# ELECTIONS ON FIRE

## – The Course of the 2025 Presidential Elections in Poland –

**Edited by Konrad Wytrykowski**

**“Prawnicy dla Polski” (Lawyers for Poland) Association**

**Warsaw, July 2025**

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Association Lawyers for Poland

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*Government's first duty is to protect the people, not run their lives.*
*R. W. Reagan*

*Freedom cannot be simulated.*
*S. J. Lec*

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# Introduction

Free elections are the essence of democracy. One of the most significant political changes implemented in Poland after the fall of communism in 1989 was the introduction of free elections. Through free elections, the Sejm and Senate, the President, local government bodies, and members of the European Parliament are chosen.

Although the principle of free elections is not explicitly stated in the 1997 Constitution, it can unquestionably be inferred from several constitutional provisions, including, foremost, the principle of a democratic state governed by the rule of law, the principle of political pluralism, and other principles governing electoral law. The proper realization of this principle depends not only on impartial electoral bodies and independently exercised oversight of the electoral process but also on an appropriate legal culture. Accordingly, it is essential to secure both the conditions necessary for the proper functioning of election administration bodies and the legality, transparency, and integrity of the electoral process. These factors are all intended to foster public confidence in elections, legitimizing both elected bodies and the system of government. The atmosphere surrounding elections should promote a fair, balanced, and peaceful electoral contest, without favoritism toward particular parties or candidates, and without discrimination against others (see G. Kryszeń, *Standardy prawne wolnych wyborów parlamentarnych*, Białystok 2007, pp. 207–211).

A state cannot be deemed to be functioning properly when its institutions not only fail to respond to actions that contravene the standards of fair electoral competition in a democratic state but also engage in conduct that violates those standards themselves.

At the conference "Ways Out of the Constitutional Crisis" on September 10, 2024, Prime Minister Donald Tusk stated that the coalition governing Poland since December 15, 2023, has been operating under the concept of "fighting democracy." This concept anticipates, in advance, the commission of acts that "will be incompatible or not fully compliant with the provisions of the law" (https://www.gov.pl/web/primeminister/we-stand-for-the-fighting-democracy).

It is widely recognized that one of the cornerstones of good governance and the rule of law is the ability to hold those in power politically accountable, which necessarily entails the possibility of losing power through elections. Although changes in the political forces governing the state are a normal phenomenon in democratic constitutional states and should not undermine the constitutional order, the current authorities are behaving as though their right to govern Poland has been granted to them indefinitely.

Such an attitude undermines the very need for free elections, since it presupposes that only the "correct" candidate can prevail. Moreover, this attitude

serves to justify any acts that violate the standards of fair elections and may lead to a distortion of electoral outcomes.

The 2025 elections and the preceding campaign were closely monitored by the international community. During that period, Poland was visited by its outspoken supporter, a recipient of the Fidelis Legibus Medal awarded by the Prawnicy dla Polski [Lawyers for Poland] Association, and a politician from the U.S. Republican Party, Mike Calamus, who publicly highlighted perceived irregularities and unlawful measures taken by those in power to secure the victory of their preferred candidate.

In this publication, we intend to demonstrate, through a dozen selected examples, how the standards governing presidential elections in Poland were violated in the run-up to the 2025 elections. Such a situation threatens further destabilization of Poland, which – in the context of a tense geopolitical environment in Europe and globally – can only benefit the enemies of truth, justice, goodness, and beauty.

The collapse of institutions and of the legal order, the disruption of the political system, the subversion of free and fair elections – the core of democracy – and the undermining of courts and judicial decisions will inevitably lead to economic decline, a halt in investment, and a weakening of the Republic's military strength. As patriots devoted to our homeland, we cannot remain indifferent, particularly since the principal actors in these processes are the primary organs of the state – the government, its ministers, the President of the Council of Ministers, and the National Electoral Commission (Państwowa Komisja Wyborcza, PKW), which is dominated by individuals appointed by the ruling coalition.

This is the fourth report by the Prawnicy dla Polski Association concerning threats to the rule of law. We regard it as our moral duty – as lawyers operating in a time of flagrant violations of legal norms – to document all incidents of breaches of the legal order, not only to preserve the record for future generations but also to facilitate the prosecution of those responsible.

*Konrad Wytrykowski*
Warsaw, July 2025

**Stanisław Tomasik**
*(Retired judge of the Court of Appeals in the Circuit Court in Piotrków Trybunalski)*

# The Course of Elections for the Office of the President of Poland in 2025

Pursuant to the order of the Marshal of the Sejm dated January 15, 2025 (Journal of Laws of 2025, item 48), issued under the Act of January 5, 2011 – the Electoral Code, elections for the office of President of the Republic of Poland were scheduled for May 18, 2025, and deadlines for the performance of specific electoral activities were established. Subsequently, as in the 2020 presidential election and the 2023 parliamentary elections, the performance of electoral tasks and activities commenced in accordance with statutory requirements. This included the issuance of executive acts by competent ministers and by the National Broadcasting Council [*Krajowa Rada Radiofonii i Telewizji*] concerning the voters' register; the preparation of powers of attorney for voting; the adaptation of constituency electoral commission premises to the needs of voters with disabilities and the safeguarding of such premises during breaks in voting; the establishment of polling districts abroad and on Polish sea vessels; the allocation of airtime among electoral committees for the free broadcast of election materials on public television and radio; procedures for the transport, storage, and disclosure of electoral documents; and the maintenance by electoral committees of registers of loans received and payments made.

The National Electoral Commission (*Państwowa Komisja Wyborcza*, PKW) also undertook its statutory duties, providing legal and organizational assistance to electoral authorities, electoral committees, and voters, as well as issuing relevant explanations to clarify the rules governing the performance of individual actions within the electoral process. All documents and explanations were widely disseminated through the press, television, and the Internet (via the PKW website and wybory.gov.pl). In addition, the PKW adopted relevant resolutions under its statutory authority, which played a significant role in the run-up to the elections.

On January 16, 2025, the PKW reported that the total number of voters in Poland included in the Central Register of Voters in the voting precincts for the presidential election as of December 31, 2024, was 28,945,200 (compared to 29,904,930 in the 2020 presidential election and 29,097,503 in the 2023 parliamentary election).

The elections were conducted by the electoral bodies specified in the Electoral Code – namely, the National Electoral Commission, constituency

electoral commissions, and precinct electoral commissions. In accordance with a resolution of the PKW, 49 constituency electoral commissions were established, with a total of 308 individuals appointed as members, nominated by election commissioners from among persons holding higher legal education degrees and who gave assurances of performing their duties diligently. Ex officio, the chairpersons of the constituency electoral commissions were the election commissioners. It should be noted that most members of the constituency electoral commissions were judges. Although there were changes and additions to the composition of the constituency electoral commissions during the election process, the extent of these changes was not significantly different from similar occurrences in previous elections.

Precinct electoral commissions were appointed by election commissioners for both permanent and separate precincts; abroad, they were appointed by consuls, and on Polish sea vessels, by ship captains. Voting was conducted in 32,143 precincts, including 29,815 commissions appointed for permanent precincts in Poland; 1,812 commissions for separate precincts (such as in medical facilities, detention centers, correctional institutions and their wards, student housing complexes, and social welfare homes); 511 commissions abroad; and 5 commissions on Polish ships. A total of 266,658 individuals were appointed as members of precinct electoral commissions, of whom 239,863 represented electoral committees. It should be noted that the number of precincts, electoral commissions (both domestically and abroad), and consequently the number of individuals appointed to these commissions, was higher than in the 2020 presidential and 2023 parliamentary elections.

There was a significantly higher number of applications for positions as members of precinct electoral commissions compared to previous elections, necessitating the selection of commission members by drawing lots. Additionally, numerous changes occurred in the composition of precinct electoral commissions during both the first and second rounds of voting. Members of these commissions received training from election officials and constituency electoral commissions through in-person sessions and videoconferences, serving as both instruction and refresher courses for information delivered during initial in-person training. Moreover, during the period between the first voting day and any repeat voting day, additional training was provided to newly appointed precinct electoral commission members.

With regard to the needs of persons with disabilities, and consistent with previous elections, at least half of the polling stations in each municipality were adapted to be accessible to voters with disabilities, resulting in a total of 18,350 such polling places. Election authorities also provided information on alternative voting methods, including:

– Voters with disabilities and voters who were 60 years of age or older on election day were entitled to vote by postal ballot. Within the country, in the first round, 9,698 election packages were dispatched, and 9,247

return envelopes were received. In the second round, 12,122 election packages were sent, and 11,653 return envelopes were received.
- Voting by proxy was also available. The number of voters casting votes by proxy was 27,346 in the first round and 39,826 in the second round.
- Voting on the basis of a voting certificate was permitted; 315,503 voters used this option in the first round, and 531,446 in the second round. These figures were not higher than those recorded during the 2023 parliamentary elections.

In preparation for election day, the electoral authorities held meetings and coordinated with police officials to ensure the proper conduct of voting, including the enforcement of the prohibition against electioneering on voting day and the observance of election silence.

