

Cui prodest scelus, is fecit

JUDGES-POLITICIANS AT WAR AGAINST POLAND



Editors:
Paweł Czubik, Konrad Wytrykowski



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Dr. Konrad Wytrykowski

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Introduction

According to Article 175 of the Polish Constitution, the administration of justice in the Republic of Poland is exercised by the Supreme Court, common courts, administrative courts, and military courts, while the establishment of extraordinary or summary courts is permitted only in times of war. This provision must be interpreted in conjunction with Article 45(1) of the Constitution, which guarantees that “Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court.” Additionally, Article 77(2) stipulates that “Statutes shall not bar the recourse by any person to the courts in pursuit of claims alleging infringement of freedoms or rights.”

Together, these provisions enshrine the judiciary's monopoly on the administration of justice. In both jurisprudence and legal doctrine, the administration of justice is defined as the state's function of adjudication, i.e., the binding resolution of legal disputes, where at least one party is an individual or a comparable entity (see: Polish Constitutional Court ruling of December 1, 2008, P. 54/2007, LexisNexis No. 1968781, OTK-A 2008, No. 10, item 171; Constitutional Court judgment of June 9, 1998, K 28/97, OTK 1998, No. 4, item 50; L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warsaw 2012, p. 340; Z. Czeszejko-Sochacki, “O wymiarze sprawiedliwości w świetle Konstytucji, międzynarodowych standardów i praktyki”, *PiP* 1999, no. 9, p. 3; M. Masternak-Kubiak in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. M. Haczowska, Warsaw 2014, Article 175).

The framers of the Polish Constitution, in entrusting the courts with the adjudication of cases – i.e., disputes over the law – recognized that only the judiciary provides the necessary guarantees for issuing fair and professional decisions. This is because only the courts are bound by the Constitution's special rules of organization and procedure, as well as by the distinct legal status afforded to judges.

However, the recently revealed patterns in the rulings of Polish courts, particularly the Supreme Court, demonstrate that this high regard for the judiciary has proven to be a serious misjudgment. Under the government of the December 13 Coalition, a growing and deeply concerning trend has emerged in judicial decisions: appellate and cassation courts increasingly avoid examining the merits of cases and instead focus solely on scrutinizing the professional background of judges who presided over the earlier stages of the proceedings. In these cases, courts do not assess the commission of a crime, its circumstances, or the harm done to victims. Instead, they evaluate whether the judges in question were appointed after 2018 and whether their nominations were submitted by the National Council of the Judiciary (NCJ) as reconstituted in March 2018. Additional aggravating factors for judges include having lawfully served as court presidents or visiting judges between

2015 and 2023 (during the rule of the conservative, Republican-aligned Law and Justice party), having legally participated in judicial examination commissions, or having taken part in the lawful election process for the NCJ. The consequence of such assessments is the frequent vacation of appealed rulings and the remanding of cases for retrial – solely due to the composition of the court that originally issued the decision, without any substantive objection to the legal correctness of the ruling itself. The course of judicial proceedings, the severity of the crime, and the risk of secondary victimization of victims – who must once again face their perpetrators and provide testimony – are disregarded. Even the risk of serious crimes going unpunished due to the statute of limitations is ignored, as is the prospect of individuals convicted of grave offenses, such as participation in organized crime, drug trafficking, or even murder, being released from prison. In many instances, the vacating of contested rulings leads to the release and effective impunity of convicted criminals – because once the statute of limitations expires, these offenders can never again be prosecuted for their crimes. The release of perpetrators of serious crimes poses a direct threat not only to those who testified against them but also to society at large, which is now at increased risk of further acts of violence, including murder, kidnapping, sexual assault, financial crimes, and the resurgence of drug trafficking operations in schools.

Judgments are being set aside on the grounds of so-called “improper constitution of the court” – specifically, on the premise that a judge appointed after 2018 participated in the adjudication. It must be emphasized that these judges were appointed through a legal process strictly defined by the Constitution and statutory law. Questioning their appointments is purely political in nature.

In 2024 alone, the Supreme Court vacated judgments in 120 such cases (Supreme Court announcement, January 27, 2025: www.sn.pl/aktualnosci/SitePages/Wydarzenia.aspx?ItemSID=1050-0dc69815-3ade-42fa-bbb8-549c3c6969c5&ListName=Wydarzenia).

This situation has rightfully provoked public outrage. As dedicated patriots and legal professionals who hold deep respect for the rule of law as enshrined in the Constitution, we cannot remain indifferent. Through this publication, we aim to illustrate – by analyzing selected cases – how certain judges in Poland are distorting the very concept of justice. The judiciary is increasingly embracing a Marxist approach, where the law itself is rendered meaningless, subordinated instead to the ideological goals of a liberal revolution. This model of justice stands in direct opposition to the principles of Roman law and the values of Latin civilization, from which Poland has drawn its legal and cultural heritage for over a thousand uninterrupted years. We present only a few of the most egregious examples of blatant violations of the principle of legalism by courts that issue rulings without a legal foundation, undermining both the constitutional order and the functioning of the state. However, such cases are far more numerous. The courts openly execute the di-

rectives of liberal-left elites and politicians advocating radical concepts such as “fighting democracy” or “transitional rule of law.” In doing so, they also facilitate the interests of criminal organizations and mafias.

Indeed, the only beneficiaries of setting aside judgments are criminals – those who go unpunished, those who are released, or at the very least, those whose convictions are indefinitely delayed. This raises serious questions about the true masterminds and driving forces behind such judicial behavior, particularly within Polish courts and, most notably, the Supreme Court. The consequences of these actions are unmistakable: legal chaos, anarchy, the erosion of judicial authority, and the weakening of respect for the rule of law. This will inevitably lead to economic collapse, the strengthening of criminal networks, the entrenchment of mafia rule, and, ultimately, a direct threat to Poland's very existence as a sovereign state.

The older generation of judges – many of whom were appointed during Poland's communist occupation by the Soviet Union – have demonstrated such consistency in vacating judgments that it raises serious concerns about whether they are not following the orders of some principal. The political alignment of judges affiliated with the Iustitia association and their ties to the ruling December 13 Coalition are increasingly evident. Many of these judges openly express their political views on social media and frequently benefit from lucrative government-appointed positions, including roles in committees at the Ministry of Justice and the judicial training system. In this way, the December 13 Coalition has reestablished in Poland a judicial elite – one still bearing traces of its communist origins, composed of politically engaged judges. The purpose of these government-driven actions is unmistakable: to create a judiciary that serves political interests, delivering rulings tailored to the needs of the ongoing Marxist revolution. A government that opposes a conservative society rooted in Christian values requires judges who are unwaveringly loyal to its political objectives. This is the judiciary that is gradually taking shape in Poland today.

The Roman jurists taught: *Cui prodest scelus, is fecit* – “He who profits from the crime is the one who committed it.” Without question, those profiting from the current situation in Poland include drug traffickers, corrupt developers, forgers, common criminals, and organized crime syndicates. The question of who the real architects of these destructive changes are will become self-evident to anyone who reads the following report.

We firmly believe that the destruction of our Homeland can still be stopped. However, this will only be possible through massive public resistance, both within Poland and on the international stage. To raise awareness and provide a deeper understanding of the current state of affairs, we present this report to the public.

Konrad Wytrykowski, Paweł Czubik
Warsaw, April 2025

Part I. Criminal cases:

Piotr Schab

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

The Supreme Court's War with the Nation

For years, politicians acting in the interests of those who oppose Poland's sovereignty have waged an attack – through the judiciary – on the institutions and individuals safeguarding a free and just Polish state. The formal end of the communist regime in Poland was predicated, in part, on an agreement that communist-era judges would retain their full social and professional status after the regime's collapse. This is precisely what transpired. These very judges, along with carefully selected peers in their judicial caste, have become a powerful and highly active force within the system – one that obstructs the development of a truly free Poland, where all citizens have equal opportunities. Instead, they serve to maintain the dominance of post-communist elites and their subservience to foreign interests.

Efforts to restore an honest, genuinely pro-state public service – initiated after the 2015 electoral victory of patriotic forces – were immediately met with a ferocious assault by domestic politicians, foreign-funded media (primarily from Germany), and the vast majority of judges, who enjoy near-unlimited privileges and have openly aligned themselves with the previously dominant political faction. Over the years, this struggle has intensified, culminating in what is now an open revolt against Poland's sovereignty and its Constitution.

Approximately 3,000 judges appointed since 2018 – still a minority within the judiciary – have disrupted the long-standing arrangement established in 1989, in which the judicial corps, rooted in communism and subservient to pro-Soviet political forces, operated as a unified caste. This judicial elite functioned as a closed network loyal to interest groups that effectively monopolized power and maintained a dominant social position. The current government, with the overt complicity of foreign political actors, is now actively working to dismantle efforts to return the judiciary to the Polish nation. Its ultimate goal is the full restoration of post-communist dominance across all spheres of social life. The judiciary is seen as the most effective instrument for guaranteeing impunity and privilege for those who view a sovereign Poland as a threat – to their entrenched corruption, their profiteering betrayal, and the exposure of past lawlessness.

One of the methods used to eliminate from public service those judges committed to restoring the Polish state to its citizens is the Supreme Court's systematic denial of their right to adjudicate. Still dominated by individuals whose status derives from the post-communist system – or who openly collaborate with it – the Supreme Court has been stripping judges of their ability to rule in cases simply because they oppose the entanglement of the judiciary in political activities. This process is carried out with absolute ruthlessness, disregarding the fundamental rights of citizens in judicial proceedings and deliberately fostering a state of legal anarchy.

In the most serious criminal cases – including those involving notorious criminals, members of organized crime groups, kidnappers, and perpetrators of violent attacks that undermine public safety – the Supreme Court has vacated lengthy prison sentences. Its justification? That the judge or judges who issued the rulings “should not have adjudicated.” The real reason behind their exclusion, however, is not legal but ideological: they do not originate from the old system that for years upheld and protected a state of social injustice and lawlessness. The widespread undermining of judges who have acted in the true spirit of public service is a deliberate attempt to condition Polish society into believing that it must rely on the remnants of the previous political and legal order when seeking justice in fundamental matters.

A glaring example of this practice is the case of a criminal group convicted of serious crimes by the Court of Appeals in Warsaw under case number II AKa 213/21. As a result of the court's judgment, the defendants were sentenced to lengthy prison terms for offenses that violated fundamental civil rights, including life, health, and property. The group's activities posed a significant and widespread threat to society. However, in a judgment dated February 15, 2023 (ref. II KK 571/22), the Supreme Court vacated this judgment. The only justification for its ruling was the presence of Judge Piotr Schab on the panel of the Court of Appeals in Warsaw. No substantive legal arguments were raised against his adjudication. Instead, the Supreme Court's ruling amounted to a personal attack on Judge Schab, insulting and demeaning in nature. The Supreme Court argued that Judge Schab's fulfillment of legally defined public service obligations – which included his acceptance of the nomination as a judge of the Court of Appeals in Warsaw from the President of the Republic of Poland in May 2020, as well as his role as Disciplinary Spokesman of the Judges of Common Courts (a position that requires oversight of judicial ethics under the Act on Common Courts Organization) – disqualified him from adjudicating cases. Over the years of his service, Judge Schab has consistently opposed the judiciary's increasing entanglement with politics and has sought to uphold the Constitution of the Republic of Poland – an obligation that many judges have openly disregarded on a massive scale. As a result, he has been branded an adversary by those within the judicial and political establishment, whose influence is reinforced by mass media support.

It is particularly significant that the Supreme Court judges involved in issuing the aforementioned ruling have repeatedly engaged in similar actions, often in collaboration with judges who were members of the communist party during the period of martial law in Poland – a time when the judiciary was an instrument of brutal repression orchestrated by the communist regime against its own citizens.

The ruling against Judge Piotr Schab provided a direct benefit to judges supporting the unconstitutional political order. It served as a public condemnation of Schab as a judge, immediately triggering a large-scale media campaign aimed at discrediting him through methods that violated the dignity of the judicial office. Beyond targeting individuals, the broader goal of the interest groups that welcome the collapse of the judiciary is to deepen chaos within the state by dismantling public institutions, eroding the sense of security among citizens, and fostering helplessness and passivity in society. Personal attacks on judges who have consistently defended constitutional order – executed within a judiciary that has become deeply entangled with political pressure groups – go hand in hand with the systematic undermining of Poland's Constitutional Tribunal, the office of the President of the Republic, and the Public Prosecutor's Office. Since December 2023, anarchy has become the defining characteristic of state governance, openly manifesting in the rejection of Poland's constitutional foundations as a democratic state under the rule of law. This deliberate strategy has effectively dismantled judicial independence by purging judges who have remained faithful to their service to the Polish state.

