findings* [Polish version], https://www.osce.org/sites/default/files/f/documents/b/3/591926.pdf, accessed on February 11, 2026, pp. 11-12.

53 *Discontinuation of the investigation conducted against the suspected notary in the case regarding the events that occurred at the TVP headquarters on Woronicza Street and the Polish Press Agency*, December 2, 2024, Gov.pl [in Polish], https://www.gov.pl/web/po-warszawa/umorzenie-sledztwa-prowadzonego-przeciwko-podejrzanej-notariusz-w-sprawie-zdarzen-do-ktorych-doszlo-w-siedzibie-tvp-przy-ul-woronicza-i-polskiej-agencji-prasowej, accessed on February 11, 2026.

RESTITUTION MEASURES

The court orders concerning the entry of the liquidators into the National Court Register (KRS) should be deemed ineffective, while at the same time upholding the validity of those acts of the liquidators that are protected by the principle of the presumption of the correctness of an entry in the KRS.

Those responsible for cutting off the signal of certain stations should be held civilly and criminally liable.

The Minister of Justice should file a motion to initiate disciplinary proceedings against the notary who prepared the minutes of the General Meetings of Shareholders.

Proceedings should be initiated against Minister Sienkiewicz with a view to holding him criminally liable under Article 231 § 1 of the Criminal Code.

3. *De lege ferenda* proposals

A solution that would eliminate any constitutional doubts as to the validity of appointing the authorities of public radio and television would be to implement the judgment of the Constitutional Tribunal dated December 13, 2016, case no. K 13/16, in which the Constitutional Tribunal held unconstitutional the exclusion of the National Broadcasting Council from the procedure for appointing and dismissing members of the supervisory boards and management boards of public radio and television companies. Accordingly, a principle should be established under which the supervisory boards and management boards of public radio and television broadcasting companies are appointed by the minister responsible for the State Treasury, with the consent of the National Broadcasting Council (KRRiT).

Implementation of the judgment of the Constitutional Tribunal of December 13, 2016, case no. K 13/16, would remove any constitutional doubts as to the validity of the appointment of the governing bodies of public radio and television broadcasting companies.

The National Broadcasting Council should also be vested with powers enabling it to exercise meaningful oversight of public media's compliance with the public service mission referred to in Article 21(1) of the Act on Radio and Television Broadcasting, including imposing appropriate penalties for violations in this area—up to and including holding those managing these media personally liable.

CONCLUSION

The analysis conducted leads to the unequivocal conclusion that the *sine qua non* for restoring the rule of law in the Republic of Poland is, first and foremost, to restore calm and order to the legal chaos that arose after December 13, 2023. The scale and nature of the violations described in the report—encompassing both actions of the executive branch and the effects of those actions on the functioning of the courts and the prosecutor's office—mean that the current state of affairs does not allow for a coherent, rational, and effective policy of reform of the justice system.

The first stage in rebuilding the rule of law must therefore be the restoration of the formal rule of law, understood as the strict adherence to the provisions of law in force, the constitutional powers of state authorities, and the binding force of final judgments of courts and tribunals. This means the need to cease extralegal activities, to declare the legal effects of acts carried out without a legal basis null and void, to reinstate people unlawfully removed from office to their former positions, and to remove from the legal order legal acts issued in flagrant violation of the law. Only bringing order to this area and remedying the consequences of unlawful actions will enable the restoration of fundamental legal certainty in transactions and citizens' trust in the state and the law.

In this context, any attempts to pursue simultaneous, far-reaching institutional reforms, without first addressing the effects of the current legal chaos, should be considered premature and fraught with a high risk of exacerbating existing problems. Reforms aimed at advancing the substantive rule of law—understood as giving effect to constitutional values such as the independence of the courts, the independence of judges, and the right to a fair trial—can be effectively designed and implemented only under conditions of a stable, predictable, and respected legal order.

Therefore, the order of corrective actions is of fundamental importance. First, it is essential to restore normative and institutional order by respecting the applicable law and removing the consequences of its violations. Only on a foundation reconstructed in this way will it be possible to carry out further, in-depth reforms to repair the justice system, reforms that will not be *ad hoc* or political in nature, but will serve to strengthen the rule of law on a lasting basis.

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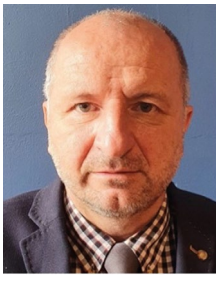
AUTHORS' BIOGRAPHIES

Łukasz Bernaciński

ORCID: https://orcid.org/0000-0002-3491-8675

PhD in Law. Co-founder and President of the Polish Scientific Society. Vice President of the Hipolit Cegielski Center for Legal, Economic, and Social Analyses, member of the boards of directors of Poland's Ordo Iuris Institute for Legal Culture Foundation and Center for Supporting Initiatives for Life and Family Foundation. Deputy editor-in-chief of the academic journal *Legal Culture*. Four-time recipient of the Rector's Scholarship at the University of Lodz. He defended his doctoral dissertation titled *Civic Tax Deduction as a Potential Source of Funding for Churches and Other Religious Associations in Poland – The Legal and Religious Perspective* with unanimous distinction. Speaker at more than twenty international and national academic conferences. Author or co-author of more than twenty scholarly publications, including three monographs, as well as a dozen or so draft bills, more than sixty analyses, legal opinions, reports, and guides, and more than fifty popular-science commentaries. Graduate of leadership programs in law, management, and the operation of non-governmental organizations. His research focuses on church-state law, constitutional law, and human rights.