According to the published electoral calendar, notifications of the formation of electoral committees could be submitted until March 24, 2025. After verifying the correctness of the submissions, the PKW accepted 44 notifications regarding the establishment of electoral committees and refused to accept nine notifications. Only four complaints were filed against the refusals, but the Supreme Court (*Sąd Najwyższy*) dismissed all of them. Notifications regarding the formation of electoral committees were accepted for the following candidates for the office of President of the Republic of Poland: Sławomir Jerzy Mentzen, Rafał Trzaskowski, Grzegorz Michał Braun, Szymon Hołownia, Adrian Zandberg, Wiesław Lewicki, Maciej Maciak, Magdalena Biejat, Marek Woch, Marek Jakubiak, Karol Nawrocki, Wojciech Papis, Romulad Starosielec, Paweł Tanajno, Dawid Bohdan Jackiewicz, Aldona Anna Skirgiełło, Dominika Jasińska, Joanna Senyszyn, Krzysztof Tołwiński, Eugeniusz Maciejewski, Katarzyna Cichos, Piotr Szumlewicz, Jan Wojciech Kuban, Włodzimierz Rynkowski, Marcin Bugajski, Jolanta Duda, Artur Bartoszewicz, Kamil Krzysztof Całek, Krzysztof Andrzej Sitko, Jakub Perkowski, Sebastian Ross, Marta Ratuszyńska, Stanisław Żółtek, Krzysztof Jakub Stanowski, Robert Śledź, Adam Nawara, Grzegorz Kołek, Tomasz Ziółkowski, Roman Jackowski, Piotr Daniel Lechowicz, Robert Więcko, Zbigniew Litke, Katarzyna Anna Łysik, and Andrzej Jan Kasel.

Subsequently, until April 4, 2025, at 4:00 p.m., election attorneys for the aforementioned electoral committees submitted applications to register candidates for the office of President of the Republic of Poland. Within the statutory deadline, 17 candidates were nominated, of whom 13 were registered. In four cases, registration was refused due to failure to meet the statutory requirement of submitting, along with the application, a valid list of at least 100,000 signatures of citizens eligible to vote in the election. One complaint was filed with the Supreme Court against the refusal of registration; however, the Supreme Court dismissed the complaint. (In previous elections, the number of registration refusals and complaints filed was higher. For example, in the 2023 parliamentary elections, there were 50 refusals and 42 complaints

filed, and in the 2020 presidential elections – 9 refusals and 9 complaints filed, though none of the complaints were upheld by the Supreme Court.)

In the course of activities related to candidate registration, committee formation, and the filing of complaints, no arguments were raised concerning the alleged improper status of judges adjudicating in the Chamber of Extraordinary Control and Public Affairs – the body competent to hear complaints in this area – nor was the legitimacy of the Chamber itself challenged.

On April 23, 2025, the National Electoral Commission officially announced the list of registered candidates for the office of President of the Republic of Poland, as follows: Artur Bartoszewicz, Magdalena Agnieszka Biejat, Grzegorz Michał Braun, Szymon Franciszek Hołownia, Marek Jakubiak, Maciej Maciak, Sławomir Jerzy Mentzen, Karol Tadeusz Nawrocki, Joanna Senyszyn, Krzysztof Jakub Stanowski, Rafał Kazimierz Trzaskowski, Marek Marian Woch, and Adrian Tadeusz Zandberg.

From the date on which the elections were ordered, the electoral campaign commenced. Under the law, the campaign may not be conducted during the 24 hours preceding election day or on election day until the conclusion of voting. Throughout the electoral campaign, the electoral authorities, acting both on their own initiative and in response to reports submitted by voters, issued reminders and explanations regarding the rules governing proper conduct of the campaign, as well as the regulations concerning campaign financing. Although the 2025 electoral campaign, like those in previous elections, proceeded without major incidents or disruptions, issues persist regarding unequal access to public media and a lack of transparent rules for campaign financing. Consequently, it must be noted that the elections were neither equal nor fair in this regard, as they favored one electoral committee – specifically, the committee of candidate Rafał Trzaskowski.

In accordance with the applicable law, on the voting day for both the first and second rounds of the elections, polling stations were properly prepared, and voting commenced at 7:00 a.m. in permanent precincts. In closed precincts, voting could begin at a different time upon request by the commission, subject to approval by the election commissioner. As in previous elections, voters raised concerns regarding the conditions of the polling premises, as well as the conduct or attire of commission members. Numerous complaints pertained specifically to the wearing of "red beads," perceived as a symbol of affiliation with one of the candidates for President of the Republic, as well as to acts of agitation in a broad sense. During the voting process, some commission members were removed from their duties; however, the scale of such removals did not significantly differ from that observed in prior elections.

Preparations for polling day included the delivery of ballot papers, their counting and proper stamping by the commissions (noting that in every election, instances occur where some ballots remain unstamped due to error), delivery of ballot overlays in Braille, on-call assistance by precinct electoral commissions and constituency electoral commissions for providing infor-

mation and support to voters, delivery of the voter register, voting record forms and seals, and the inspection and sealing of ballot boxes. The most notable issue during these preparations involved reported irregularities in the appearance of ballot papers, specifically concerning the cutting of the left corner or the absence of such corner cutting. However, the PKW promptly clarified that ballots, regardless of the presence or absence of the corner cut, remained valid. On election day, voters did not submit a high number of complaints. Most of them were related to omissions from the voter register, which the commissions, with the assistance of municipal offices, endeavored to resolve to enable affected voters to cast their votes. The incidents reported were similar in nature to those observed in previous elections, although on this occasion, additional problems arose regarding incorrect verification of voting certificates.

International observers and polling agents (*mężowie zaufania*) were present during the 2025 presidential election. It should be noted that the number of polling agents has consistently increased in each election since 2015. In the first round, the majority of polling agents represented the electoral committees of presidential candidates Karol Nawrocki, Rafał Trzaskowski, Szymon Hołownia, Marek Jakubiak, Magdalena Biejat, and Sławomir Jerzy Mentzen. Records from the precinct electoral commissions indicate that a total of 42,275 polling agents observed the first round of voting, while 26,783 polling agents observed the second round. The PKW issued 142 certificates authorizing domestic and international observers to enter polling stations and monitor electoral activities (out of a total of 144 certificates issued, 2 were not collected). International observers included representatives of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) with 59 certificates issued, the Reykjavik City Council Office with 8 certificates, Göteborgs Stad with 3 certificates, and the Parliamentary Assembly of the Council of Europe (PACE) with 72 certificates issued.

Upon the conclusion of voting, electoral commissions determined the voting results and prepared official voting protocols. The results were immediately published by posting them at the polling stations. The protocols of voting results from the precincts were delivered in sealed envelopes by the commission chairpersons (or persons authorized by them) to the constituency electoral commissions. The receipt of these protocols – in sealed envelopes – was carried out by individuals authorized by the constituency electoral commissions, who then delivered them to the constituency electoral commissions. To assist the precinct electoral commissions and ensure the arithmetical accuracy of data recorded in the voting protocols, electronic support was provided through the computer system Wsparcie Organów Wyborczych (Support for Electoral Bodies), in accordance with the procedures set forth in the resolution of the National Electoral Commission.

With respect to voting abroad, the protocols containing the results from individual precinct electoral commissions were transmitted very rapidly; in

the second round of voting, the last protocol was received at approximately 4:00 a.m. on Monday, June 2.

After receiving the aggregated voting results from all constituency electoral commissions and verifying the accuracy of the established voting results, the National Electoral Commission determined the voting results and the outcome of the presidential election on May 19, 2025. The PKW announced that a runoff election would be held on June 1, 2025, between the two candidates who had received the highest number of votes in the first round: Karol Tadeusz Nawrocki and Rafał Kazimierz Trzaskowski. The runoff election was conducted on June 1, 2025. Based on the summary protocols of voting results received from all constituency electoral commissions, the PKW determined the results of the second round and the overall result of the election for the office of President of the Republic of Poland. This determination was formalized in a protocol issued on June 2, 2025, accompanied by a resolution declaring the election of Karol Tadeusz Nawrocki as President of the Republic of Poland.

The PKW published the voting results and the election outcome on the same day. The announcement of the PKW dated June 2, 2025, regarding the results of the runoff election and the outcome of the presidential election, was published in the Official Gazette on June 2, 2025, item 714. On June 11, 2025, the PKW delivered to the newly elected President of the Republic of Poland Resolution No. 192/2025 of the National Electoral Commission, dated June 2, 2025, concerning the determination of the results of the presidential election.

Within a few days following the determination of the election results, certain electoral commissions reported issues involving the misallocation of votes cast for one candidate being recorded for another candidate. However, both the nature of these reports and the number of commissions potentially affected did not constitute grounds for invalidating the election results. It should be noted that, as in every election, there were issues related to the handling of voting certificates, the high volume of voters relative to the closing times of polling stations, and challenges arising from extraordinary circumstances, such as the COVID-19 pandemic. Despite significant improvements in the electoral process and the increasing professionalization of electoral bodies and officials, there remain areas that require more precise regulation.