The cost of this assault on the Polish state is twofold: the collapse of key institutions and an escalating sense of insecurity among the citizens.

Michał Bukiewicz
(*Judge of the Circuit Court Warsaw-Praga in Warsaw*)

The Supreme Court's Unjustified Vacation of the Judgment of the Circuit Court in Warsaw-Praga in Warsaw, Leading to the Statute of Limitations on Key Charges Against the Defendants

In a judgment dated December 20, 2018 (case VIII K 696/11), the District Court for Warsaw's Praga Północ district found four defendants – members of a major criminal group active during a particularly difficult period for Polish society – guilty of committing numerous crimes between 1999 and 2000. These offenses included car burglary, robbery, extortion, and ransom demands for the return of stolen vehicles. The court imposed the following sentences: 3 years' imprisonment, 7 years' imprisonment, 6 years' imprisonment, and 3 years' imprisonment, respectively. On April 20, 2022, in case VI Ka 1240/19, the Circuit Court reviewed the appeals and ruled to reduce the first defendant's sentence to 1 year and 6 months' imprisonment. However, it upheld the remainder of the District Court's judgment, deeming the remaining appeals unfounded.

In its judgment of September 28, 2023 (II KK 55/23), the Supreme Court set aside the judgment of the court of second instance, recognizing cassation appeals against it. The decision was based on an arbitrarily assumed improper constitution of the adjudicating panel, the unfounded questioning of the referring judge's appointment, and the unlawful assertion of an absolute cause of appeal under Article 439 § 1(2) of the Code of Criminal Procedure. The case, which was already at risk of exceeding the statute of limitations, was remanded to the circuit court for retrial. Notably, the Supreme Court also set aside the judgment with regard to a defendant who had not even filed a cassation appeal. Importantly, the reporting judge in question had been adjudicating in the circuit court since September 2017, initially on secondment and then as a full circuit court judge from May 2020. Over this period, dozens of rulings in which he participated – whether as a presiding judge or a panel member – had been subject to cassation review by the Supreme Court, without any concerns being raised regarding his qualifications or judicial independence. The fact that such a decision was issued only after he assumed the position of President of the Circuit Court in Warsaw-Praga strongly sug-

gests that it was not a neutral legal determination, but rather a deliberate and targeted action aimed at discrediting individuals appointed to key judicial positions by former Minister of Justice Zbigniew Ziobro.

It is important to emphasize that this practice is limited to a handful of Supreme Court judges. Within a year of the judge's appointment as President of the Circuit Court, the Supreme Court issued multiple rulings in other cases – most of them adjudicated by judges appointed under the previous National Council of the Judiciary – where the merits of the cases were considered, cassation appeals were dismissed, and no objections were raised regarding the composition of the adjudicating panel. In setting aside the judgment in question, the Supreme Court departed from established jurisprudence by failing to engage with the substantive aspects of the case. It did not examine whether there had been any actual violation of the standards of judicial independence and impartiality. Instead, the judgment was based on an abstract, arbitrary, and subjective assessment of the judge's career path, divorced from any legal analysis related to the case itself. This decision clearly does not serve the proper administration of justice but is instead motivated by considerations entirely extrinsic to the judiciary. The Supreme Court judges responsible for vacating this judgment were fully aware that their decision would expose the proceedings to the risk of the statute of limitations expiring, given the considerable time that had elapsed since the crimes were committed. This decision flagrantly undermines the objectives of criminal proceedings and the rights of the victims, ultimately benefiting perpetrators of serious crimes.

As a result of this judgment, the statute of limitations expired for 22 offenses. When the “old” case was retried, proceedings for these acts were formally discontinued. Additionally, one of the defendants, who had not even filed a cassation appeal, completely escaped criminal liability, as the statute of limitations had expired for all five car theft charges against him. For the other defendants, their sentences were significantly reduced. The penalty of seven years' imprisonment was lowered to five years, the six-year sentence was reduced to five years, and the three-year sentence was shortened to one year and eight months.

Jakub Iwaniec
(Judge of the Warsaw-Mokotów District Court in Warsaw)

Blatant Fraud Using the “Fake Policeman” Method – Circuit Court in Warsaw, VIII Criminal Division, File Number VIII K 348/22

1. Facts

Between January 12 and 18, 2022, Cezary W. contacted the victim, Ewa O. During their conversations, he claimed that she would be assisting police officers in apprehending bank fraudsters. He further stated that officers would contact her directly to coordinate the details of the operation. Through these phone conversations, he gained the trust of the victim, who, despite being 90 years old at the time, was in very good mental and physical condition. Eventually, Cezary W. informed the victim that she needed to meet with another police officer who would visit her home. He also instructed her to withdraw money from the bank to contribute to the supposed police operation. On January 12 and 17, 2022, having previously withdrawn the money from her bank, the victim handed over 50,000 zlotys on each occasion to a fake “officer.” These funds constituted her life savings. However, the criminals did not stop their fraudulent scheme. On January 18, 2022, Cezary W. contacted the victim again, this time requesting an additional 20,000 zlotys. At that point, the victim grew suspicious and realized she may have fallen prey to scammers impersonating police officers. She immediately notified law enforcement authorities. When the perpetrator arrived at her apartment later that day to collect more money, he was detained and subsequently placed under temporary arrest by the court.

An indictment against Cezary W. was filed with the Circuit Court in Warsaw in late 2022. Unfortunately, the identities of the other perpetrators who collaborated with the accused could not be determined. Before the court, the defendant partially admitted to committing the alleged offense.

2. Legal Status

In a judgment dated December 14, 2023, the court found the defendant, Cezary W., guilty of the charged offense and sentenced him to six years' imprisonment for fraud under Article 286 § 1 of the Criminal Code, committed

under recidivism conditions. The court determined that the defendant had previously been convicted and served a prison sentence imposed by a German court. Additionally, the court ordered the defendant to pay full restitution in the amount of PLN 100,000 (approximately \$ 26,000) and mandated the public announcement of the judgment. Notably, the defendant had five prior convictions.

The Circuit Court's judgment became final on July 5, 2024, following the decision of the Court of Appeals in Warsaw to uphold it. The appellate panel included Judge Izabela Szumniak (judge appointed with the participation of the National Council of the Judiciary formed in 2018), Judge Piotr Bojarczuk, and Judge Przemysław Filipkowski (judge appointed with the participation of the National Council of the Judiciary formed in 2018).

After the judgment became final, the victim's attorney petitioned the court for the formal declaration of enforceability regarding the restitution order. Under Polish law, this decree of enforceability is a procedural formality that occurs automatically but is essential for the creditor to initiate enforcement proceedings before a bailiff. However, a judge of the Court of Appeals in Warsaw, which had been unlawfully staffed by appointees of Justice Minister Adam Bodnar, refused to grant the enforceability clause. The judge justified this decision by claiming that the Circuit Court in Warsaw had allegedly adjudicated in an improper constitution. It was further argued that a cassation appeal had been filed, asserting with certainty that the judgment would be set aside and the case remanded to the Circuit Court in Warsaw for retrial.

3. Who Is the Victim?

The victim, a 92-year-old Warsaw resident, is a retired music teacher who dedicated her life to working with young people. She is highly educated, mentally sharp, and articulate. A modest and trusting individual, she became an easy target for the accused, who cynically exploited her trust by engaging her in conversations on various topics to establish a connection. She actively participated in the court proceedings, demonstrating a strong belief in justice. Her deep respect for the court was evident in her demeanor throughout the trial. However, as a result of the crime, she lost her entire life savings, leaving her in a vulnerable position.

4. Who is Judge Mirosława Chyr, Who Convicted the Dangerous Criminal?

Judge Mirosława Chyr, whose conviction was challenged through a procedure unknown to Polish law, was promoted to the Warsaw Circuit Court in 2022 following the recommendation of the National Council of the Judiciary and her formal appointment by the President of Poland. Prior to her judicial appointment, she had a distinguished career as a prosecutor, achieving signif-

icant success in combating crime. As stated in the resolution of the National Council of the Judiciary:

The visiting judge for criminal cases at the Circuit Court in Warsaw recognized Miroslawa Chyr's extensive expertise in substantive and procedural criminal law, as well as her ability to skillfully interpret and apply the law. The cases she supervised or personally handled varied in complexity, with many involving intricate legal issues and requiring a broad, multifaceted approach. All legal documents prepared by Judge Chyr, including pleadings, decisions, and orders, were formally correct, while her justifications for indictments and pre-trial decisions were characterized by thorough professionalism, meticulous attention to detail, and comprehensive legal analysis. These justifications consistently referenced statutory law, case law, and doctrinal perspectives, demonstrating a rigorous and well-founded approach to legal reasoning. Her decisions on the merits, along with protocols for witness and suspect examinations, reflected a deep familiarity with case files, underscoring her diligent preparation and commitment to her work. The visiting judge has assessed Miroslawa Chyr's qualifications and performance as outstanding.

Additionally, it is worth noting that Miroslawa Chyr secured her judgeship through an open competition, prevailing over both another judge and a legal advisor.

5. Consequences of the Unlawful Challenge to the Judgment of the Circuit Court

The court issued a final conviction against the defendant through an efficient and expedited proceeding, imposing a severe sentence and awarding PLN 100,000 in restitution. However, the refusal to grant an enforcement clause based on alleged flaws in the judge's nomination process constitutes a blatant violation of the Polish Constitution. This decision created a situation that directly undermined the role and authority of the judiciary, an institution in which the victim had placed her trust. As a result, she now faces the high likelihood of never recovering her entire life savings.

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

Supreme Court Releases a Rightfully Convicted Prisoner

As reported by the pro-government web portal Onet.pl (www.wiadomosci.onet.pl/Cracow/sad-najwyzszy-kaze-wypuscic-skazanego-z-wiezienia-zaskakujaca-przyczyna/2se7kgm), the case concerned a man convicted of operating a motor vehicle after his license had been revoked. The court of first instance sentenced him to six months' imprisonment. Following an appeal by the defense, the case was reviewed by the criminal appeals division of the Circuit Court in Cracow. The case was assigned to a judge who had been appointed to the Circuit Court in 2022. At that stage, the defense submitted a motion to exclude her, arguing that her appointment was defective due to the involvement of the National Council of the Judiciary, reconstituted in 2018. However, a different adjudicating panel rejected the motion, finding no grounds for her exclusion.

As a result, the judgment of the Court of Appeals was issued by a panel that included a judge appointed after 2018. The court rejected the appeal, rendering the judgment final and forwarded it for execution.

In response, the defense attorney sought to overturn the judgment by petitioning the court of first instance to declare the decision of the Court of Appeals "non-existent." He requested that the case be remanded to the Circuit Court for reconsideration by a "properly constituted" panel. He argued that the motion for exclusion had been handled contrary to the defense's intent and that his action was the only means of preventing the execution of an unlawful judgment.

However, the court of first instance acted reasonably and refused to grant the defense attorney's request, citing the lack of legal grounds. Consequently, in December 2022, the execution of the sentence was ordered, and the driver was sent to prison. At that stage, the defense attorney filed a cassation appeal with the Supreme Court, arguing that the Court of Appeals had been improperly constituted. After reviewing the cassation, the Supreme Court decided to suspend the execution of the sentence and ordered the convict's immediate release. As a result, the man was freed from prison and will await the final decision at liberty.

The Supreme Court's actions demonstrate a striking disregard for the existing legal order. The criminal case in question was duly adjudicated in two instances, as required by the Polish Constitution. In both instances, the courts issued judgments in accordance with the law. Moreover, both courts were composed of judges appointed by the President of the Republic of Poland

upon the recommendation of the National Council of the Judiciary, thereby adhering to constitutional procedures.

Challenging the legitimacy of these judges is directly tied to broader attacks on the National Judicial Council (NCJ). This argument rests on the assumption that the Constitution mandates that judge-members of the NCJ be elected exclusively by other judges. However, this claim is demonstrably false. Nowhere does the Polish Constitution specify that the fifteen judicial members of the NCJ must be elected by fellow judges or by judicial self-governing bodies. Given this, it is essential to revisit what the Constitution actually states regarding the NCJ and to assess whether the selection rules introduced in 2018 genuinely contradict its provisions.

According to Article 186(1) of the Constitution, the National Council of the Judiciary is responsible for safeguarding the independence of courts and judges. Article 187(1) of the Constitution specifies the composition of the National Council of the Judiciary, which includes:

1. The First President of the Supreme Court, the Minister of Justice, the President of the Supreme Administrative Court, and one person appointed by the President of the Republic;
2. Fifteen members chosen from among the judges of the Supreme Court, common courts, administrative courts, and military courts;
3. Four members chosen by the Sejm from among its deputies and two members chosen by the Senate from among its senators.