Zygmunt Drożdżejko

Judge of the Krakow Court of Appeal, President of the National Association of Judges "Judges of the Republic of Poland." Graduate of the Jagiellonian University. From 1997 to 1999, he served as a District Court assessor and adjudicated labor law cases. He was appointed judge in 1999 and since then has adjudicated civil cases. From 1999 to 2020, Judge of the District Court; from 2012 to 2020, assigned to adjudicate at the Regional Court. From 2020 to 2023, Judge of the Regional Court. Since March 2023, Judge of the Court of Appeals. As a judge, he served as head of a division, a supervisory judge, and as the President of the Court of Appeal. On May 25, 2012, the Polish Section of the International Commission of Jurists awarded him a distinction in the 2011 European Judge competition, and on March 29, 2018, awarded him the honorary title of European Judge 2017. Participant in numerous conferences and author of numerous scientific publications.

Katarzyna Gęsiak

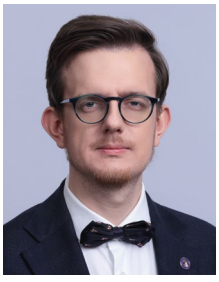
ORCID: https://orcid.org/0000-0001-7210-0180

Graduated with a degree in law from the Faculty of Law and Administration at Jagiellonian University, received a scholarship to study at the Université de Liège in Belgium. Attorney-at-law, entered on the list of attorneys-at-law at the District Chamber of Attorneys-at-Law in Warsaw. She completed postgraduate studies in medical law and bioethics at Jagiellonian University. She has gained professional experience working at several Warsaw law firms.

Andrzej Golec

ORCID: https://orcid.org/0009-0002-0999-7719

Prosecutor, in the prosecutorial service since December 1993 , has served since November 2021 at the IPN Lustration Bureau, where he drafts cassation appeals against final judgments handed down in lustration proceedings. Participates in cassation hearings before the Supreme Court. From 2007 to 2016, he served as the head of the Gdańsk Branch of the Institute of National Remembrance (IPN) Lustration Office. Regional Prosecutor in Gdańsk and Deputy Director of the Office of the National Prosecutor (2016–2021). Author of publications related to the activities of the Lustration Office, the verification of lustration declarations, and the lustration process. President of the Ad Vocem Independent Association of Prosecutors.



Jędrzej Jabłoński

ORCID: https://orcid.org/0009-0000-2206-9373

Graduate of the Faculty of Law and Administration at the University of Warsaw (graduated with honors) and completed postgraduate studies on the topic of "Polish Personnel for the EU." Senior analyst at the Ordo Iuris Institute, coordinator of the "Freedom and Rule of Law" program and the Rule of Law Observer website. Previously, he worked as Chief Specialist at the Office of the Ombudsman for Small and Medium-Sized Enterprises from the beginning of its operations in 2018 until the end of the first Ombudsman's term. The focus of his academic publications is primarily on the principle of subsidiarity.

Łukasz Piebiak

PhD in Law. A judge serving since 2003 in Warsaw's commercial courts, currently in the bankruptcy and reorganization division. President of the Main Board of the Lawyers for Poland Association. Prior to 2015, president of the Warsaw branch, vice president of the main board of directors and chairman of the international team of the Polish Judges Association "Iustitia." From 2015 to 2019, Undersecretary of State at the Ministry of Justice, overseeing departments responsible for human resources; organization and administrative oversight of the common court system; civil law legislation; international cooperation; strategy; and European Union funds. Lecturer at the National School of the Judiciary and Public Prosecution, War Studies University, and Collegium Intermarium. Participant and speaker at more than a dozen national seminars and several dozen international ones on civil procedure, and in particular on proceedings in commercial cases, the organization and systemic reforms of the judiciary, antitrust law, telecommunications law, and trademarks and utility models. Author of several dozen scholarly publications (case notes, articles, a commentary on special proceedings in the Code of Civil Procedure–co-author) and journalistic publications, primarily in the area of civil procedure and the organization and reform of the judiciary.

Krzysztof Wąsowski

Advocate, PhD in Law. Student of Prof. Zbigniew Cieślak. Member and co-founder of the Warsaw Seminar on the Axiology of Administration. Specialist in administrative law and procedure, as well as public economic law. Author of numerous scholarly publications. Experienced practitioner.

The authors of the report trace, step by step, the mechanisms of constitutional destabilization that have been unfolding in Poland since December 2023—from undermining the position of the National Council of the Judiciary, through the unlawful dismissal of court leadership and interference in the system of disciplinary accountability for judges, to the non-publication of Constitutional Tribunal rulings and the takeover of the National Prosecutor's functions. Each of these areas is described using constitutional and statutory reasoning as well as case law, making the report a reliable analytical tool for lawyers, policymakers, and the public.

A particular merit of the study lies in the precise identification of restitution measures and recommendations *de lege ferenda*. Indeed, the report does not stop at diagnosis—it proposes realistic solutions leading to the restoration of the formal rule of law as a necessary condition for further substantive reforms. The authors point out that stabilizing the legal and political situation first requires restoring a basic normative order, and only then undertaking constitutional reforms.

We trust that the report—by providing structured knowledge, setting the direction for corrective measures, and laying the groundwork for a rational, nonpartisan discussion on the structure of the justice system—will be an important contribution to the debate on the future of the rule of law in Poland.

For anyone interested in restoring institutional stability, citizens' trust in the state, and legal certainty, this is essential reading.

Łukasz Bernaciński, Ph.D.
Member of the Management Board of the Ordo Iuris Institute for Legal Culture

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