It should be noted that since the announcement of the election results by the PKW, there has been continuous criticism directed at the judges serving in the Chamber of Extraordinary Control and Public Affairs of the Supreme Court – the body competent to adjudicate election protests and determine the validity of elections – as well as challenges to the legitimacy of the Chamber itself. This situation contrasts with the circumstances following the 2020 presidential and 2023 parliamentary elections, during which such criticism did not occur. Nevertheless, on July 1, 2025, the Supreme Court's Chamber

of Extraordinary Control and Public Affairs ruled that the 2025 presidential election and the voting results established therein are valid. The concluding step of the entire electoral process will be the swearing-in of President-elect Karol Nawrocki before the National Assembly, which is scheduled for August 6, 2025.

**Dorota Bielicka**
*(Prosecutor of the Regional Prosecutor's Office in Białystok)*
**Jarosław Tekliński**
*(Doctor of Legal Sciences, Judge of the Circuit Court in Ostrołęka)*

# The (A)Politicization of the National Electoral Commission: A New "Standard" or a Return to Founding Principles?

> It is the business of the very few to be independent; it is a privilege of the strong. And whoever attempts it, even with the best right, but without being OBLIGED to do so, proves that he is probably not only strong, but also daring beyond measure.
>
> Friedrich Nietzsche, *Beyond Good and Evil*

## 1. Historical Outline

The National Electoral Commission (*Państwowa Komisja Wyborcza*, PKW) was established during the Second Republic of Poland (1918–1945) under Article 15(1)(1) of the Act of July 28, 1922 – Electoral Ordinance for the Sejm (Journal of Laws of 1922, No. 66, item 590; hereinafter referred to as the "1922 Ordinance").

The PKW consisted of the General Election Commissioner or his deputy, appointed by the President of the Republic at the request of the Prime Minister from among three candidates nominated by the assembly of the Presidents of the Supreme Court, who served as the chairperson. Additionally, there were eight members or their deputies, presented to the Commissioner by the eight largest parliamentary clubs of the outgoing Sejm (Articles 16(2) and 17(2) of the 1922 Ordinance).

The next legislative act governing electoral law, namely the Act of July 8, 1935 – Electoral Ordinance for the Sejm (Journal of Laws of 1935, No. 47, item 319), did not provide for the establishment of the PKW.

The PKW returned permanently to the Polish state system under Article 13 of the Act of September 22, 1946 – Electoral Ordinance for the Legislative Sejm (Journal of Laws of 1946, No. 48, item 274). Its composition included the General Election Commissioner (appointed by the Presidium of the State National Council upon the proposal of the Prime Minister from among judges of

the Supreme Court, the Supreme National Tribunal, or the Courts of Appeal – Article 12(1)), his deputy, and six members representing the six parliamentary clubs of the State National Council, appointed by the Presidium of the State National Council from among candidates nominated by the clubs. Deputy members of the PKW were elected under the same procedure. It should be emphasized that the State National Council (*Krajowa Rada Narodowa*), established during the night of December 31, 1943, to January 1, 1944, in Warsaw (and dissolved on January 19, 1947), was formed to assume state power in Poland following the entry of the Red Army into Polish territory. It rejected the legitimacy of the organs of the Polish underground state, as well as the authority of the President and Government of the Republic of Poland in exile. From August 1945 onward, this Council functioned as a provisional parliament (https://encyklopedia.pwn.pl/haslo/Krajowa-Rada-Narodowa;3926942.html, accessed June 22, 2025).

During the People's Republic of Poland (1944–1989), under the provisions of the 1956 and 1976 election laws (Article 19 of the Act of October 24, 1956 – Electoral Ordinance for the Sejm of the People's Republic of Poland; Journal of Laws of 1956, No. 47, item 210, and Article 26 of the Act of January 17, 1976 – Electoral Ordinance for the Sejm of the People's Republic of Poland and National Councils; Journal of Laws of 1976, No. 2, item 15), the National Electoral Commission was appointed by the State Council from among individuals proposed by the highest authorities of political and social organizations. The Commission consisted of a chairman, two deputy chairmen, a secretary, and twelve members.

Subsequent electoral laws – the Act of May 29, 1985 (Articles 36(1) and 37(1), Electoral Ordinance for the Sejm of the People's Republic of Poland; Journal of Laws of 1985, No. 26, item 112) and the Act of April 7, 1989 (Article 33(1), Electoral Ordinance for the Sejm of the People's Republic of Poland of the 10th term, for 1989–1993; Journal of Laws of 1989, No. 19, item 102) – increased the number of members of the PKW. Under these laws, the Commission consisted of a chairman, two to four deputy chairmen, a secretary, and fifteen members.

Under the 1985 ordinance, the members of the PKW were selected by the State Council from among voters nominated by the Executive Committee of the National Council of the Patriotic National Revival Movement (PRON) and the highest authorities of the following organizations: the Polish United Workers' Party (PZPR), the United People's Party, the Democratic Party, the "Pax" Association, the Christian Social Association, and the Polish Catholic Social Union. Under the 1989 ordinance, the members of the PKW were appointed by the State Council from among candidates proposed by the highest authorities of political and social organizations or by coalitions thereof.

Similar to the National Council, the State Council, established in 1947 (and dissolved in 1989), functioned as one of the principal executive organs of the state but was essentially a strictly political body (https://encyklopedia.pwn.pl/haslo/Rada-Panstwa;4009761.html, accessed June 22, 2025).

The foregoing remarks entitle us to assert that, historically, the composition of the PKW was shaped to varying degrees by politicized entities, which, as a rule, simultaneously concentrated in their hands the prerogatives of the executive, legislative, and judicial powers. This conclusion is not altered by the fact that during the Second Republic and at the beginning of the People's Republic of Poland, the General Election Commissioner was appointed from among the judiciary. Thus, the composition of the PKW as formed in those periods did not provide even a semblance of a guarantee of impartiality in its operations or in its exercise of oversight over the proper conduct of elections in an independent and autonomous manner. This was additionally guaranteed by the non-pluralistic party system in Poland, monopolized by the Polish United Workers' Party (*Polska Zjednoczona Partia Robotnicza*, PZPR – the party was established on December 15, 1948, and dissolved on January 29, 1990) and its allied parties.

This state of affairs persisted until 1989, when, among other systemic transformations, the conduct of free elections – parliamentary, presidential, and local – became a fundamental change. The full realization of this principle required numerous legislative reforms. Firstly, it necessitated the introduction of provisions guaranteeing the impartiality of electoral administration bodies, ensuring the legality, transparency, and integrity of the electoral contest, conducted in an atmosphere of fair and balanced campaigning without discrimination among political groups or candidates. Secondly, it required the establishment of bodies responsible for overseeing the proper conduct of elections in an independent and autonomous manner. The guarantors of this independence were to be apolitical judges, who were both independent and impartial (A. Rakowska-Trela, in: A. Rakowska-Trela, K. Składowski, *Kodeks wyborczy. Komentarz do zmian 2018*, Warsaw 2018, pp. 136–137).

The process of implementing these principles – namely, securing the PKW's independence from political influence – began, among other measures, with the appointment of the PKW in 1990 to conduct the presidential elections. The composition of this PKW was determined by the Marshal of the Sejm (Order of the Marshal of the Sejm of the Republic of Poland dated October 4, 1990, on the appointment of the National Electoral Commission; Monitor Polski 1990, No. 37, item 295). The Commission comprised five judges each from the Constitutional Tribunal, the Supreme Court, and the Supreme Administrative Court, designated by the presidents of those courts.

The electoral ordinances of 1991, 1993, and 2001 subsequently reduced the composition of the PKW to nine judges, with three selected from among the judges of the Constitutional Tribunal, three from the Supreme Court, and three from the Supreme Administrative Court. These judges were designated by the presidents of their respective courts and appointed by the President of the Republic, thereby preserving the judicial nature of the PKW's composition (see Article 53(1) and (2) of the Act of June 28, 1991, Electoral Ordinance for the Sejm of the Republic of Poland; Journal of Laws of 1991, No. 59, item

252; Article 62(1) and (2) of the Act of May 28, 1993, Electoral Ordinance for the Sejm of the Republic of Poland; Journal of Laws of 1993, No. 45, item 205; and Article 36(1)–(3) of the Act of April 12, 2001, Electoral Ordinance for the Sejm and the Senate of the Republic of Poland; Journal of Laws of 2001, No. 46, item 499).

It should be further noted that the PKW has been, and remains, the competent authority for the preparation, organization, and conduct of elections not only for the Sejm but also for the Senate – the upper house of parliament, which was abolished following the results of the manipulated People's Referendum of 1946 (see *People's Referendum*, conversation with Prof. Czesław Osękowski; https://muzhp.pl/en/calendar/sfalszowane-wybory-do-sejmu-en; accessed June 21, 2025) – and subsequently reestablished in 1989. Additionally, the PKW conducts elections for the office of the President of the Republic of Poland, elections to the European Parliament, local government elections, and other electoral processes.

The current PKW operates under the provisions of the Electoral Code (Act of January 5, 2011, consolidated text as of February 14, 2025; Journal of Laws of 2025, item 365, hereinafter referred to as the Electoral Code), which initially preserved, without modification, the judicial composition of the PKW and the procedure for its appointment (Article 157 of the Electoral Code).

## 2. Current Status

On November 12, 2018, the Act of January 11, 2018, amending certain laws to increase citizen participation in the process of electing, functioning, and supervising certain public bodies, came into force (Journal of Laws of 2018, item 130). The provisions of this Act introduced highly controversial regulations concerning the composition and the procedure for appointing members of the PKW.