Furthermore, Article 187(4) of the Constitution states that the organizational structure, scope of activities, and procedures for the work of the National Council of the Judiciary, as well as the method of selecting its members, are determined by statute.

It is therefore evident that the Constitution does not stipulate that the fifteen members elected from among the judiciary must be chosen by other judges or by judicial self-governing bodies. The NCJ is neither a judicial body nor a professional self-governing institution. The deliberate omission in Article 187 of the Constitution regarding the specific method of selecting these fifteen members highlights that this matter was intentionally left to statutory regulation.

The argument that the NCJ must be “independent” within the meaning of Article 173 of the Constitution is a misinterpretation. Structurally, the NCJ is a constitutional organ positioned between the three branches of government, rather than a component of the judiciary as defined by Article 10 of the Constitution.

Moreover, the NCJ is not an element of judicial self-government. Its mixed composition – including representatives from the legislative, executive, and judicial branches – reflects its role as a body designed to ensure the balance and interaction of powers. It should be viewed as a forum where different perspectives and approaches to safeguarding judicial independence can con-

verge and be debated. As an independent, central organ of the state, its autonomy is akin to that of other constitutional bodies.

Judges serving as members of the NCJ do not possess the attribute of independence as defined in Article 178(1) of the Constitution when performing their duties within the NCJ. In this capacity, they act as members of a state body, with their judicial status serving merely as a constitutional prerequisite for membership. Moreover, NCJ members do not function individually but as part of a collegial body.

In Poland, the sole authority responsible for assessing the constitutionality of laws is the Constitutional Tribunal. According to Article 190(1) of the Constitution, its rulings are universally binding and final.

All doubts regarding the constitutionality of the current method of selecting judge-members of the NCJ have been resolved through the only procedure permitted by the Constitution. In a ruling dated March 25, 2019, the Constitutional Tribunal determined that “Article 9a of the Act of May 12, 2011, on the National Council of the Judiciary (Journal of Laws of 2019, item 84) is consistent with Article 187(1)(2) and (4) in connection with Article 2, Article 10(1), Article 173, and Article 186(1) of the Constitution of the Republic of Poland.” This ruling, in accordance with Article 190(1) of the Constitution, carries the constitutional attribute of finality, and the law governing the NCJ is therefore presumed to be constitutional.

Consequently, all judges serving as members of the National Council of the Judiciary hold their positions lawfully, and this legal status cannot be altered by illegitimate expectations or demands – whether from European tribunals, Polish politicians, or the subjective views of politically engaged judges.

As a result, judges appointed by the President upon the recommendation of the National Council of the Judiciary are, without question, judges within the meaning of the Constitution. Any attempt to undermine their status is purely political. Particularly alarming is the fact that such actions have led to the annulment of legally sound judgments and even the release of convicted individuals from prison – an outcome that is incomprehensible to any reasonable observer.

Impunity for the Attempted Murder of Police Officers

In a judgment dated September 19, 2022, the Circuit Court in Warsaw, in case no. VIII K 102/22, found the defendant, P. M., guilty of the following offense:

I. On the night of December 5–6, 2020, in Warsaw, at ul. Janowskiego 7, acting with the direct intent to deprive police officers of their lives – namely, Sergeant M. Ł. M., Chief Inspector A. G., and Second-Lieutenant S. T. – he attempted to kill these officers by driving an Audi A6 (registration no. ...) to the front of the Police Station in Warsaw Ursynów, carrying inside an 11 kg cylinder filled with propane-butane gas. After opening the valve, allowing the gas to escape and fill the interior of the vehicle, he activated the car horn to attract the attention of as many police officers as possible and then attempted to trigger an explosion by igniting a lighter. The act constituted an attempted homicide of multiple police officers while they were performing their duties related to public safety and order. However, the intended explosion did not occur due to an insufficient gas-to-oxygen ratio, which prevented the ignition of the gas mixture. The court found that this act fell under Article 13 § 1 of the Penal Code in conjunction with Article 148 § 3 of the Penal Code. Accordingly, the defendant was convicted and, pursuant to Article 14 § 1 in conjunction with Article 148 § 3 of the Penal Code, was sentenced to 12 years and 6 months' imprisonment;

II. On the night of December 5–6, 2020, in Warsaw, at ul. Janowskiego 7, which is classified as a public road, he operated a motor vehicle, an Audi A6 (registration no. ...) while under the influence of a narcotic substance – tetrahydrocannabinol, the active ingredient in marijuana, at a concentration of not less than 3.8 ng/ml of blood. This level of intoxication resulted in a disturbance of his psychophysical functions to a degree equivalent to significant alcohol intoxication. For this offense, pursuant to Article 178a § 1 of the Penal Code, he was convicted and sentenced to six months' imprisonment.

III. On the night of December 5–6, 2020, in Warsaw, at ul. Janowskiego 7, he was in possession of a narcotic substance in the form of cannabis herb, other than non-fibrous cannabis, with a net weight of 1.50 grams. This was in violation of the applicable provisions of the Act on Counteracting Drug Addiction. For this offense, pursuant to Article 62(1) of the Act of July 29, 2005, on Coun-

teracting Drug Addiction, he was convicted and sentenced to two months' imprisonment.

Pursuant to Article 85 § 1 and Article 86 § 1 of the Penal Code, the court combined the sentences of imprisonment imposed on the defendant, P. M., and sentenced him to a total of 12 (twelve) years and 7 (seven) months of imprisonment. Additionally, pursuant to Article 42 § 2 in conjunction with Article 39(3) of the Penal Code, the court imposed a penalty measure in the form of a four-year driving ban on all motor vehicles in connection with the conviction for the offense specified in point II of the judgment. Furthermore, pursuant to Article 43a § 2 in conjunction with Article 39(7) of the Penal Code, the court ordered the defendant to pay a monetary benefit of PLN 5,000 (approximately \$ 1,300) to the Fund for Crime Victims and Post-Penitentiary Aid, also in connection with the conviction under point II of the judgment.

After considering the appeals filed by the defendant's counsel and the prosecutor, the Court of Appeals in Warsaw, in a judgment dated March 29, 2023 (ref. no. II AKa 528/22), amended the appealed judgment. It revoked the decision on the cumulative penalty, annulled the conviction for the offense specified in item III, and remanded this part of the case to the Circuit Court in Warsaw for re-examination. The Court of Appeals upheld the remainder of the judgment and, after combining the prison sentences imposed under items I and II, sentenced the defendant, P. M., to a total of 12 (twelve) years and 6 (six) months of imprisonment.

After considering the cassation filed by the convict's counsel, the Supreme Court, in a judgment dated March 12, 2024 (ref. no. II KK 506/23), set aside the judgment of the Court of Appeals in Warsaw in the appealed part, specifically the portion that upheld the judgment of the Circuit Court in Warsaw, and remanded the case to the Court of Appeals in Warsaw for retrial. The basis for the Supreme Court's decision was the recognition of the cassation argument that an absolute ground for appeal, as defined in Article 439 § 1(2) of the Code of Criminal Procedure, had occurred. This ground was identified as improper composition of the court, due to the participation of the Court of Appeals Judge P. R. in the adjudicating panel. The justification of the judgment further indicates that, in applying Article 536 of the Code of Criminal Procedure, the Supreme Court also considered the participation of the Court of Appeals Judge I. S. in the panel, which led to an additional finding of a violation under Article 439 § 1(2) of the Code of Criminal Procedure. Judges P. R. and I. S., who served on the panel of the Court of Appeals in Warsaw, were appointed by the President of the Republic of Poland upon the recommendation of the National Council of the Judiciary, which had been constituted under the provisions of the Act of December 8, 2017, amending the Act on the National Council of the Judiciary and certain other acts.

In a judgment dated June 27, 2024 (ref. no. II AKa 102/24), the Court of Appeals in Warsaw, acting pursuant to Article 439 § 1(2) of the Code of Criminal Procedure, set aside the appealed judgment of the Circuit Court in Warsaw

with respect to points I and II, which concerned the convictions for the first two offenses. The court remanded the case to the Circuit Court in Warsaw for retrial. The basis for vacating the judgment and ordering a retrial was the improper composition of the court due to the participation of Judge M. C. The court found that his inclusion in the adjudicating panel rendered the composition of the court insufficient to meet the minimum constitutional standards of independence and impartiality. Judge M. C. had been appointed to the position of a judge of the Circuit Court in Warsaw by the President of the Republic of Poland upon the recommendation of the National Council of the Judiciary, which was constituted under the provisions of the Act of December 8, 2017, amending the Act on the National Council of the Judiciary and certain other acts.

The questioning of the proper composition of the Court of Appeals in Warsaw and the Circuit Court in Warsaw by the Supreme Court and the Court of Appeals in Warsaw, respectively, lacked a basis in the applicable provisions of law. Under the guise of conducting a test of the court's independence and impartiality within the framework of an alleged absolute ground for appeal under Article 439 § 1(2) of the Code of Criminal Procedure, what was in fact challenged was the status of the judges who adjudicated these cases. These judges had been appointed by the President of the Republic of Poland upon the recommendation of the National Council of the Judiciary, which had been constituted under the provisions of the Act of December 8, 2017, amending the Act on the National Council of the Judiciary and certain other acts. This unlawfulness was particularly evident in the violation of:

- Article 187(1) and (4) of the Constitution of the Republic of Poland, by assuming that the National Council of the Judiciary is not a constitutional body;
- Article 179 of the Constitution of the Republic of Poland, which establishes the President's exclusive prerogative to appoint judges;
- Article 190(1) of the Constitution of the Republic of Poland, by challenging the binding and universally applicable nature of the Constitutional Tribunal's judgment of April 20, 2020 (ref. U 2/20);
- Article 42a § 3–7 of the Act of July 27, 2001, on the Organization of Common Courts, which sets out the prerequisites and conditions under which a court may examine a judge's independence and impartiality;
- Article 55 § 4 of the Act of July 27, 2001, on the Organization of Common Courts, which establishes the principle of judicial jurisdiction.

The judgments of the Supreme Court and the Warsaw Court of Appeals discussed above undermine the very foundations of the rule of law. Police officers, as individuals responsible for safeguarding public security and order, should receive special protection, including from the judiciary. However, as a consequence of these decisions, a person accused of committing one of the gravest crimes – the attempted murder of police officers – remains unpun-

ished. This outcome is the direct result of judicial rulings that, in essence, challenge the legitimacy of other judges appointed by the President of the Republic under his constitutional prerogative. Such actions create an exceptionally dangerous situation, leading to the anarchization of the state, legal chaos, and the erosion of public trust in the justice system and state institutions. The only beneficiaries of this disorder are dangerous criminals who, due to these legal uncertainties, evade timely and effective prosecution.

Review of the Supreme Court's Unlawful Vacation of the Judgments of the Court of Appeals in Cracow

- 1) The judgment of the Court of Appeals in Cracow dated May 9, 2022, issued in case II AKa 23/22 (consideration of the appeal against the judgment of the Court of First Instance of July 5, 2021), was set aside by the judgment of the Supreme Court of October 18, 2023, in case III KK 60/23.
Under the vacated judgment, several defendants had been validly convicted of drug offenses, including the cultivation of cannabis plants, the manufacture of a significant quantity of drugs, and drug possession. One of the defendants had been sentenced to a total of four years' imprisonment, while the others had received combined sentences of three years and six months' imprisonment each.
- 2) The judgment of the Court of Appeals in Cracow dated January 24, 2023, issued in case II AKa 312/22 (consideration of the appeal against the judgment of the Court of First Instance of September 2, 2022), was set aside by the judgment of the Supreme Court of March 7, 2024, in case III KK 401/23.
Under the vacated judgment, the defendants had been validly convicted of a drug offense involving the export of a significant quantity of a psychotropic substance – specifically, 90 kilograms – beyond the customs territory of the European Union. They had been sentenced to more than four years' imprisonment and a fine.
- 3) The judgment of the Court of Appeals in Cracow dated February 7, 2023, issued in case II AKa 192/22 (consideration of the appeal against the judgment of the Court of First Instance of December 22, 2021), was set aside by the judgment of the Supreme Court of February 22, 2024, in case III KK 463/23.
The vacated judgment concerned six defendants who had been sentenced to prison terms and fines for participating in an organized crime group and committing drug-related offenses as part of its activities. These offenses involved the intracommunity transportation and distribution of a significant quantity of narcotics.

- 4) The judgment of the Court of Appeals in Cracow dated October 17, 2022, issued in case II AKA 266/22 (consideration of the appeal against the judgment of the Court of First Instance of February 18, 2022), was set aside by the judgment of the Supreme Court of November 8, 2023, in case III K 239/23.