The amendment established new rules (Article 157 of the Electoral Code), under which the PKW is composed of: one judge of the Constitutional Tribunal and one judge of the Supreme Administrative Court, each designated by the presidents of their respective courts, and seven individuals qualified to hold the office of a judge, indicated by the Sejm. These individuals may not belong to political parties or engage in public activities incompatible with their functions. The requirement to hold judicial office does not apply to individuals who have at least three years of professional experience as a prosecutor, the President or Vice-President of the General Prosecutor's Office of the Republic of Poland, as legal counsel to that office, or who have practiced as an advocate, legal adviser, or notary in Poland. It also does not apply to individuals who have been employed at a Polish university, the Polish Academy of Sciences, a research institute, or another scientific institution, and who hold the academic title of professor or the academic degree of *doktor habilitowany* in legal sciences. The term of office for members of the PKW who are judges

is nine years. For those appointed by the Sejm, their term corresponds to the term of the Sejm. Candidates for PKW membership appointed by the Sejm are nominated by parliamentary clubs, with the proviso that their number must reflect the proportional representation of parliamentary or deputies' clubs in the Sejm. As a rule, the number of members appointed to the PKW from among those indicated by a single parliamentary or deputies' club may not exceed three. In the event there are only two parliamentary or deputies' clubs during a given term of the Sejm, the final candidate for the PKW is selected by drawing lots conducted by the Presidium of the Sejm from among individuals nominated by the parliamentary or deputies' clubs, each of which may nominate one person.

Originally, the PKW was composed of Zbigniew Cieślak, Dariusz Lasocki, and Arkadiusz Pikulik (nominated by Prawo i Sprawiedliwość), Ryszard Balicki and Konrad Składowski (nominated by Koalicja Obywatelska), Liwiusz Laska (nominated by Lewica), and Maciej Miłosz (nominated by PSL-Kukiz'15).

It is currently composed of Mirosław Suski and Arkadiusz Pikulik (nominated by Prawo i Sprawiedliwość), Konrad Składowski and Ryszard Balicki (nominated by Koalicja Obywatelska), Maciej Kliś (nominated by Klub PSL–Trzecia Droga), Paweł Gieras (nominated by Polska 2050–Trzecia Droga), and Ryszard Kalisz (nominated by Lewica). The chairman of the PKW is Judge Sylwester Marciniak of the Supreme Administrative Court, and one of his deputies is Judge Wojciech Sych of the Constitutional Tribunal. Notably, **the current PKW does not include any representatives of the Supreme Court, whose participation in the Commission's work was standard practice after 1990.** Assuming the principle of legislative rationality, it must be concluded that this exclusion was intentional and likely stemmed from conflicts between the First President of the Supreme Court, Prof. Małgorzata Gersdorf, and representatives of the legislative and executive branches.

From the above summary, it is evident that the current ruling coalition holds a majority of members within the PKW (five members).

Regarding the composition of the current PKW, it should be further emphasized that the method set forth in the Electoral Code – and cited above – for determining the number of PKW candidates nominated by individual parliamentary and deputies' clubs raises significant concerns. The provision is unclear in its wording and application. This problem became apparent following the election of seven PKW candidates at the first sitting of the 10th Sejm on December 21, 2023. The proportions set out in the Sejm resolution, intended to reflect parliamentary club representation, were questioned by the President of the Republic of Poland. According to the President, the Prawo i Sprawiedliwość club, as the largest parliamentary group, should have been entitled to nominate three rather than two representatives to the PKW (see S. Patyra, *Opinia prawna na temat statusu Państwowej Komisji Wyborczej w kontekście braku powołania przez Prezydenta Rzeczypospolitej jej siedmiu nowych członków, wskazanych przez Sejm Rzeczypospolitej Polskiej 21 grudnia 2023 roku*

[*Legal Opinion on the Status of the National Electoral Commission in the Context of the President of the Republic's Refusal to Appoint Its Seven New Members, as Indicated by the Sejm of the Republic of Poland on December 21, 2023*], pp. 3–4, available at: https://www.batory.org.pl/wp-content/uploads/2024/03/Opinia-prawna_status-PKW.pdf, accessed June 23, 2025). This dispute resulted in the President's initial refusal to appoint the new members of the PKW. Ultimately, however, the appointments were made on March 14, 2024. During the period between the date of the Sejm's resolution and the eventual appointment of the new members, the PKW continued to operate in its existing composition, which included three members nominated by Prawo i Sprawiedliwość. This situation was governed by Article 158 § 1a of the Electoral Code, which provides that the term of office of the seven PKW members nominated by political groups expires by operation of law 150 days after the date of the elections to the Sejm.

In summary of this part of the analysis, it should be noted that, after operating for nearly three decades as a body independent from political influence – an independence guaranteed by the inclusion of judges in its composition as an apolitical element accustomed to functioning in conditions of impartiality and autonomy – the PKW has once again become a body primarily dependent on the legislature and, to a certain extent, the executive branch.

The return to the politicization of the PKW raises, and must raise, significant axiological concerns. It should be emphasized, however, that the Constitution of the Republic of Poland does not contain provisions regulating the principles governing the structure or composition of the PKW. In this regard, it merely stipulates that the President's decision to appoint members to the PKW requires the countersignature of the Prime Minister (Article 144(2) of the Polish Constitution).

The departure from the judicial model of the PKW in favor of political appointments is of systemic significance, not solely due to the PKW's function of organizing elections. It must be underscored that the PKW – which is often overlooked in public discourse – is also the body responsible for overseeing the flow of public funds, including subsidies and grants to political parties, as well as verifying the financial reports of electoral committees after campaigns conclude. Given that five out of nine current members of the PKW are nominees of the ruling parties, there exists a risk that they may "follow the party line" in shaping the methods of oversight and determining the final outcomes of such reviews. This composition does not provide a sufficient guarantee of independence or autonomy from the parties that promoted these individuals, especially considering that, firstly, the term of office of PKW members appointed by the Sejm coincides with that of the Sejm itself, and secondly, the nominating entity may request the President of the Republic to dismiss a nominee. Importantly, the nominating entity does not lose its representation in the PKW upon dismissal, since, if a member is dismissed, the right to nominate a replacement belongs to the same parliamentary or deputies' club

(Article 158 § 3 of the Electoral Code). Significantly, the Electoral Code does not specify the grounds that may justify a request for dismissal. Therefore, refusal to serve the partisan interests of the nominating entity could itself become a sufficient reason for seeking dismissal and replacing the individual with someone more aligned with the political interests of the recommending party.

In assessing the changes introduced in 2018, Polish legal scholarship has expressed the view that the method of forming the PKW's composition under the amended provisions is consistent with the Code of Good Practice in Electoral Matters, adopted at the 52nd session in Venice on October 18–19, 2002, by the European Commission for Democracy through Law (Venice Commission) (Opinion No. 190/2002; https://bisnetus.wordpress.com/biblioteka/akty-ustrojowe/kodeks-dobrej-praktyki-komisji-weneckiej/kodeks-dobrej-praktyki-w-sprawach-wyborczych-calosc/, accessed June 22, 2025). This claim, however, raises significant objections, particularly as it has been articulated by Judge Sylwester Marciniak, Chairman of the PKW (see S. Marciniak, "Państwowa Komisja Wyborcza – historia i współczesność," *Przegląd Prawa Konstytucyjnego*, No. 5, 2023, pp. 97–99). Notably, this argument was also invoked in the justification of the parliamentary bill on amending certain laws to increase citizen participation in the process of electing, functioning, and supervising certain public bodies (Draft No. 2001, Sejm VIII term, p. 15; https://www.sejm. gov. pl/sejm8.nsf/ druk.xsp?nr= 2001, accessed June 22, 2025).

The Venice Commission study states:

> 63. Stability of the law is crucial to credibility of the electoral process, which is itself vital to consolidating democracy. Rules which change frequently – and especially rules which are complicated – may confuse voters. Above all, voters may conclude, rightly or wrongly, that electoral law is simply a tool in the hands of the powerful, and that their own votes have little weight in deciding the results of elections.
> 64. In practice, however, it is not so much stability of the basic principles which needs protecting (they are not likely to be seriously challenged) as stability of some of the more specific rules of electoral law, especially those covering the electoral system per se, the composition of electoral commissions and the drawing of constituency boundaries. These three elements are often, rightly or wrongly, regarded as decisive factors in the election results, and care must be taken to avoid not only manipulation to the advantage of the party in power, but even the mere semblance of manipulation.
> (...)
> 68. Only transparency, impartiality and independence from politically motivated manipulation will ensure proper administration of the election process, from the pre-election period to the end of the processing of results.