Under the vacated judgment, the defendant had been validly sentenced to imprisonment for an offense committed between 2009 and November 2011, involving the misappropriation of property of significant value that had been entrusted to her.

- 5) The judgment of the Court of Appeals in Cracow dated July 5, 2022, issued in case II AKA 154/21 (consideration of the appeal against the judgment of the Court of First Instance of December 8, 2020), was set aside by the judgment of the Supreme Court of June 18, 2024, in case III KO 56/24.

Under the vacated judgment, the defendants had been validly sentenced to prison terms and fines for participating in an organized criminal group and committing drug-related offenses as part of its activities.

- 6) The judgment of the Court of Appeals in Cracow dated September 20, 2022, issued in case II AKA 46/22 (consideration of the appeal against the judgment of the Court of First Instance of August 13, 2021), was set aside by the judgment of the Supreme Court of June 7, 2023, in case III KK 109/23.

The vacated judgment had validly sentenced several defendants to lengthy prison terms. The convictions included, among other offenses, leadership of an organized criminal group, participation in an organized criminal group, misappropriation of entrusted property, money laundering, fencing, crimes against documents, as well as criminal and fiscal offenses. Most of the defendants in this case had multiple prior criminal records. The offenses attributed to them occurred between 2010 and 2013. The case file comprised more than 100 volumes, while the indictment alone spanned 55 pages. Due to the complexity and scope of the case, proceedings before the court of first instance took place over the course of dozens of trial dates.

- 7) The judgment of the Court of Appeals in Cracow dated December 7, 2021, issued in case II AKA 2/21 (consideration of the appeal against the judgment of the Court of First Instance of January 25, 2018), was set aside by the judgment of the Supreme Court of January 17, 2025, in case III KK 259/24.

Under the vacated judgment, the defendant had been validly sentenced to imprisonment for the crime of sexually molesting his minor stepdaughter.

- 8) The judgment of the Court of Appeals in Cracow dated July 3, 2023, issued in case II AKA 124/23 (consideration of the appeal against the judgment of

the Court of First Instance of January 25, 2023), was set aside by the judgment of the Supreme Court of May 8, 2024, in case III KK 30/24.

Under the vacated judgment, the defendant had been validly sentenced to 25 years' imprisonment for the crime of attempted murder committed in connection with robbery.

- 9) The judgment of the Court of Appeals in Cracow dated May 14, 2021, issued in case II AKa 16/20 (consideration of the appeal against the judgment of the Court of First Instance of May 30, 2019), was set aside by the judgment of the Supreme Court of April 11, 2024, in case III KK 74/22.

Under the vacated judgment, the defendant had been validly sentenced to imprisonment and a fine for the crime of fraud, committed between October 2013 and April 2014, as well as for the crime of multiple misappropriation of entrusted property of significant value, committed between January 2011 and July 2012.

- 10) The judgment of the Court of Appeals in Cracow dated November 16, 2022, issued in case II AKa 250/22 (consideration of the appeal against the judgment of the Court of First Instance of January 20, 2022), was set aside by the judgment of the Supreme Court on April 11, 2024, in case III KK 181/23.

Under the vacated judgment, the defendants had been validly sentenced to prison terms and fines for crimes against property and offenses related to documents.

- 11) The judgment of the Court of Appeals in Cracow dated October 25, 2021, issued in case II AKa 158/21 (consideration of the appeal against the judgment of the Court of First Instance of March 31, 2021), was set aside by the judgment of the Supreme Court of January 10, 2024, in case III KK 230/22.

Under the vacated judgment, the defendant had been acquitted of the crime of fraud, which had been charged and attributed to her by the Court of First Instance. The alleged offense was committed between November 2015 and April 2016.

These judgments were vacated by the Supreme Court without any substantive examination of the cases. The sole reason for setting them aside was that one of the three members of the adjudicating panel was a judge who had been appointed to the Court of Appeals in Cracow based on the recommendation of the National Council of the Judiciary formed under the December 2017 legislation. The Supreme Court additionally cited the fact that this judge had assumed the position of Vice-President of the Circuit Court in Cracow in January 2018 and later became Vice-President of the Court of Appeals in Cracow in 2020, arguing that these circumstances raised doubts about his independ-

ence and, consequently, his impartiality in adjudicating the cases. In light of the above, it is worth noting that the judge whose impartiality has been questioned by the Supreme Court since 2023 has been serving as a judge since 1997, having previously worked as an associate judge since October 20, 1995. From January 14, 2004, to February 3, 2021, he was a judge in the Criminal Division of the Circuit Court in Cracow. During this period, he was evaluated three times by experienced judges of the Court of Appeals in Cracow, and each time his competence was rated highly. Before his appointment to the Court of Appeals, he adjudicated in that court under permanent secondment from June 2011 to August 31, 2011, and from February 1, 2018, to February 3, 2021, as well as under presidential secondment.

The Supreme Court's judgments vacating the judgments described above, issued without substantive review and based solely on the participation of a judge appointed to the Court of Appeals in Cracow following the recommendation of the National Council of the Judiciary formed under the December 2017 legislation, reflect the political views of the adjudicating judges rather than legal necessity. These judgments not only damage the reputation of the judge whose independence was questioned but also undermine the proper functioning of the justice system and the broader public interest. As a consequence of such actions by the Supreme Court, criminal proceedings, already lengthy, are further prolonged. In many of these cases, the proceedings before the court of first instance had already lasted for several years, with an additional delay of a year or more between the judgments of the court of first instance and the Court of Appeals, and a similar delay between the Court of Appeals' judgment and the Supreme Court's decision. Given the existing backlog of cases, the Supreme Court's rejection of recently appointed judges, and the ongoing retirement of experienced judges, it often takes several months – or even more than a year – before the cases vacated by the Supreme Court are re-entered on the docket. This problem is further exacerbated by the fact that many of these cases are complex, involving extensive case files spanning dozens of volumes, multiple defendants, and numerous charges. These cases require significant judicial commitment, and yet they are being reopened not due to any procedural or substantive deficiency in the judgments but solely because certain Supreme Court judges, for political reasons, assert that part of the judiciary does not meet the standard of independence. **The direct beneficiaries of this situation are criminals, who, as a result of setting aside the judgments, are released from serving their sentences. Some crimes fall under a statute of limitations due to the prolonged proceedings, allowing offenders to evade punishment, which undoubtedly encourages further criminal activity.** The real victims of these judgments are the victims of crime – individuals who, instead of finding closure, are forced to endure retraumatization through another trial. For many, the new proceedings bring back painful memories they would rather leave behind, intensifying their emotional distress and reinforcing their sense of injustice.

Mariusz Moszowski

(Prosecutor of the District Prosecutor's Office in Świdnica)

Vacation of the Judgment in a Shocking Drug Smuggling Case

The Republic of Poland is a member of both the European Union and the United Nations. In 1995, Poland incorporated the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on December 20, 1988, into its legal system (Journal of Laws of 1995, No. 15, item 69). Additionally, the non-binding “European Union Strategy on Drugs 2021–2025” was published in the Official Journal of the European Union (OJ.EU.C.2021.1021.1). Under international law, Poland has committed itself to the effective and uncompromising fight against drug-related crime, including offenses of a cross-border and international nature.

On January 30, 2023, near the Polish-Lithuanian border in Budzisko, Polish Border Guard officers stopped a truck with a semi-trailer driven by a Latvian national. The driver was transiting through Poland from a Western European country and was heading directly toward the Lithuanian border with the intention of crossing it. The officers had intelligence indicating a reasonable suspicion that the vehicle might be carrying a significant quantity of narcotics. Upon conducting a thorough inspection, including the use of scanners, the officers discovered three bags concealed in the trailer containing cubes of a brown, resinous substance. Subsequent testing confirmed that the substance, weighing 74.6 kg, was hashish, a narcotic drug under Polish criminal law. The seized cargo had an estimated market value of PLN 3,700,000 (approximately € 885,000, \$ 962,000). The driver, a Latvian citizen, was taken into custody and subsequently placed under temporary arrest on charges of attempting to export a significant quantity of narcotics beyond the customs territory of the European Union.

The Regional Prosecutor's Office in Lublin, following the findings of the investigation, filed an indictment with the Circuit Court in Suwałki against the Latvian citizen, charging him with the crime of attempting, in violation of the intra-Community law, to supply a significant quantity of narcotic drugs – specifically, 74.6 kg of hashish. This offense falls under Article 55(1) and (3) of the Act of July 29, 2005, on Counteracting Drug Addiction (Journal of Laws of 2023, item 1939).

The Circuit Court in Suwałki found that the defendant had attempted to supply 68.4 kg of hashish and sentenced him to four years' imprisonment, a fine of PLN 2,000 (approximately \$ 520), and an additional monetary penalty of PLN 2,000 payable to the Fund for Victims of Crimes and Post-Penitentiary Aid.

Both the prosecutor and the defendant's defense counsel appealed the judgment. The prosecutor challenged the judgment in part, specifically regarding the severity of the sentence, while the defense attorney argued that the court of first instance had been improperly constituted.

The Court of Appeals in Białystok, in a judgment dated February 24, 2025, set aside the judgment issued by the Circuit Court in Suwałki and remanded the case for retrial, citing improper constitution of the adjudicating panel as an absolute ground for appeal. The basis for this decision was the court's determination that the judge who presided over the first-instance proceedings had been appointed by the President of the Republic of Poland upon the recommendation of the National Council of the Judiciary, which had been re-established under the Act of December 8, 2017, amending the Act on the National Council of the Judiciary and certain other acts (Journal of Laws of 2018, item 3). According to the Court of Appeals, this appointment rendered the judge ineligible to serve as a member of the Circuit Court in Suwałki.

The judgment of the Court of Appeals in Białystok undermines both the Polish constitutional order and the broader international efforts to combat drug-related crime – an area characterized by offenses of exceptionally high social harm, often carried out by highly organized criminal groups that generate enormous profits from such activities.

There is no legal provision within the Polish legal system that grants the authority to challenge the competence of a common court judge or a Supreme Court judge. No such power can be derived from any ruling of the Court of Justice of the European Union or the European Court of Human Rights.

The Polish Constitutional Tribunal has repeatedly affirmed that it is impermissible to question the status of judges of common courts and the Supreme Court solely on the basis that they were appointed with the involvement of the National Council of the Judiciary, as re-established under the Act of December 8, 2017, amending the Act on the National Council of the Judiciary and certain other acts. This position has been explicitly upheld in the Tribunal's judgments of March 4, 2020, in case P 22/19, and June 2, 2020, in case P 13/19.

Pursuant to Article 42a § 1 and 2 of the Act of July 27, 2001, on the Organization of Common Courts, it is inadmissible for courts or judicial bodies to question the legitimacy of courts and tribunals, constitutional state bodies, or institutions responsible for legal supervision and assistance. Furthermore, no common court or other authority is permitted to determine or assess the legality of a judge's appointment or the authority derived from that appointment to perform judicial duties.

The validity of this principle is not diminished by the obligation to consider European law. Despite numerous rulings in Polish cases issued in the context of judicial reforms, the Court of Justice of the European Union (CJEU) has never endorsed an interpretation of national law that would allow the status of a judge to be challenged on the basis of the procedure by which they

were appointed – including the mere involvement of a particular composition of the National Council of the Judiciary in that process – under the guise of safeguarding the Treaty right to a fair trial.

In its judgment of November 19, 2019, in joined cases C-85/18, C-624/18, and C-625/18, the CJEU acknowledged that, under Polish law and in accordance with the consistent position of the Supreme Court, the Supreme Administrative Court, and the Constitutional Tribunal, the President's decisions on judicial appointments are not subject to judicial review and cannot be revoked.

Furthermore, CJEU case law establishes that the mere fact that the National Council of the Judiciary is composed primarily of members selected by the legislature does not, in itself, give rise to doubts about the independence of judges appointed through this process. This principle was explicitly reaffirmed in the CJEU judgment of July 15, 2021 (C-791/19, paragraph 103) and further supported in the judgment of October 6, 2021, in W.Ż. (C-487/19, ECLI:EU:C:2021:798, paragraph 161).

Possible doubts regarding the impartiality and independence of the judge who participated in the adjudication of the case involving the Latvian citizen could only have been raised by the parties to the proceedings, including the defendant and his counsel, in accordance with Article 42a § 3 of the Act of July 27, 2001, on the Organization of Common Courts (Journal of Laws of 2024, item 334), in conjunction with Article 42a § 6(6) of the same Act. This provision serves as a *lex specialis* to Article 41 § 1 of the Code of Criminal Procedure, which provides the legal basis for filing a motion to exclude a judge from a case where circumstances exist that could create a reasonable doubt as to his or her impartiality. The right of a party, or the defense counsel acting on its behalf, to challenge a judge's independence or impartiality based on the circumstances of their appointment expired seven days after notification of the composition of the court assigned to hear the case. This deadline was preclusive and not subject to reinstatement. Any motion filed after its expiration was, and remains, legally inadmissible.

Importantly, in order to invoke this institution (Article 42a § 3 in conjunction with Article 42a § 6(6) of the Act on the Organization of Common Courts), a party must demonstrate that concerns regarding a judge's independence and impartiality – considering both the circumstances of their appointment and their conduct after the appointment, including the involvement of the National Council of the Judiciary as reconstituted after 2017 – are justified based on the specific facts of the case. This standard was not met in the present case.

The Court of Appeals set aside the judgment of the Circuit Court in Suwalki solely on the basis of the judge's participation in a procedure involving the National Council of the Judiciary after 2018. However, under the cited provisions, such reasoning is legally impermissible within the Polish legal order.

In conclusion, there is no legal or factual basis to justify the judgment of the Court of Appeals in Białystok. Given the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances cited at the outset, as well as the European Union's established strategy on drug policy and Poland's corresponding obligation to combat drug-related crime effectively and decisively, the jurisprudential approach reflected in this ruling undermines the credibility of the Polish judiciary – not only domestically but also on the international stage.

It should be emphasized that neither the Polish justice system nor the international community benefits from the legal chaos described. The only beneficiaries are organized criminal groups, which engage in the highly destructive practice of producing, distributing, and profiting from drugs, as was the case in this instance.

Michał Lasota

*(Judge of the Court of Appeals in Warsaw,
Deputy Disciplinary Spokesman of the Judges of Common Courts)*

The Smolensk Flight Organization – The Case of the Officials of the Prime Minister's Office

1. Case Description

In 2010, Tomasz A. and Magdalena Monika B. held senior positions within the Prime Minister's Office. At the time, Tomasz A. served as Head of the Prime Minister's Office, while Magdalena Monika B. was Deputy Director of the Office of the Director General of the Council of Ministers. The Prime Minister at the time was Donald Tusk, who, since December 13, 2023, once again holds this position.

By virtue of their high-ranking roles, Tomasz A. and Magdalena Monika B. were responsible for organizing the flight of the then-President of Poland, Lech Kaczyński, to Smolensk for the commemoration of the 70th anniversary of the Katyn Massacre. This flight ended tragically on April 10, 2010, when the plane crashed, resulting in the deaths of President Lech Kaczyński and all 95 passengers and crew members on board.

Despite potential concerns regarding the possible dereliction of duty in co-organizing the presidential flight – an offense under Article 231 § 1 of the Polish Criminal Code – the prosecutor's office, which operates within the executive branch, decided not to pursue charges against Tomasz A., Magdalena Monika B., or others involved.

Following the inaction of public authorities, the closest family members of those who perished on April 10, 2010, in Smolensk filed a subsidiary indictment with the Circuit Court in Warsaw. By doing so, they exercised the rights of the victims and formally accused Tomasz A. and Magdalena Monika B. of failing to fulfill their official duties in the co-organization of the presidential flight to Smolensk, constituting offenses under Article 231 § 1 of the Polish Criminal Code.

In a judgment issued on June 13, 2019, in case VIII K 98/15, the Circuit Court in Warsaw found Tomasz A. and Magdalena Monika B. guilty of the charges under Article 231 § 1 of the Criminal Code. The court imposed prison sentences with a conditional suspension of execution. The remaining defendants were acquitted of all charges. The judgment of the Circuit Court in Warsaw, as a court of first instance, was appealed, including by the defense attorneys of Tomasz A. and Magdalena Monika B.

The Court of Appeals in Warsaw, acting as a court of second instance, with Judges Anna Zdziarska, Anna Kalbarczyk, and Izabela Szumniak, modified the judgment of the Circuit Court in its ruling of June 25, 2021, in case II AKa 296/20, by specifying that the defendants acted to the detriment of both public and private interests. As a result, Tomasz A. and Magdalena Monika B. were legally convicted of crimes under Article 231 § 1 of the Criminal Code for failing to fulfill their duties in organizing the Smolensk flight. The defense attorneys of the convicted individuals filed a cassation appeal – an extraordinary remedy – with the Supreme Court against the final judgments.

In a judgment dated December 12, 2023, in case II KK 74/22, the Supreme Court, composed of Judges Jarosław Matras, Małgorzata Wąsek-Wiaderek, and Eugeniusz Wildowicz, ruled under Article 439 § 1 point 2 of the Code of Criminal Procedure to set aside the appealed judgment, including with respect to Tomasz A. and Magdalena Monika B., and remanded the case to the Court of Appeals in Warsaw for reconsideration in appellate proceedings.

The judges of the Supreme Court did not examine the case on its merits. Instead, they ruled that the Court of Appeals in Warsaw had been improperly staffed, as its panel included Judge Izabela Szumniak, who had been appointed to another judicial post by the President of the Republic of Poland based on a recommendation from the National Council of the Judiciary. This Council had been restructured under the provisions of the Act of December 8, 2017, which amended the Act on the National Council of the Judiciary, transferring the power to elect judicial members from an assembly of judges to the Sejm.

In doing so, the Supreme Court, through the judges mentioned, relied on the resolution of the three Chambers of the Supreme Court dated January 23, 2020, in case BSA-I-4110-1/20, effectively granting it normative significance. In its reasoning, the Court rejected the ruling of the Constitutional Tribunal issued on April 20, 2020, in case U 2/20, which had declared the resolution unconstitutional and thereby removed it from the legal order. As a result, the case of Tomasz A. and Magdalena Monika B. was remanded to the Court of Appeals in Warsaw for appellate review.

In accordance with the applicable procedural and constitutional rules, the composition of the Court was determined by a random draw, selecting Judges Agnieszka Stachniak-Rogalska, Piotr Schab, and Przemysław Filipkowski. However, the Court of Appeals in Warsaw, acting through Judge Adam Wrzosek, excluded these judges from the case, partially in response to motions from the defense attorneys and partially *ex officio*. Subsequently, the Court also excluded the remaining judges, including those who had not been selected for the panel assigned to hear this specific case.

As a result, any judge from the criminal division of the Court of Appeals in Warsaw who had been appointed to a subsequent judicial position by the President of the Republic of Poland based on a recommendation from the National Council of the Judiciary, restructured under the provisions of the Act of

December 8, 2017, amending the Act on the National Council of the Judiciary, was excluded from participating in the case.

Consequently, the composition of the Court reviewing the case of Tomasz A. and Magdalena Monika B. was determined exclusively from among judges who had been appointed to the Court of Appeals in Warsaw based on recommendations from the National Council of the Judiciary as constituted under the legal framework preceding the December 8, 2017 amendment.

The Court of Appeals in Warsaw, composed of Judges Ewa Leszczyńska-Furtak, Ewa Gregajtys, and Rafał Kaniok, changed the judgment of the Circuit Court in Warsaw on December 16, 2024, in case II AKa 128/24, acquitting defendants Tomasz A. and Magdalena Monika B. of all charges.

Notably, the Court of Appeals first determined that the individuals who had brought the subsidiary indictment were not legally recognized as victims. As a result, they lacked standing to effectively file such an indictment. Despite this finding, the Court did not discontinue the proceedings due to the absence of a complaint from a legitimate accuser. Instead, it proceeded to amend the Circuit Court's judgment and acquitted the defendants.

2. Legal Assumption

The Constitution of the Republic of Poland, pursuant to its Article 8(1), is the supreme law of the Republic. According to Article 10(1) and (2), the courts and tribunals exercise only judicial power, and the system of governance is based on the division and balance of powers. Furthermore, in accordance with Article 7 of the Constitution, every public authority must act on the basis of and within the limits of the law.

Articles 87 and 234 of the Constitution comprehensively define the sources of universally binding law, which include, first and foremost, the Constitution itself, as well as statutes, ratified international agreements, and regulations. Notably, the Constitution does not recognize judicial rulings and resolutions, including those of the Supreme Court, nor the decisions of international tribunals such as the European Court of Human Rights and the Court of Justice of the European Union, as sources of universally binding law.

The constitutional prerogative of a judicial body such as the Constitutional Tribunal, as explicitly derived from Article 188(1) and (3) of the Constitution, is to adjudicate on the compatibility of laws with the Constitution, as well as on the conformity of legal acts issued by central state bodies with the Constitution, ratified international agreements, and statutes.

Thus, the Constitution of the Republic of Poland grants a lawmaking function, in a negative sense, exclusively to the judgments of the Constitutional Tribunal. This is expressly stated in Article 190(1), which establishes that its decisions have universally binding force and are final.

According to Article 179 of the Constitution, judges are appointed by the President upon the motion of the National Council of the Judiciary. As stipu-

lated in Article 187(1)(2) of the Constitution, the National Council of the Judiciary is primarily composed of fifteen members elected from among judges of the Supreme Court, common courts, administrative courts, and military courts. Furthermore, Article 187(4) of the Constitution provides that the procedure for electing the judicial members of the Council is to be determined by statute.

The Act of December 8, 2017, amended the Act of May 12, 2011, on the National Council of the Judiciary by introducing Article 9a, which altered the procedure for selecting judicial members of the Council. Under this amendment, the authority to elect these members was transferred from assemblies of judges to the Sejm, the legislative body and lower house of the Polish Parliament.

In its judgment of March 25, 2019, in case K 12/18, the Constitutional Tribunal ruled that Article 9a of the Act on the National Council of the Judiciary is consistent with the Constitution of the Republic of Poland. As the only body constitutionally authorized to adjudicate on such matters, the Tribunal confirmed the constitutionality of the Sejm's authority to elect judicial members of the National Council of the Judiciary.

In a judgment dated April 20, 2020, in case U 2/20, the Constitutional Tribunal ruled that the resolution of the three Chambers of the Supreme Court of January 23, 2020, in case BSA-I-4110-1/20, had a normative character, as it contained general and abstract legal norms. The Tribunal further found that the resolution was incompatible with the Constitution of the Republic of Poland, the Treaty on European Union, and the Convention for the Protection of Human Rights and Fundamental Freedoms. As a result, the resolution was eliminated from the Polish legal order.

3. Conclusions

The judgment of the Court of Appeals in Warsaw of June 25, 2021, in case II AKa 296/20, was neither challenged nor vacated on substantive grounds. Instead, in its judgment of December 12, 2023, in case II KK 74/22, the Supreme Court – composed of Judges Jarosław Matras, Małgorzata Wąsek-Wiaderek, and Eugeniusz Wildowicz – issued a decision that lacked a legal or factual basis. Instead of reviewing the merits of the case before them, the Court focused its judgment on Judge Izabela Szumniak.

The composition of the Court of Appeals in Warsaw that reviewed the case of Tomasz A. and Magdalena Monika B. was selected in a manner that was, at the very least, non-transparent. This was due in part to the fact that no judge from the criminal division of the Court of Appeals who had been appointed to a subsequent judicial position by the President of the Republic of Poland – based on a recommendation from the National Council of the Judiciary as restructured by the Act of December 8, 2017 – was eligible to serve on the panel.

In public perception, the case in question may be viewed as a political matter, leading an outside observer to conclude that the final judgment was influenced by party affiliations rather than legal principles.

As a result, the conduct of the judges, particularly those of the Supreme Court, has significantly undermined the judiciary's image as a separate and independent branch of government, distinct from the legislative and executive authorities.

At the same time, this situation benefits all those who seek to weaken the judiciary and subject it to the influence of the executive branch – regardless of their political alignment.

Moreover, those who have broken the law and were lawfully convicted stand to gain, as their convictions are annulled and effectively removed from the legal order by the Supreme Court, acting through specific judges, based on considerations that are entirely extraneous to the merits of the case.

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

Supreme Court Vacates Convictions for Drug Traffickers and Manufacturers (II KK 262/23)

The case at hand involves crimes committed since 1999. The defendants were indicted by the prosecutor's office on charges of participating in an organized criminal group, as well as the production and trafficking of significant quantities of narcotic substances, including marijuana, ecstasy, amphetamine, and cocaine. According to the description of the alleged offenses, the charges encompassed the manufacture of approximately 26 kilograms of amphetamine, involvement in the trafficking of substantial quantities of narcotic drugs and psychotropic substances, and the distribution of 30 kilograms of cocaine, 100 kilograms of amphetamine, 10,000 ecstasy tablets, and 100 kilograms of marijuana.