69. In states where the administrative authorities have a long-standing tradition of independence from the political authorities, the civil service applies electoral law without being subjected to political pressures. It is therefore both normal and acceptable for elections to be organised by administrative authorities, and supervised by the Ministry of the Interior.
70. However, in states with little experience of organising pluralist elections, there is too great a risk of government's pushing the administrative authorities to do what it wants. This applies both to central and local government – even when the latter is controlled by the national opposition.
71. This is why independent, impartial electoral commissions must be set up from the national level to polling station level to ensure that elections are properly conducted, or at least remove serious suspicions of irregularity. (...)
74. The composition of a central electoral commission can give rise to debate and become the key political issue in the drafting of an electoral law. Compliance with the following guidelines should facilitate maximum impartiality and competence on the part of the commission.
75. As a general rule, the commission should consist of:
    – a judge or law officer: where a judicial body is responsible for administering the elections, its independence must be ensured through transparent proceedings. Judicial appointees should not come under the authority of those standing for office;
    – representatives of parties already represented in parliament or which have won more than a certain percentage of the vote. Political parties should be represented equally in the central electoral commission; "equally" may be interpreted strictly or proportionally, that is to say, taking or not taking account of the parties' relative electoral strengths. Moreover, party delegates should be qualified in electoral matters and should be prohibited from campaigning.

Several important points emerge from the quoted passage.

First, the Venice Commission underscores the necessity of stability in electoral law as a guarantor of the credibility of the electoral process, "which is itself vital to consolidating democracy." In doing so, it emphasizes that such stability should extend, among other areas, to regulations governing the composition of electoral commissions, as one of the factors "deciding the results of elections."

Second, it highlights critical elements in the operation of electoral commissions, namely "transparency, impartiality, and independence from politically motivated manipulation," whose implementation is essential to ensuring the proper organization of the entire electoral process.

Third, the electoral system should be structured "to avoid not only manipulation to the advantage of the party in power, but even the mere semblance of manipulation."

Fourth, the Commission notes the heightened risk of government pressure on administrative authorities in countries "with little experience of organising pluralist elections."

Finally, the Venice Commission recognizes that, "as a general rule," the composition of the central electoral commission should include judges or lawyers – provided the latter have no official ties to candidates – as well as representatives of political parties who are qualified in electoral matters and prohibited from engaging in electoral campaigning.

What conclusions can be drawn from this for the Polish electoral system?

There is no doubt that Poland, on the one hand, is a country with relatively limited historical experience in conducting pluralist elections and, on the other hand, one where the principle of legislative supremacy is strongly emphasized, as demonstrated, for example, by the history of Polish parliamentarism. Moreover, it cannot be overlooked that in Poland, the parliamentary majority typically also controls the executive branch. Consequently, the change introduced in 2018 regarding the composition of the PKW has rendered the Commission dependent not only on the decisions of the legislature but also on those of the executive, thereby effectively politicizing this body. A glaring manifestation of this development is the transfer of parliamentary disputes into the functioning of the PKW itself – a clear example of which is the controversy surrounding subsidies and grants allocated to the Prawo i Sprawiedliwość party following the parliamentary elections in October 2023, which revealed that the PKW is a divided and internally conflicted body.

Furthermore, the politicization of the PKW risks fostering the dangerous phenomenon of the cartelization of politics – a process fundamentally contrary to political pluralism, a principle enshrined in Article 11 of the Polish Constitution. In a cartelized political system, parties, rather than competing vigorously, enter into informal arrangements designed to exploit state resources – such as public funds, public media, and positions within the administration – to entrench their power and maintain their dominance. It is sufficient to note, with respect to public finances, that a substantial reduction in a party's state subsidy has a significant impact on its electoral prospects, as such a party may lack the means to compensate for the shortfall, which in turn adversely affects its organizational capacity and its ability to mobilize voters.

In conclusion, despite the apparent compliance of the current model of forming the PKW's composition with the recommendations of the Venice Commission, the system in place since 2018 does not secure adequate guarantees of the apolitical character of its members, particularly those nominated by political actors. Consequently, it fails to ensure the necessary guarantees for conducting elections in a fair and free manner consistent with the standards arising from the principles of national sovereignty (Article 4 of the Polish Constitution) and the democratic state governed by the rule of law (Article 2 of the Polish Constitution).

## 3. Final Conclusions

History has, in a sense, come full circle, as the model for selecting members of the PKW adopted after 2018 has once again politicized this body.

Intuitively, one might advocate a return to the judicial composition of the PKW. However, even this model, due to the current polarization within the judiciary – stemming in particular from the activities of the Iustitia Association of Polish Judges and the increasing proximity of some of its members to broadly defined political spheres, as well as disputes undermining the status of judges, the Constitutional Tribunal, and parts of the Supreme Court – no longer provides a reliable guarantee of independence from the legislative and executive branches. This represents a profoundly abnormal situation that, in the long term, requires urgent and systemic reforms. For example, it should be proposed that the PKW be granted the status of a constitutional body, with the principles governing its composition (including the method of appointment) enshrined in the Constitution of the Republic of Poland. Simultaneously, there should be a move away from both political and judicial models toward an expert model, wherein the composition of the PKW is determined not according to political affiliations or judicial backgrounds but based on meritocratic criteria.

Another issue requiring immediate legislative attention is the need for a constitutional definition of the grounds justifying the dismissal of PKW members before the expiration of their term of office, as well as the establishment of procedures governing such dismissals. Clear rules in this regard would promote transparency in any changes to the PKW's composition before the end of a member's term and would strengthen the protective guarantees of tenure, thereby preventing or significantly limiting the potential for manipulation of the Commission's membership.

Finally, there is one further recommendation, no less important than the preceding ones. Assuming the current model of the PKW is maintained, there is an urgent need to introduce precise rules for determining the number of PKW candidates nominated by individual parliamentary and deputies' clubs. The currently adopted principle of political parity – intended to guarantee all clubs a fair role in forming the composition of the PKW – fails to meet its intended purpose because it lacks clarity and precision.

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

# Failure to Pay the Largest Opposition Party Its Due Budget Funds

## 1. Funding of Political Parties

The Act on Political Parties provides that a political party's assets shall accrue from membership fees, gifts, inheritance, bequests, property income and subventions and subsidies specified by acts of law (Article 24(1) of the Act on Political Parties of June 27, 1997; Journal of Laws of 2023, item 1215).

In practice, subventions and subsidies from the state budget constitute one of the primary sources of political parties' financial assets. These funds enable parties to compete in election campaigns and participate effectively in political life. The obligation to provide such funding is intended to uphold the principle of equal opportunity among different political forces and to help prevent corruption.

## 2. Earmarked Subsidies

Pursuant to Article 150 § 1 of the Electoral Code (Act of January 5, 2011 – Electoral Code; Journal of Laws of 2025, item 365), a political party whose electoral committee participated in the elections, a political party forming part of an electoral coalition, as well as an electoral committee of voters participating in elections to the Sejm and the Senate, is entitled to receive a subsidy from the state budget for each parliamentary and senatorial seat won. This subsidy is referred to as a "earmarked subsidy" (*dotacja podmiotowa*). Expenses related to the earmarked subsidy are financed from the state budget under the section "Budget, Public Finances, and Financial Institutions." The Minister of Public Finance is responsible for transferring the earmarked subsidy to the designated bank account of the entitled entity. According to Article 150 § 5 of the Electoral Code, the Minister of Public Finance disburses the earmarked subsidy in the appropriate amount calculated on the basis of information provided by the National Electoral Commission (PKW) regarding the entities entitled to receive the subsidy and the number of seats obtained by each electoral committee. The earmarked subsidy must be paid within a mandatory period of nine months from election day.

The legal framework provides for the possibility of reducing the earmarked subsidy only as a consequence of the PKW rejecting the financial report submitted by the electoral committee. It is exclusively through this

procedure – the examination of the electoral committee's financial report by the PKW – that an earmarked subsidy may be reduced.

Under Article 144 § 1 of the Electoral Code, after reviewing an electoral committee's financial report, the PKW may: (1) accept the report without objections; (2) accept the report with an indication of deficiencies; or (3) reject the report.

The rejection of an electoral committee's financial report occurs only if the committee is found to have violated mandatory rules governing the raising and spending of funds (Articles 144 § 1 and § 2 of the Electoral Code).

If an electoral committee's financial report is rejected by the PKW, the committee's financial representative has the right, within 14 days of receiving the decision rejecting the report, to file a complaint with the Supreme Court challenging the PKW's decision (Article 145 § 1 of the Electoral Code). The Supreme Court considers the complaint in a panel of seven judges, in non-litigious proceedings, and must issue its ruling within 60 days of service of the complaint. No further legal remedies are available against the Supreme Court's decision (Article 145 § 4 of the Electoral Code), rendering it final and enforceable.

If the Supreme Court determines that the complaint against the PKW's resolution rejecting the financial report is justified, the PKW is obliged to immediately accept the financial report (Article 145 § 6 of the Electoral Code). At that point, the obligation of the Minister of Public Finance to transfer the earmarked subsidy to the relevant political party becomes effective (Article 150 § 5 of the Electoral Code).

### 3. Subventions

The second method of financing political parties from the state budget is through the payment of subventions.

Pursuant to Article 28(1) of the Act on Political Parties, a political party that, in elections to the Sejm, either independently formed an electoral committee and received at least 3% of the valid votes cast nationwide for its constituency lists of candidates for deputies, or participated in an electoral coalition whose constituency lists of candidates for deputies received at least 6% of the valid votes cast nationwide, is entitled, for the duration of the Sejm's term, to receive subventions from the state budget for its statutory activities, in the manner and according to the rules specified by law.