On June 19, 2018, under file number XVIII K 369/11, the Circuit Court in Warsaw issued a judgment following extensive and meticulous evidentiary proceedings.

Following multiple appeals, the Court of Appeals in Warsaw, in a judgment dated February 9, 2021 (ref. II AKa 358/19), modified the judgment of the Circuit Court, finding the defendants guilty and imposing sentences of up to four years' imprisonment.

The defense attorneys for the convicted individuals subsequently filed cassation appeals with the Supreme Court. In response, the prosecutor submitted a written reply, requesting that the cassations be dismissed as obviously unfounded. In a ruling dated May 20, 2022 (II KK 120/22), the Supreme Court rejected all the cassation appeals on these grounds. Ordinarily, such a decision would mark the definitive conclusion of the proceedings.

However, in this case, despite the formal conclusion of the proceedings and the dismissal of the cassation appeals, legal mechanisms emerged that effectively granted the case a second life – allowing it to continue as if starting anew. In a remarkable turn of events, on June 14, 2023, under case reference II KO 73/22, the Supreme Court, composed of Justices Tomasz Artymiuk (presiding and rapporteur), Jarosław Matras, and Waldemar Płóciennik, decided to reopen the cassation proceedings. In doing so, the Court overturned its own order of May 20, 2022, which had dismissed the cassations as manifestly unfounded, and referred the case back to the Supreme Court for reconsideration within cassation proceedings.

In doing so, the Supreme Court determined that its May 20, 2022, decision to dismiss the cassation was fundamentally compromised due to the manner in which one of the judges had been appointed to the Supreme Court. The Court found that this appointment process constituted an “inherently flawed procedure for the appointment of judges,” thereby creating an absolute ground for appeal. Consequently, a panel including this judge lacked the attributes of a “independent and impartial tribunal” as required under Article 6(1) of the European Convention on Human Rights.

As a result, the Supreme Court – this time composed of Justices Barbara Skoczowska (presiding), Waldemar Plóciennik (rapporteur), and Pawel Wiliński – reexamined the cassation appeals. In its judgment of May 10, 2024, the Court largely vacated the appealed judgment of the Court of Appeals, partially discontinuing the proceedings due to the death of one of the defendants. For the remaining aspects of the case, the Supreme Court remanded the matter back to the Court of Appeals in Warsaw for reconsideration in appeal proceedings.

The basis for this ruling was the participation of a judge in the Court of Appeals who had been “appointed to the office of a judge in a court of general jurisdiction at the request of the National Council of the Judiciary, as reconstituted under the 2017 Act Amending the Act on the National Council of the Judiciary and Certain Other Acts.” In reaching its decision, the Supreme Court referred to a series of its prior rulings.

The Court determined that, due to the statutory changes introduced by this law, the NCJ had lost the characteristics of a constitutional body. As a result, the presumption that judges appointed by the President of the Republic of Poland upon the NCJ’s recommendation met the criteria of independence and impartiality was effectively nullified: “The direct dependence of the decisions made in the judicial appointment procedure on the political authorities justifies the belief that these appointments may follow non-merit-based considerations.”

Furthermore, the Supreme Court identified specific circumstances that, in its view, “indicate a connection between the judge in question [...] and the executive branch.” However, upon reading the justification, it becomes clear that these “circumstances” included activities such as signing a letter of support for a judge – candidate to the NCJ, accepting a delegation to the Court of Appeals, applying for a judicial position at the Court of Appeals, serving on the Disciplinary Court, participating in examination committees for legal counsel and attorney applications, taking part in the judicial examination committee, and lecturing at the National School of the Judiciary and Prosecution.

Clearly, these are routine functions and activities that have long been performed by judges within the Polish judiciary. They stem directly from statutory provisions and have never been regarded as actions that discredit a judge. Yet, in this instance, the Supreme Court determined that the judge’s conduct demonstrated not only full support – both formal and personal approval –

of the judicial reforms introduced since 2017, but also aligned with changes that the Court unilaterally deemed “unconstitutional” and indicative of “the restriction of judicial independence and the full subordination of the courts to the executive and judiciary [sic].”

The decision to set aside a conviction for participation in a multi-member criminal group and a series of serious drug offenses – based solely on a negative assessment of an appellate court judge’s exercise of constitutionally and legally prescribed powers – demonstrates a profound disregard for the legal system. There is no doubt that, given the time elapsed since the commission of these crimes, a significant portion will now fall under the statute of limitations, ensuring that they will never be prosecuted. The dynamics of the case made it clear that the Court of Appeals acted with urgency, aiming to prevent the expiration of the statute of limitations by handling the proceedings with exceptional efficiency. However, this was met with complete indifference by the Supreme Court, which, despite having already dismissed the cassation appeals, chose to reopen the proceedings.

The real beneficiaries of such a decision are the criminals who now have a pathway to evade trial and punishment. The moral of this case can be distilled into a stark and unsettling reality: in contemporary Poland, it appears more advantageous to traffic cocaine than to serve as a judge appointed with the participation of the legally established National Council of the Judiciary – an institution that, despite its formal legitimacy, remains disfavored by the country’s legal elite.

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

Supreme Court Vacates Convictions for Perpetrators of Aggravated Murder and Robbery (II KK 47/24)

The case in question concerns crimes of murder and robbery. By judgment of the Circuit Court in Warsaw of November 26, 2021 (file no. VIII K 210/20), the perpetrator was found guilty of offenses committed on March 24, 2020, at approximately 9 p.m. Acting jointly and in concert with another individual, he used a knife and physical violence – delivering blows with his fists to the victims' head and torso – to commit the theft of approximately 30 grams of marijuana and four packages of Clonazepam. Furthermore, the court found him guilty of acting with possible intent to kill, having inflicted three stabbing wounds to the victim's chest on the left side. These injuries resulted in the victim's death at the scene. For these acts, he was sentenced to 25 years of imprisonment. By the same judgment, the second defendant was convicted solely for his participation in the robbery.

The judgment was appealed by both the attorneys representing the auxiliary prosecutors and the defense attorneys. After reviewing these appeals, the Court of Appeals in Warsaw upheld the original ruling in its judgment of March 22, 2023 (II AKa 278/22).

A cassation appeal against this judgment was subsequently filed by a defense attorney. Initially, in a written response, the prosecutor argued that the cassation should be dismissed as obviously unfounded. However, during the cassation hearing, he requested that the cassation be upheld, the judgment of the Court of Appeals in Warsaw be vacated, and the case be remanded to that court for retrial.

Considering the cassation, the Supreme Court, composed of Justices Piotr Mirek (presiding), Michał Laskowski (rapporteur), and Małgorzata Wąsek-Wiaderek, issued a judgment on September 11, 2024 (ref. II KK 47/24), in which it vacated the judgment of the Court of Appeals in Warsaw and remanded the case for re-examination in appellate proceedings. Notably, the judgment was also set aside with respect to the accomplice, despite the fact that he had not filed a cassation appeal.

The basis for this ruling was the participation of a judge in the Court of Appeals who had been “appointed to the office of a judge in a court of general jurisdiction at the request of the National Council of the Judiciary, as reconstituted under the 2017 Act Amending the Act on the National Council of

the Judiciary and Certain Other Acts.” In reaching its decision, the Supreme Court referred to a series of its prior rulings.

The Court determined that, due to the statutory changes introduced by this law, the NCJ had lost the characteristics of a constitutional body. As a result, the presumption that judges appointed by the President of the Republic of Poland upon the NCJ's recommendation met the criteria of independence and impartiality was effectively nullified.

In addition, the Supreme Court identified circumstances that, in its view, indicated a lack of independence and impartiality on the part of the judge adjudicating at the Court of Appeals. This assessment was based on the judge's professional background. However, upon reviewing the justification, it becomes evident that the supposed grounds for this finding included: serving as a judge of the Disciplinary Court at the Court of Appeals in Warsaw, later holding the position of President of this Court, participating in examination committees, assuming the role of Electoral Commissioner, and sitting on a panel of the Court of Appeals in Warsaw that, in a decision dated April 24, 2023 (case ref. II AKzw 285/23), had pointed out to the Circuit Court in Warsaw a misconduct involving an obvious violation of the law, pursuant to Article 40 § 1 of the Act on the Organization of Common Courts.

It should be emphasized that these are routine functions and activities that have long been performed within the Polish judiciary – and, more broadly, within the framework of a democratic state governed by the rule of law – precisely by judges. They derive directly from statutory provisions and have never been considered grounds for discrediting a judge. A particularly striking aspect of the Supreme Court's reasoning is its negative assessment of yet another ruling issued by a court in which the same “vetted” judge from the Court of Appeals participated. This raises fundamental concerns, as adjudication based on applicable law is safeguarded by the principle of judicial independence. A judge cannot be penalized for issuing a ruling in accordance with the law.

As a result, the Supreme Court determined that significant circumstances warranted the conclusion that the panel of the Court of Appeals in Warsaw, with the participation of this particular judge, was improperly constituted. Consequently, it deemed it necessary to vacate the appealed judgment and remand the case to the Court of Appeals for retrial. Notably, the ruling also extended to the accomplice, even though he had not filed a cassation appeal.

Vacating a judgment concerning crimes as grave as murder and robbery – based solely on a negative and subjective assessment of an appellate judge's exercise of constitutionally and legally prescribed powers – demonstrates an exceptional disregard for the legal system. There is no doubt that the swift adjudication of cases that shock public conscience is of paramount importance, and this case is precisely such an instance. By vacating the appealed judgment solely on the basis of its subjective evaluation of the appellate judge, the Supreme Court has effectively undermined this

imperative. Both the constitutional and convention-based definitions of the right to a fair trial include the right to a hearing “without undue delay.” Yet, the Supreme Court's actions in this case directly contribute to such a delay. The true beneficiaries of this approach are criminals, who, until a final conviction is secured, continue to benefit from the presumption of innocence. Meanwhile, the real victims of such adjudication are the victims of the crime and their families – forced to endure prolonged legal proceedings and an indefinite wait for justice.

Part II. Other cases:

Kamila Borszowska-Moszowska
(Judge of the Circuit Court in Świdnica)

When Activism Obscures Justice

From 2021 to 2023, the executive branch froze the valorization of judges' salaries as part of budgetary legislation. The Constitutional Tribunal later deemed these provisions unconstitutional, thereby enabling judges to pursue their salary claims. A judge of the Circuit Court in Cracow subsequently filed a lawsuit in the labor court, seeking the difference in salary he would have received had the unconstitutional regulations not been enacted.

By the time of his lawsuit, case law across the country had already firmly established the legitimacy of such claims. However, the judge in question had the misfortune of having his case assigned to Judge Magdalena Niemiec, a well-known activist affiliated with the IUSTITIA Judges Association. In October 2024, she appeared in several press reports and interviews, in which she asserted that the composition of the National Council of the Judiciary (NCJ), as restructured by the 2017 law, had impeded her promotion. Adhering to the narrative promoted by her association, she maintained that the NCJ was unconstitutionally established and, for that reason, refused to participate in the selection process for a higher court position. She further contended that this violated her personal good in the form of the right to promotion.

Regardless of such claims, the National Council of the Judiciary remains a constitutionally legitimate body, as confirmed by the Constitutional Court. The rhetoric surrounding the so-called “neo-NCJ” is a product of judicial circles that, following the reform, lost their influence over judicial appointments. Under the previous system, judges to the NCJ were selected by delegates chosen by judges; following the reform, the Sejm appoints judges to the Council, requiring them to secure a certain level of support from the judiciary or the public. This structure more effectively upholds the principle of national sovereignty enshrined in Article 4 of the Constitution.

Moreover, the assertion that a “right to promotion” constitutes a legally protected personal good is absurd. Personal goods, by definition, are inherent to an individual and exist independently of their actions or intentions. Promotion, however, is contingent upon multiple factors, including personal ambition and institutional considerations. It is immediately evident that a right to promotion does not qualify as a personal good. It appears that even Judge Niemiec recognized the weakness of this argument, as there have been

no media reports indicating that she ultimately pursued such a claim in court.

Unfortunately, Judge Niemiec's hostility toward the National Council of the Judiciary extended to the judge-claimant in the case assigned to her. In a judgment dated October 28, 2024, in case VII P 844/24, the District Court of Katowice-Zachód, where she presided, dismissed his claim for payment, reasoning that he had never acquired the status of a circuit court judge and was therefore not entitled to compensation for his work.

What makes this ruling particularly troubling is that the respondent circuit court never actually disputed the plaintiff's judicial status. Instead, it merely asserted that his salary had been paid in full. The reasoning provided by the court is not only irrelevant to the resolution of the case but reads more like a personal manifesto. In doing so, Judge Niemiec appears to have engaged in what seems to be characteristic of disciplinary misconduct under Article 107 of the Act on the Organization of Common Courts. Her ruling represents a gross and manifest disregard for the law – specifically, Articles 22 and 80 of the Labor Code; moreover, her questioning of the judge's status was a matter beyond her authority.

The court's justification is nothing more than a presentation of a narrative about the judge's career history, from his education to his participation in the judicial selection process. The legal analysis is minimal and reduced to an argument about the supposed unconstitutionality of the National Council of the Judiciary. Why is this so outrageous? Because the justification for a ruling in a salary dispute should assess whether the plaintiff performed work and whether he was compensated accordingly. The trajectory of his judicial career has no bearing on these issues. Judge Niemiec, an experienced labor court judge, either overlooked or deliberately omitted the most pertinent fact: the plaintiff actually performed judicial work. A proper application of labor law principles would have made it impossible for her to justify dismissing his claim. The employer – the Circuit Court in Cracow – allowed the plaintiff to work as a circuit court judge, provided him with an office, work tools (computer, clerical, and assistant services), and entered his details into the Random Case Allocation System, leading to the assignment of judicial cases under the jurisdiction of the Circuit Court in Cracow.

To assume otherwise would mean that court officials knowingly permitted an unauthorized person to administer justice, an act that could constitute a crime under Article 231 of the Criminal Code. Moreover, **the defendant in the case never contested the fact that the plaintiff had actually been performing judicial duties during the disputed period – because he had been lawfully appointed to his position.** The plaintiff engaged in adjudicatory activities, and both the department head and the president of the Circuit Court in Cracow accepted and facilitated this arrangement. The defendant, acting as the employer, also acknowledged this relationship by granting leave and partially paying wages. Under the well-established interpretation of Article 22 of the

Labor Code, what matters in employment disputes is the **actual performance of work-related duties**. The District Court appears unable to grasp which facts are legally relevant in such cases, making it necessary to clarify some fundamental issues:

- first, the essence of civil proceedings is to establish undisputed circumstances, following the principle of procedural economy, which dictates that only disputed facts require evidentiary proceedings;
- second, based on the uncontested positions of both parties, it was never in dispute that the plaintiff performed the duties of a circuit court judge;
- third, the plaintiff received a partial payment of wages for this work.

The dispute and the court's findings should have been limited to determining the amount of remuneration due under the applicable legal provisions. However, the District Court, in clear violation of basic logical principles, failed to make any factual determinations regarding the plaintiff's actual performance of judicial duties. Instead, the court engaged in an absurd form of judicial activism, reaching conclusions that contradict both the reality of the plaintiff's work and the undisputed agreement between the parties.

It is essential to emphasize that labor enjoys constitutional protection. Article 24 of the Polish Constitution unequivocally states that the Republic of Poland safeguards labor. The establishment of an employment relationship entails a mutual obligation: the employee commits to performing specific work under the employer's direction at a designated place and time, while the employer undertakes to provide remuneration. Legal literature affirms that this provision serves as a fundamental justification for labor legislation, whose primary purpose is to support the economically weaker party in the employment relationship, which is typically the employee.

For this reason, the Constitutional Tribunal, in one of its rulings, identified the application of guaranteed minimum standards and the principle of preference as examples of the state's role in ensuring labor protection in employment relations (see Constitutional Tribunal judgment of October 4, 2005, K 36/03). Furthermore, legal scholars emphasize that this constitutional provision imposes an obligation on the state to create labor legislation, particularly in the context of advancing human rights (*Konstytucja RP. Tom I. Komentarz do art. 1–86*, ed. M. Safjan, L. Bosek, C.H. Beck 2016).

Labor is a fundamental public good and serves as one of the primary foundations for economic functioning and development. From an individual perspective, work is not only the main source of livelihood for most citizens but also an essential element of human dignity. Labor protection encompasses a comprehensive set of legal, political, and practical measures aimed at mitigating the imbalance of power between employers and employees, ensuring that the economically stronger position of the employer does not lead to the unjust treatment of workers.

The rule articulated in the first sentence of Article 80 of the Labor Code serves as the basis for rejecting interpretations that seek to condition remuneration on factors other than the actual performance of work. This position is rightly supported by Professor Krzysztof Baran in his commentary on the Labor Code (LEX). A similar view is expressed by Professor Małgorzata Gersdorf in her commentary on the Labor Code (LEX), emphasizing that remuneration for work is a direct reciprocation for the work performed and is therefore due for the work actually done. This principle follows directly from the first sentence of Article 80. The key factor for acquiring the right to remuneration is the fact that the employee has “earned” it through actual labor.

In line with this interpretation, the Supreme Court, in its judgment of June 14, 2018 (II PK 130/17), ruled that what matters in determining the right to remuneration is whether the employee has earned it during the period for which it is due, rather than whether they remain in an employment relationship on the date of payment.

In a decision dated September 9, 2021 (II PSK 111/21), the Supreme Court affirmed that Article 80 of the Labor Code is unequivocal: remuneration is due for work performed. A similar position was taken in the decision of June 26, 2019, which emphasized that basic salary constitutes the fundamental and most essential element of remuneration. The wording of Article 80 of the Labor Code establishes a clear rule: remuneration is contingent solely on the performance of work. If the agreed-upon work has not been performed, no remuneration is due.

The European Court of Human Rights (ECtHR) has also repeatedly addressed the issue of the right to fair remuneration, particularly in the broader context of labor rights and human rights protection. Regarding labor remuneration, the Court has relied on provisions of the European Convention on Human Rights, particularly Article 4 (prohibition of slavery and forced labor) and Article 1 of Protocol No. 1 (protection of the right to property). The failure to pay wages constitutes a violation of the right to property under Article 1 of Protocol No. 1. The Court has emphasized that wages are an integral part of an individual's right to own property, including income earned through labor. Employers, therefore, have a legal obligation to ensure the timely and fair payment of wages.

In these judgments, the ECtHR emphasizes that remuneration for work is not merely an economic matter but a fundamental right of workers, which states have an obligation to protect. When this right is violated by either the state or an employer, workers have the ability to assert their claims before national courts and, if necessary, before the ECtHR.

Similarly, in the jurisprudence of the Court of Justice of the European Union (CJEU), the right to remuneration for work is a central issue that has been repeatedly examined. The CJEU has addressed this right particularly in relation to employees working under various civil law contracts and in the broader context of employment law.

The principle of equal treatment and the prohibition of discrimination have been consistently reinforced in the jurisprudence of the CJEU, which emphasizes that employees must be granted equal treatment in matters of remuneration, regardless of the form of employment. In its rulings, the CJEU has made it clear that remuneration for work is a fundamental right that cannot be restricted based on the type of contract, place of work, or employment status.

In this context, the ongoing dispute over judicial appointments amounts to nothing more than indirect discrimination. Differentiating the status of judges based on the date of their appointment, while seemingly a neutral criterion, in practice results in depriving certain judges of the recognition that they have been duly appointed. Such a distinction is in direct violation of Article 14 of the European Convention on Human Rights, which prohibits any form of discrimination. It also contravenes one of the fundamental human rights enshrined in Article 32 of the Polish Constitution, which guarantees equality before the law.

One of the fundamental structural conditions of an employment relationship is its paid nature. Article 22 of the Labor Code establishes that the employee is obligated to perform work, while the employer is obligated to provide remuneration in exchange for that work (Supreme Court judgment of October 7, 2009, III PK 38/09, OSP 2010/11, item 115). Given that it is undisputed that the District Court in Cracow was the direct beneficiary of the work performed by the plaintiff and never denied this fact, it is unclear on what legal basis the district court dismissed the claim.

The paid nature of the employment relationship is also intrinsically linked to the obligation of the parties to determine the amount of remuneration, as derived from Article 22 § 1, Article 29 § 1 point 3, Article 13, and Articles 84 of the Labor Code. The plaintiff's personnel file contains so-called salary decrees specifying the amount of his salary as a circuit court judge, in accordance with the applicable law. These decrees bear the signature of the President of the Circuit Court, a person authorized to make binding statements on behalf of the employer.

According to Article 13 of the Labor Code, an individual is entitled to fair remuneration for work performed. The judgment under appeal effectively rendered the judge's work unpaid. Importantly, a judge's salary is explicitly protected by the constitutional norm enshrined in Article 178(2) of the Polish Constitution.

The plaintiff appealed the judgment, and on January 23, 2025, the Circuit Court in Katowice upheld the appeal, amended the judgment, and awarded the requested remuneration in full. Notably, the appellate panel was composed of a judge who had been appointed before 2017. In its reasoning, the Court of Appeals recognized the fact of the plaintiff's work, fully accepted the plaintiff's arguments regarding his performance of judicial duties, and emphasized – consistent with the plaintiff's position – that the first-instance

judgment would have effectively deprived the plaintiff of compensation for work performed. The Court of Appeals further pointed out that the Circuit Court in Katowice was the actual beneficiary of the plaintiff's labor, making it the entity with passive standing in the dispute, which the lower court had failed to properly acknowledge.

The judgment issued by Judge Magdalena Niemiec is a blatant example of betraying the judicial oath, demonstrating a desperate display of judicial activism that disregards fundamental legal principles. One can only hope that the amendment of her judgment will prompt serious reflection on her part.

Daniel Jurkiewicz
(*Judge of the Circuit Court in Poznań*)

Case III Ko 241/24 of the Circuit Court in Poznań – Compensation from the State Treasury for Repressions Suffered by Plaintiffs' Father in the Soviet Union

At the outset of World War II, Tadeusz F. lived with his mother in Szamotuły. In 1939, they were evicted from their apartment and the restaurant they operated, both of which were confiscated by the Germans. Tadeusz F. was subsequently imprisoned in Wronki for approximately four weeks. Upon his release, he traveled to Warsaw before relocating to Aleksandrów near Łuków, where his mother had been resettled. In 1942, he was conscripted into the Home Army.

In November 1944, NKVD troops entered Aleksandrów near Łuków. On November 3, Tadeusz F. was arrested and detained in Łuków, where he was interrogated and beaten. After several days, he was transferred to a collective camp in Sokołów Podlaski and then deported deep into the USSR to the gulags. Transported by train in unheated cattle cars without proper space to rest or sleep, many prisoners succumbed to the harsh conditions during the two-week journey.

By late November, he arrived at the Szeptetów gulag and was later moved to Szeptetów II, where he performed above-ground labor as a stove fitter, plasterer, carpenter, painter, etc. The living conditions in the gulag were severe due to extreme cold, inadequate food, poor hygiene, lack of medical care, and substandard housing.

Tadeusz F. remained in the Szeptetów gulag near Borovichi until January 22, 1946. On February 7, 1946, he was transported to Biała Podlaska. From there, he set out to find his family, first traveling to Aleksandrów and then to Szamotuły. He lived in Szamotuły until his death on April 25, 1999.

In a judgment dated October 22, 2024, the court awarded PLN 175,000 (approximately \$ 45,500) to each of the claimants. However, in its ruling of February 5, 2025, the Court of Appeals in Poznań vacated this judgment solely due to the involvement of Judge Daniel Jurkiewicz as the rapporteur. The judge was also advised of the possibility of receiving a reproof, as he was expected to be aware that the Court of Appeals in Poznań had reservations about his impartiality and should have recused himself from the case.

These objections are entirely unfounded. The Court of Appeals alleges that the judge engaged in politicization because he had previously served as

president of the Circuit Court in Poznań, supported candidates for the National Council of the Judiciary, and acted as a proxy for one of those candidates. However, the court disregards the fact that both holding the position of president and participating in the NCJ election process are lawful activities explicitly defined by the applicable legal framework. Every judge has the right to engage in them.

By vacating the judgment in question, the Court of Appeals failed to take into account that the claimants are elderly and may never live to see their compensation. The decision appears to align with a broader pattern of shielding the past communist regime and Russia, as the legal successor to the Soviet Union, from accountability. It reflects a trend of avoiding exposure of their crimes and evading responsibility for them.

Lukasz Zawadzki
(Judge of the Circuit Court in Opole)

A Return to Totalitarianism: The Unity of Public Power as a Result of Judicial Servility After December 13, 2023

On July 18, 2024, MP Roman Giertych posted on the X platform: “Judge Katarzyna Jakubowska-Mela of the District Court for Warsaw Praga-Południe issued a ruling (I Co 149/24) stating that she considers the cassation judgment of the Supreme Court issued by the neo-judges as NON-EXISTENT! This ruling is absolutely groundbreaking. We must remove neo-judges from the Supreme Court.”