Non-payment of the subvention is permissible only if the PKW raises objections to the "report on the sources of funds, including bank loans and the conditions for obtaining them, as well as expenditures incurred from the funds of the Electoral Fund in the previous calendar year", which must be submitted by March 31 of each year (Article 38(1) of the Act on Political Parties). Following its review of this report, the PKW may: (1) accept the report without objections; (2) accept the report with an indication of deficiencies; or (3) reject the report (Article 38a(1)(1)–(3) of the Act on Political Parties).

A report may be rejected, among other reasons, if a political party has conducted business activities, raised funds through public collections, accepted or solicited funds from unauthorized sources, violated regulations concerning the collection of funds outside a bank account either with or without the Electoral Fund, or financed an electoral committee in violation of applicable regulations (Article 144 § 1 of the Electoral Code).

If a report is rejected, the political party has the right to file a complaint with the Supreme Court (Article 38b of the Act on Political Parties). The Supreme Court considers the complaint in a panel of seven judges, in non-litigious proceedings, and must issue its ruling within 60 days of the service of the complaint. There is no further legal remedy against the Supreme Court's decision (Article 38b, sentence 2, in conjunction with Article 34b(3) of the Act on Political Parties). Thus, the Supreme Court's decision is final and subject to immediate enforcement. If the Supreme Court determines that the complaint is justified, the PKW is obliged to issue, without delay, a resolution accepting the report (Article 38b, sentence 2, in conjunction with Article 34b(2) of the Act on Political Parties). This resolution, in turn, triggers the obligation of the Minister of Finance to pay the subventions due.

## 4. Depriving the Largest Opposition Party of Its Due Funds

**4.1** The PKW, currently dominated by representatives of the ruling December 13 Coalition (whose nine-member composition includes, contrary to principles of parity, five members appointed by the ruling coalition, two members appointed by the opposition, and two judges representing the Constitutional Tribunal and the Supreme Administrative Court), by Resolution No. 316/2024 of August 29, 2024, rejected the financial report of the Prawo i Sprawiedliwość Electoral Committee (hereinafter: PiS Electoral Committee) concerning revenues, expenditures, financial liabilities, including bank loans obtained and the conditions for obtaining them, related to participation in the elections to the Sejm and Senate of the Republic of Poland held on October 15, 2023. The basis for rejecting the financial report was the PKW's classification of certain activities carried out by entities associated with the broadly defined sphere of state bodies or entities dependent on those bodies as non-monetary financial benefits accepted by the PiS Electoral Committee. The PKW concluded that the Committee "must have known" about these activities. The judges serving on the PKW submitted statements effectively constituting *vota separata* to the content of this resolution. In their statement, Constitutional Tribunal Judge Wojciech Sych and Supreme Administrative Court Judge Sylwester Marciniak declared: "Since this act was performed in excess of authority, I do not want to, and cannot, sign it. Guided by this conviction, I make this statement as a kind of *votum separatum*." (www.niezalezna.pl/polityka/mamy-pelna-tresc-oswiadczenia-sedziego-pkw-akt-ten-dokonal-sie-z-przekroczeniem-uprawnien/525799)

As a result of a complaint filed by the PiS Electoral Committee against PKW Resolution No. 316/2024 of August 29, 2024, the Supreme Court, sitting in the Chamber of Extraordinary Control and Public Affairs, in its decision of December 11, 2024, in case I NSW 55/24, found the complaint to be justified. (www.sn.pl/aktualnosci/SitePages/Komunikaty_o_sprawach.aspx? ItemSID=682-b6b3e804-2752-4c7d-bcb4-7586782a1315&ListName=Komunikaty_o_sprawach)

The Supreme Court held that the PKW's findings of fact and its conclusion that a violation of statutory prohibitions had occurred must be clearly and precisely set forth in the reasoning of the adopted resolution. In the Court's opinion, the PKW failed to meet this requirement. The justification of the contested PKW resolution consisted primarily of a listing of the documents submitted to the PKW, while its reasoning for the decision consisted of only brief and general reflections on the concept of "acceptance" of non-monetary financial benefits. The Supreme Court found that the absence of elements in the justification of the appealed resolution explaining the PKW's reasoning, the assessment of the evidence, and the factual basis for its findings rendered the justification too vague and arbitrary to permit effective judicial review.

Following this Supreme Court ruling, the PKW was obligated to accept the financial report of the PiS Electoral Committee.

The PKW's follow-up resolution, implementing the Supreme Court's ruling of December 11, 2024, in case I NSW 55/24, was adopted on December 30, 2024 (Resolution No. 421/2024 of the National Electoral Commission of December 30, 2024, concerning the financial report of the PiS Electoral Committee related to the elections to the Sejm and Senate of the Republic of Poland held on October 15, 2023). (www.pkw.gov.pl/prawo-wyborcze/uchwaly-pkw/2024-r/uchwala-nr-4212024-pkw-z-dnia-30-grudnia-2024-r-w-sprawie-sprawozdania-finansowego-komitetu-wyborcze). In this resolution, the PKW stated that it had resolved to accept the financial report of the PiS Electoral Committee in execution of the Supreme Court's ruling. However, the resolution included the following statement:

> This resolution was adopted solely as a result of the acceptance of the complaint by the Chamber of Extraordinary Control and Public Affairs of the Supreme Court and is immanently and directly related to the ruling, which must originate from a body that is a court within the meaning of the Constitution of the Republic of Poland and the Electoral Code. At the same time, the National Electoral Commission does not express any opinion as to whether the Chamber of Extraordinary Control and Public Affairs constitutes a court within the meaning of the Constitution of the Republic of Poland, nor does it prejudge the effectiveness of the ruling.

Despite the PKW's resolution accepting the financial report, the Minister of Finance, Andrzej Domański, has not transferred the funds owed. Prime Minister Donald Tusk commented on the PKW's resolution in a post on the X plat-

form, stating: “There is no money and there won’t be any. To my mind, this much is clear from the PKW’s resolution.” (www.rmf24.pl/polityka/news-tusk-o-uchwale-pkw-w-sprawie-pis-pieniedzy-nie-ma-i-nie-bedz,nId,7883666#crp_state=1)

**4.2** Parallel to its audit of the financial report of the PiS Electoral Committee, the PKW rejected the report of the political party Prawo i Sprawiedliwość concerning the sources of funds – including bank loans and the conditions under which they were obtained – as well as expenditures made from the funds of the Electoral Fund in 2023, by way of Resolution No. 389/2024 of November 18, 2024. The basis for the rejection was the alleged financing of the PiS Electoral Committee, which participated in the elections to the Sejm and Senate of the Republic of Poland held on October 15, 2023, in violation of the provisions of the Electoral Code.

In reaching this conclusion, the PKW relied on its earlier Resolution No. 316/2024 of August 29, 2024, concerning the financial report of the PiS Electoral Committee for the elections to the Sejm and Senate held on October 15, 2023, asserting that the Committee established by PiS had accepted unauthorized financial benefits. The resolution, however, contained no further substantive explanation on this point.

As a result of PiS’s complaint against this resolution, the Supreme Court, sitting in the Chamber of Extraordinary Control and Public Affairs, in an order dated January 21, 2025, in case I NSW 59/24, found the complaint to be justified.

The Supreme Court held that, as of the date of the issuance of the contested resolution, PKW Resolution No. 316/2024 of August 29, 2024 – on which the contested resolution relied – was invalid and, therefore, could not produce any legal effects, including those erroneously attributed to it in the reasoning of the contested resolution by the PKW. Moreover, PKW Resolution No. 316/2024 had itself been subject to an appeal before the Supreme Court, which, in its decision of December 11, 2024, in case I NSW 55/24, found the complaint against that resolution to be justified (Supreme Court decision of January 21, 2025, I NSW 59/24, LEX No. 3818840; https://sip.lex.pl/#/jurisprudence/523912536/1?directHit=true&directHitQuery=I%20NSW%2059%2F24).

Consequently, the PKW’s resolution of November 18, 2024, was likewise eliminated from the legal order. This creates an obligation on the part of the PKW to adopt a resolution accepting the report of the PiS political party concerning the sources of funds for 2023. However, the PKW has thus far failed to adopt such a resolution. As a result, the Minister of Finance has not disbursed the full amount of the subsidy funds due.

**4.3** In a decision dated January 15, 2025, the Marshal of the Sejm ordered the elections for the President of the Republic of Poland and set the election date

for May 18, 2025, with a possible second round scheduled for June 1, 2025. The order of the Marshal of the Sejm was published in the Official Gazette on January 15, 2025, under item 48. This meant that from January 15, 2025, until June 1, 2025, the election campaign was ongoing, conducted by the individual presidential candidates and financed by their respective electoral committees.

During this period, the Minister of Finance continued to withhold the payment of subsidies and grants due to the Prawo i Sprawiedliwość party, which was supporting the independent candidacy of Karol Nawrocki in the presidential elections.

It was not until May 9, 2025, that the Minister of Finance decided to transfer a portion of the subsidies due to the Prawo i Sprawiedliwość party, disbursing PLN 3.7 million instead of the PLN 6.3 million owed. The payment of the earmarked subsidy was not made at all.