At the time of the post, Giertych was not only a member of parliament from the main party in the coalition that had formed the government on December 13, 2023, following the parliamentary elections of October 15, 2023. Since February 2024, he has also led the so-called Accountability Team, established by the co-ruling Civic Coalition. Furthermore, in addition to being an MP and an active attorney, Giertych is legal counsel for one of the parties involved in the court proceedings in case I Co 149/24 before the District Court for Warsaw Praga-Południe.

The judgment of July 18, 2024, concluded a lawsuit with the following course: a natural person sued the publisher of a daily newspaper for redress and secured favorable judgments in both the court of first instance and the court of appeals. Based on the final judgment, enforcement proceedings were initiated and carried out by the district court in accordance with civil procedure rules. The defendant – publisher of a tabloid – subsequently filed a cassation appeal with the Supreme Court, which set aside the judgment of the court of appeals. Following this decision, the publisher requested that the district court terminate the enforcement proceedings. However, the district court ordered the publication of the apology as required by the court of appeals' judgment. The district court held that the Supreme Court's ruling was legally non-existent, as it had been issued by a panel composed entirely of judges appointed through a procedure before the National Council of the Judiciary, restructured under the amendment law of December 8, 2017.

The decision of the District Court for Warsaw-Praga-Południe of July 18, 2024, in case number I Co 149/24, directly and blatantly contradicts the Polish constitutional order, legislation, and two decades of Constitutional Court jurisprudence. However, it aligns with the claims of politicians from Poland's

current ruling coalition regarding alleged legal defects in judicial appointments made after 2017.

According to Article 179 of the Constitution, judges are appointed by the President of the Republic of Poland upon the recommendation of the National Council of the Judiciary for an indefinite term. This provision applies to judges of common courts (district courts, circuit courts, and courts of appeal), the Supreme Court, and administrative courts.

The procedures for judicial candidates, as well as the substantive criteria for appointment to the judiciary, are currently regulated by the following acts: for common court judges – the Act of July 27, 2001, on the Organization of Common Courts (Journal of Laws of 2024, item 334, consolidated text); for Supreme Court judges – the Act of December 8, 2017, on the Supreme Court (Journal of Laws of 2024, item 622, consolidated text); and for administrative court judges – the Act of July 25, 2002, on the Organization of Administrative Courts (Journal of Laws of 2024, item 1267, consolidated text).

The Constitutional Tribunal – the judicial body with exclusive authority to assess the conformity of normative acts with the Constitution of the Republic of Poland – has on numerous occasions ruled that laws regulating the procedure for judicial appointments were unconstitutional. From the Tribunal's extensive jurisprudence, several key conclusions emerge.

First, the appointment of judges in Poland is a prerogative of the President. This decision is not subject to appeal or review by any body or through any legal procedure. The President is not bound by a positive recommendation from the National Council of the Judiciary and may refuse to appoint a candidate proposed by the Council. Moreover, the President himself lacks the authority to challenge an appointment – whether made by him or by his predecessor.

Second, there is no legal basis to question the judicial status of individuals who participated in a constitutionally flawed appointment process, provided they subsequently met the statutory criteria for judicial office as set forth in constitutional laws, including the Act on the Supreme Court, the Act on the Organization of Common Courts, and the Act on the Organization of Administrative Courts. If such individuals received a presidential act of appointment, issued under the President's exclusive prerogative, their judicial status remains valid.

Finally, it is solely the President who evaluates whether a candidate, at the time of nomination, meets the statutory requirements for judicial office, including ethical standards such as impeccable character.

The conclusions outlined above are supported by the following rulings of the Constitutional Tribunal: the judgment of October 24, 2007, in case SK 7/06; the judgment of November 29, 2007, in case SK 43/06; the judgment of May 27, 2008, in case SK 57/06; the judgment of June 5, 2012, in case K 18/09; the judgment of June 4, 2012, in case K 18/09; the judgment of June 5, 2012, in case K 18/09; the judgment of June 2, 2020, in case P 13/19; the judgment of

April 20, 2020, in case U 2/20; the judgment of March 4, 2020, in case P 22/19; and the judgment of January 23, 2022, in case P 10/19.

The District Court for Warsaw Praga-Śródmieście, in the justification of its July 18, 2024, decision in case I Co 149/24, cited alleged defects in judicial appointments following the amendment of the Act on the National Council of the Judiciary of December 8, 2017. This amendment expanded democratic oversight over the judicial appointment process by granting the Sejm, elected through direct and free elections, the authority to select the judicial members of the NCJ. Prior to this change, the selection process was controlled by judicial circles operating without a democratic mandate. Interestingly, the amendment to the Act on the NCJ, introduced by the conservative parliamentary majority of the United Right, aligned with a reform previously advocated by the current ruling party, the Civic Platform. In its January 2007 draft program, *Deep Reconstruction of the State*, the Civic Platform proposed similar measures to democratize the judiciary. By now challenging the composition of the NCJ and the status of judges appointed since 2017, the current parliamentary majority and government are contradicting their own long-standing programmatic goals, which were developed under the same constitutional framework that remains in force today.

The position taken by the District Court for Warsaw-Praga-Południe – i.e., a common court of the lowest tier within Poland's judiciary – contravenes not just two decades of Constitutional Tribunal jurisprudence but also undermines the constitutional function of the Supreme Court. According to Article 1(1)(a) of the Act on the Supreme Court, the Supreme Court ensures the legality and uniformity of common court jurisprudence. By disregarding a Supreme Court ruling, the District Court for Warsaw-Praga-Południe violated Articles 398(15) § 1 and 398(20) of the Code of Civil Procedure, which establish the binding nature of Supreme Court rulings and their interpretations of the law following a cassation review. Furthermore, the district court's decision is in direct opposition to Article 190(1) of the Polish Constitution, which states that Constitutional Tribunal rulings have the force of law and are final.

Notably, years before the district court's ruling of July 18, 2024, the Constitutional Tribunal had already determined the constitutionality of Article 9a of the Act on the National Council of the Judiciary, introduced by the amendment of December 8, 2017. In its judgment of March 25, 2019 (case K 12/18), the Tribunal ruled that this provision – democratizing judicial appointments by subjecting them to greater public scrutiny – was consistent with the Constitution. By effectively reassessing the constitutionality of Article 9a of the Act on the National Council of the Judiciary, the District Court for Warsaw-Praga-Południe exceeded its authority. First, under Article 188(1) of the Constitution, only the Constitutional Tribunal has the power to adjudicate on the constitutionality of laws. Second, the district court, as a common court, is bound by both the Constitution and statutory law under Article 178 of the Constitution.

The decision of the District Court for Warsaw-Praga-Południe is also problematic from a purely normative perspective. Under Polish civil procedure, the justification of a judgment must include an explanation of its legal basis, explicitly citing the relevant provisions of law (Articles 327(1) § 1 and 361 of the Code of Civil Procedure). However, the district court, in direct contradiction to this requirement, did not ground its decision in statutory law. Instead, it relied on case law from the Supreme Court, the European Court of Human Rights, and the Court of Justice of the European Union. This approach is inconsistent with the Polish constitutional order. Case law is not a source of universally binding law in the Republic of Poland. According to Article 87(1)–(2) of the Constitution, the only sources of universally binding law are the Constitution itself, statutes, ratified international agreements, and acts of local law.

Notably, the Supreme Court jurisprudence cited by the District Court for Warsaw-Praga-Południe to justify its order – specifically, its reasoning for questioning the legality of judicial appointments to the Supreme Court after 2017 – directly contradicts fundamental Polish constitutional principles for the reasons outlined above (the closed system of sources of law; the binding obligation of judges to adhere to the Constitution and statutory laws; the binding nature of Constitutional Tribunal rulings and its exclusive authority to assess the constitutionality of laws; and the President's prerogative in judicial appointments).

Clearly, judicial decisions are not a source of law in the Republic of Poland, nor are rulings of the European Court of Human Rights (ECtHR) or the Court of Justice of the European Union (CJEU). Consequently, they could not serve as a legal basis for the judgment of the District Court for Warsaw-Praga-Południe in an individual case. Unfortunately, in recent years, both the ECtHR and the CJEU have issued multiple rulings on the organization of the Polish judiciary, despite lacking a legal basis to do so under their founding treaties. The ECtHR, as the judicial body overseeing the European Convention on Human Rights, is responsible for ensuring compliance with the Convention's provisions. While Article 6(1) guarantees the right to a fair trial, it does not authorize the Court to assess or question the status of Polish judges in its rulings. The Constitutional Tribunal of the Republic of Poland, exercising its constitutional authority to review the compatibility of international agreements with the Polish Constitution (Article 188(1)), ruled on March 10, 2022 (case K 7/21) that Article 6(1) of the European Convention on Human Rights is unconstitutional to the extent that it permits the ECtHR or national courts to evaluate the conformity of Polish laws governing the judiciary – including court organization, jurisdiction, and the appointment process for National Council of the Judiciary members – with the Polish Constitution or the Convention. The Tribunal determined that this interpretation conflicts with Articles 188(1) and (2) and Article 190(1) of the Constitution.

The CJEU is responsible for ensuring the consistency, compliance, and enforcement of European Union law. However, it has no authority to issue

rulings on matters that fall within the exclusive competences of sovereign member states, including the organization of the judiciary in the Republic of Poland. As a structural matter, judicial organization does not fall under the exclusive, shared, or supporting competences of the European Union, as defined respectively in Articles 3, 4, and 6 of the Treaty on the Functioning of the European Union.

Even the Venice Commission, which had been strongly endorsed by Poland's current political leadership until the autumn of 2024, in its Opinion No. 1206/2024 of October 12, 2024 – issued in response to questions posed by Adam Bodnar himself in an attempt to legitimize his proposed reforms – raised concerns about the assumptions underlying the legislative proposals of the Minister of Justice. Contrary to the intentions of Minister of Justice Adam Bodnar, the opinion affirms not only the indisputable status of judges appointed after 2017 but also the inadmissibility of their removal by general legislation. Furthermore, it unequivocally states that rulings issued by these judges remain legally valid and in force within the legal system.

The widespread questioning of the status of judges appointed after 2017 by the democratically elected President of the Republic of Poland has become a persistent tool for undermining the democratic legitimacy of the winners of the 2015 and 2019 parliamentary elections, as well as the 2015 and 2020 presidential elections. This narrative is promoted not only by members of the current left-liberal parliamentary majority but also by the judges' associations Iustitia and Themis, which, according to media reports, have received direct and indirect funding from foreign sources. As a result, an alliance emerged between certain judges and the left-liberal political opposition during the 2015–2023 period, supported by the European Union establishment, including the Court of Justice of the European Union. During this time, judges affiliated with Iustitia and Themis engaged in unprecedented political statements and activities, in direct violation of judicial ethics, as set forth in the “Collection of Principles of Professional Ethics of Judges” (Resolution No. 16/2003 of the National Council of the Judiciary of February 19, 2003). Some judges participated in political rallies and informal gatherings with opposition politicians. Others have since assumed positions within the judiciary following purges carried out in recent months under Minister of Justice Adam Bodnar. The head of Iustitia, Judge Krystian Markiewicz, was appointed Chairman of the Commission for the Codification of the System of Judiciary and Public Prosecution. Over the past six months, this Commission has gained notoriety for advancing proposals that are unequivocally unconstitutional, seeking to draft laws aimed at dismissing, demoting, or even removing from the judiciary judges appointed by President Andrzej Duda after 2017.

Adding to the unprecedented nature of Judge Krystian Markiewicz's actions and the work of the body he leads is the fact that the so-called “verification” process targets judges appointed through the most democratic and transparent procedure in Polish history. Meanwhile, no such scrutiny is ap-

plied to judges who remain professionally active – including those serving on the Supreme Court – despite having begun their judicial careers under the totalitarian regime. These judges were appointed to their positions in the 1980s by the undemocratic, communist-era Council of State and, during that period, were affiliated with regime-backed political parties.

The servile alignment of some judges with the prevailing political narrative and the expectations of those in power – who control both the legislative and executive branches – effectively undermines judicial independence. While independence may still exist de jure, in practice, it has become largely illusory. Ironically, it is the judges themselves who are relinquishing the portion of public authority granted to them by the Constitution. In doing so, they are facilitating a gradual return to a systemic principle characteristic of the pre-1989 totalitarian state: the unity of public power, including the subordination of the judiciary to political authority.



**Association
Lawyers for Poland**

Address:

ul. Henryka Sienkiewicza 1
42-600 Tarnowskie Góry
Poland

E-mail:

stowarzyszenie@prawnicydla.pl

Bank account:

PKO Bank Polski SA
PL 57 10201026 0000 1902 0400 6243
(swift: BPKOPLPW)

<https://prawnicydla.pl/>



**Prawnicy
dla Polski**

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

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

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

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