## 5. Summary

Under the system of financing political parties adopted in Poland, decisions on the acceptance of financial reports are made by the PKW. However, the PKW is currently dominated by political appointees, particularly those affiliated with the parties in power. For this reason, serious doubts arise concerning its impartiality. Consequently, the correctness of the PKW's assessments of whether a political party has complied with its financial obligations is subject to judicial review by the Supreme Court.

The legal regulations governing earmarked subsidies and subventions aim to ensure fair electoral competition among political parties – that is, equality of opportunity in political competition – and to safeguard political pluralism.

The consequences prescribed by law for the rejection of a financial report or a report on sources of funds are intended as a form of sanction for violations of statutory rules governing the collection and expenditure of funds. These sanctions are designed to level any unfair advantages obtained by political parties that breach the rules and to deter illegal financing by making such activities unprofitable. The loss of entitlement to state funds in the form of earmarked subsidies or subventions significantly limits a party's ability to engage in political competition and to effectively compete with other political entities (see Position of the Ombudsman in case P 8/17, VII.610.11.2016.JZ, June 12, 2017, p. 14; https://trybunal.gov.pl/sprawy-w-trybunale/art/9635-partie-polityczne-sprawozdanie-finansowe-partii-politycznej).

The protection of a level playing field in political competition – especially regarding party financing – has also attracted the attention of the European Court of Human Rights (ECtHR). The ECtHR has consistently emphasized that financial oversight should never serve as a political tool to exert control over political parties, particularly under the pretext of public funding.

The Court has underscored the impermissibility of abusing financial control mechanisms for political purposes and has called for a high standard of legal predictability regarding the regulations governing the financial oversight of political parties, both in terms of specific requirements imposed and the sanctions that may follow from their breach (see, e.g., ECtHR judgment of April 26, 2016, *Cumhuriyet Halk Partisi v. Turkey*, Application No. 19920/13, § 88).

The loss of the right to receive state funds may, as a rule, negatively impact guarantees arising from the principles of political pluralism, the democratic state governed by the rule of law (Article 2 of the Constitution), popular sovereignty (Article 4 of the Constitution), and legality (Article 7 of the Constitution), as repeatedly emphasized by the ECtHR (judgments of March 3, 2000, Pp 1/99; and December 14, 2004, K 25/03).

In practice, such a situation may prevent a political party from engaging in large-scale political activities, ultimately leading to its marginalization or even effective elimination from political life (Supreme Court decision of December 11, 2024, I NSW 55/24, LEX No. 3789455, https://sip.lex.pl/#/jurisprudence/523883151/1/i-nsw-55-24-postanowienie-sadu-najwyzszego?keyword=I%20NSW%2055%2F24&cm=SREST, accessed February 11, 2025).

The Supreme Court's upholding of both complaints against the original PKW resolutions results in an absolute obligation to accept both reports. This, in turn, imposes a corresponding obligation on the Minister of Finance to disburse the budgetary funds. Yet, in the past year's circumstances, the Minister of Finance has disregarded this statutory duty.

This led to arbitrary restrictions on specific political parties and their ability to participate fully in the electoral campaign. It constitutes a violation of the principle of equal political competition. It is difficult to speak of equal opportunities in elections when one party is deprived of state funding that other parties, including those in government, continue to receive. The financial oversight system for political parties cannot be misused for political ends. Such practices infringe upon the rights of Polish citizens to form political parties and the constitutional rights of political parties themselves.

This issue becomes even more critical in light of the presidential elections held on May 18, 2025 (first round) and June 1, 2025 (second round). The electoral campaign preceding these elections ran from January 15, 2025. During this period, the principal opposition party was deprived of the public funds to which it was entitled.

Depriving the main opposition party of its budgetary funds had a significant impact on its ability to campaign effectively on behalf of the candidate it supported. Such methods of undermining political competition are unacceptable in a modern democratic society. The circumstances described could have distorted the ultimate outcome of the election to the detriment of the candidate supported by the party denied access to its rightful public funds.

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

# Using the Public Prosecutor's Office to Undermine One of the Candidates in the 2025 Presidential Elections

The President of the Republic of Poland is elected by the people in universal, equal, and direct elections, conducted by secret ballot (Article 127(1) of the Polish Constitution). The Constitution imposes an obligation on state bodies to organize and conduct elections on an equal basis for every candidate, irrespective of their personal background, including political affiliations. On June 1, 2025, in the presidential election for the office of President of the Republic of Poland, a candidate supported by the opposition party was elected by the people – a result that did not meet with the approval of the ruling coalition.

During the period of the election campaign immediately preceding the presidential election, as well as after its conclusion, significant attention must be drawn to the activities of the Public Prosecutor's Office. This office, established in the Polish legal system, is tasked primarily with prosecuting crimes and upholding the rule of law, including by conducting or supervising pre-trial proceedings in criminal cases and performing the function of public prosecutor before the courts (Articles 2 and 3 § 1 of the Act of January 28, 2016 – Act on the Public Prosecutor's Office; Journal of Laws of 2024, item 390, consolidated text).

Importantly, prosecutors are obligated to act in accordance with the law, guided by the principles of impartiality and equal treatment of all citizens (Article 6 of the Act on the Public Prosecutor's Office).

It should be noted that the structure of the Public Prosecutor's Office includes the Prosecutor General, the National Prosecutor, other Deputy Prosecutors General, prosecutors of the common organizational units of the Public Prosecutor's Office, and prosecutors of the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation (Article 1 § 1 of the aforementioned Act). The Prosecutor General is the highest authority within the Public Prosecutor's Office (Article 1 § 2 of the Act), and this office is held by the Minister of Justice.

Pursuant to Article 13 § 2 of the Act on the Public Prosecutor's Office, the Prosecutor General exercises supervisory authority over prosecutors of the common organizational units of the Public Prosecutor's Office and over prosecutors of the Institute of National Remembrance.

Against this background, it is necessary to pose the question: Does the Prosecutor General, in pursuing personal interests or the interests of political allies, have the legal authority to interfere in the course of criminal proceedings that affect the rights and obligations of individuals, including political opponents, such as a counter-candidate for the office of President of the Republic of Poland? In this regard, does the Prosecutor General – who is simultaneously the Minister of Justice – possess the tools and means to indirectly promote one of the candidates in the electoral process for the presidency of the Republic of Poland?

Pursuant to Article 7 § 1 of the cited Act on the Public Prosecutor's Office, every prosecutor, in performing activities specified by law, is independent, subject to the exceptions provided in §§ 2–6 and Articles 8 and 9. However, the independence of prosecutors in prosecuting crimes and upholding the rule of law is, in practice, subject to significant limitations, as discussed below. According to Article 7 § 2, a prosecutor is obliged to carry out the orders, directives, and instructions of a superior prosecutor. An order concerning the content of a procedural action must be issued by the superior prosecutor in writing and, at the request of the subordinate prosecutor, accompanied by a statement of reasons. If a prosecutor disagrees with an order concerning the content of a procedural action, they may request that the order be amended or that they be excluded from performing the action or from participation in the case. The prosecutor must submit such a request in writing, with justification, to the superior who issued the order. The decision on exclusion is made ultimately by the prosecutor who is directly superior to the one who issued the contested order (Articles 7 §§ 4 and 5 of the Act on the Public Prosecutor's Office).

Furthermore, Article 8 § 1 of the Law provides that a superior prosecutor is authorized to amend or revoke the decision of a subordinate prosecutor. Such an amendment or revocation must be in writing and included in the case file. Any amendment or revocation of a decision that has been served on the parties, their legal representatives, defense counsel, or other authorized persons may only be made in accordance with the procedure and rules set forth by law (Article 8 § 2 of the Law). In addition, pursuant to Article 9 § 2 of the Act on the Public Prosecutor's Office, a superior prosecutor may assume conduct of cases handled by subordinate prosecutors and carry out procedural actions in those cases, unless otherwise provided by law.

These statutory provisions indicate that every prosecutor is obliged to comply with instructions regarding the content of procedural actions issued by a politician – that is, the Minister of Justice, who also holds the office of Prosecutor General. The Prosecutor General, as a political figure, is also empowered to amend or revoke decisions of subordinate prosecutors and may assume control over proceedings previously conducted by subordinate prosecutors. As a result, the Prosecutor General has the authority to issue orders to all subordinate prosecutors regarding specific procedural actions in individ-

ual cases, including directions on how proceedings should be concluded and instructions concerning the conduct of prosecutors during court proceedings.

The Minister of Justice, who simultaneously holds the office of Prosecutor General, is a member of the Council of Ministers (Article 147(1) of the Polish Constitution). This dual role creates a significant risk that the Prosecutor General, as a politician whose primary allegiance may be to the political interests of their party, could exploit the powers of the office during an election campaign. This includes the possibility of exerting direct influence over the prosecution of criminal cases and the conduct of prosecutorial functions before the courts, particularly where political rivals are concerned, thereby indirectly supporting a presidential candidate from the same political formation. Moreover, the Minister of Justice, who serves as Prosecutor General, is obliged to implement the policies determined by the Council of Ministers (Article 7(3) of the Act of August 8, 1996, on the Council of Ministers; Journal of Laws of 2025, item 780) and is required to present positions in public statements consistent with the arrangements adopted by the Council of Ministers (Article 8 of the Act on the Council of Ministers).

At this point, it should be noted that Prime Minister Donald Tusk, on numerous occasions in public statements – even prior to assuming office – emphatically declared that the Council of Ministers under his leadership, which includes the Minister of Justice subordinate to him, would seek "reckoning" through criminal proceedings with politicians from the previous executive branch, specifically from the Zjednoczona Prawica camp, which is currently in opposition to his political grouping.

Relevant in this context are the events that transpired in January 2024 concerning the unlawful removal of National Prosecutor Dariusz Barski from office, which require explanation. Under the law, the dismissal of the National Prosecutor requires the approval of the President of the Republic of Poland. Nevertheless, the Minister of Justice, acting as Prosecutor General, unilaterally declared – completely disregarding the President's constitutional prerogatives and thereby circumventing the applicable legal provisions – that Dariusz Barski, serving as National Prosecutor, was deemed retired as of January 12, 2024. As a consequence, the Minister of Justice–Prosecutor General petitioned the Prime Minister to entrust the duties of National Prosecutor to Prosecutor Jacek Bilewicz, in clear violation of the law. This action was unlawful for two reasons. First, the Act on the Public Prosecutor's Office does not provide any legal basis for the entrustment of the duties of the National Prosecutor – Polish law simply does not recognize such an institution. Second, any personal change in this office – both dismissal and appointment – requires the participation of the President of the Republic of Poland, which was entirely omitted in this instance.

Moreover, and significantly, on January 15, 2024, the Constitutional Tribunal issued an interim order instructing the Prosecutor General and all public authorities to refrain from any actions preventing Dariusz Barski from exer-

cising the powers, duties, and competencies vested in an active National Prosecutor, including refraining from implementing or executing the contents of the Prosecutor General's letter dated January 12, 2024.

Both the Prime Minister of the Republic of Poland and the Minister of Justice–Prosecutor General have disregarded the Constitutional Tribunal's protective order and, to this day, continue to prevent the legitimate National Prosecutor, Dariusz Barski, from performing his statutory duties. It should also be noted that the Prime Minister has refused to publish the Constitutional Tribunal's judgments in the Journal of Laws solely on the grounds that the Tribunal comprises judges elected by the previous term of Parliament, whose majority consisted of politicians affiliated with today's opposition, with the involvement of President Andrzej Duda, who likewise originates from a politically opposing camp.

Also noteworthy is the Supreme Court's resolution of September 27, 2024, I KZP 3/24, in which the Court held that the regulations under which Prosecutor Dariusz Barski was reinstated in 2016 were, and remain, in force. Thus, the Supreme Court confirmed that Dariusz Barski had been lawfully appointed to the office of National Prosecutor, and consequently, any change in this position required the participation – and unconditional approval – of the President of the Republic of Poland.

Nevertheless, the office of National Prosecutor was unlawfully entrusted to an individual associated with the Lex Super Omnia Association, whose members, since 2016, had actively encouraged prosecutors to sever their allegiance to the then Prosecutor General for political reasons, openly expressing support for the political opposition at that time. As a result of the unlawful change in the leadership of the National Prosecutor's Office, the heads of general organizational units of the prosecution service – particularly at the levels of Circuit and Regional Prosecutor's Offices, and predominantly at the District level – were replaced, and prosecutors drawn from the ranks of Lex Super Omnia were appointed in their place.

The current composition of the leadership of the Public Prosecutor's Office, combined with the extensive powers vested in the Minister of Justice–Prosecutor General, represents a dangerous instrument in the hands of a political figure. It has already been used for political purposes, including in connection with the conduct of the 2025 presidential elections, thereby undermining the principle of equality of opportunity among candidates, particularly those affiliated with the opposition to the current ruling party.

An illustrative example is the resolution of the Management Board of the Lex Super Omnia Association dated April 26, 2020, which explicitly called on all prosecutors holding leadership positions at the time to resign.

Furthermore, the statements made by Dariusz Korneluk – who was unlawfully entrusted by the Prime Minister, through the flawed procedure described above, with the office of National Prosecutor – are highly significant. In August 2024, Korneluk publicly stated that out of more than six thousand

prosecutors, only four hundred (i.e., members of Lex Super Omnia) "retained a moral spine." The leadership of today's Public Prosecutor's Office remains in the hands of precisely these four hundred individuals, whose actions give rise to reasonable grounds for concern that they are politically motivated.

Serious doubts have emerged regarding politically motivated investigations and procedural actions undertaken by the Public Prosecutor's Office against the former leadership of the Ministry of Justice, including the former Minister of Justice–Prosecutor General Zbigniew Ziobro and his deputy Marcin Romanowski, both of whom are currently opposition Members of Parliament. In March 2024, prosecutors ordered a search of the former Justice Minister's home in connection with a matter of an administrative nature, involving events subject to purely political, rather than criminal, evaluation. In the same case, MP Marcin Romanowski, former Deputy Minister of Justice, was detained in flagrant violation of the law, including international law, despite holding formal immunity as a member of the Parliamentary Assembly of the Council of Europe. Significantly, the District Court for Warsaw–Mokotów declared MP Marcin Romanowski's detention unlawful and contrary to both the Polish and international legal order, and ordered his immediate release. It should also be noted that opposition MP Marcin Romanowski subsequently obtained political asylum in Hungary, where he remains under the legal protection of that state to this day.

The Public Prosecutor's Office has thus been used for political purposes during the presidential election campaign for the office of President of the Republic of Poland. It has also been deployed to undermine, or at least weaken, the mandate of the democratically elected President-elect.

In February 2025, an investigation was initiated into whether the Director of the World War II Museum in Gdańsk exceeded his official authority by allowing the free use of rooms and apartments belonging to the institution. One of the museum's directors was simultaneously a candidate in the presidential election, running with the backing of the largest opposition party. The proceedings were initiated ex officio by the Circuit Prosecutor's Office in Gdańsk on the basis of media reports suggesting that this candidate, as Director of the Museum, had used rooms owned by the institution he managed, despite living in close proximity to the museum.

In May 2025, during the period immediately preceding the voting day, media reports – primarily disseminated by the government-controlled broadcaster TVP – circulated narratives favorable to the current government, suggesting that one of the candidates supported by the opposition had illegally and criminally taken possession of an apartment belonging to an elderly, inept man.

A criminal complaint was filed with the Prosecutor's Office by politicians who were openly supporting the candidate of the ruling camp in the election campaign. During this same period, the Minister of Justice, acting as Prosecutor General, directed prosecutors in the National Prosecutor's Office to

inquire with all units of the Public Prosecutor's Office as to whether any criminal proceedings had been or were being conducted concerning the unlawful seizure of apartments from elderly or inept individuals.

Simultaneously, at the end of April 2025, the National Prosecutor's Office convened a press conference during which the findings of a report prepared by a specially appointed team of prosecutors tasked with investigating cases deemed to be of public interest were presented to the public. It should be noted that this team consisted exclusively of prominent members of the Lex Super Omnia Association, including former members of its Board of Directors, who, following the unlawful personnel changes described previously, had become the beneficiaries of key leadership positions within the National Prosecutor's Office.

The report was highly critical of the conduct and actions of prosecutors who had investigated politicians from the ruling camp from which the current Minister of Justice–Prosecutor General originated, including actions taken against a candidate in the presidential election whom he supported.

Among other claims, it was alleged that prosecutors had acted with undue swiftness and efficiency in pursuing procedural measures, which the report characterized as politically motivated. However, under Article 326 § 2 of the Code of Criminal Procedure, a prosecutor is obliged to ensure the proper and efficient conduct of all proceedings. The report presented a narrative portraying the presidential candidate supported by the Minister of Justice as a victim of allegedly politically motivated prosecutorial actions prior to his assuming the office of Prosecutor General.

It must be emphasized that the Polish legal system does not assign the Public Prosecutor's Office any role or responsibilities in organizing, conducting, or determining the results of presidential elections. The primary responsibility for these functions lies with the National Electoral Commission, which, in accordance with its statutory mandate, is tasked with determining and announcing the results of the vote.

In the 2025 presidential elections, the candidate supported by the political camp opposed to the current Minister of Justice–Prosecutor General ultimately won the approval of the electorate. As demonstrated above, the Minister of Justice–Prosecutor General possesses extensive statutory powers which, if abused, may be used to serve his personal and political interests as well as those of his political faction.

Despite the clear, binding resolution of the National Electoral Commission certifying the election of a specific candidate as President of the Republic of Poland, politicians from the ruling camp, dissatisfied with the electoral defeat of their preferred candidate, began to promote a narrative suggesting that the election results had been falsified.

The loss of their candidate dashed the ruling camp's hopes for far-reaching systemic changes, including measures aimed at securing possible immunity from prosecution for individuals involved in egregious violations of the

constitutional order. Such violations included, among other things, questioning the status of judges of common courts and the Supreme Court who were appointed with the participation of the National Council of the Judiciary established under the Act of December 8, 2017, amending the Act on the National Council of the Judiciary and certain other acts (Journal of Laws of 2018, item 3). Further issues involved challenging the legitimacy of the Constitutional Tribunal, depriving this institution – so crucial for the functioning of a democratic state governed by the rule of law and adherence to the Constitution – of financial resources necessary for carrying out its constitutional mandate, and implementing the changes in the Public Prosecutor's Office described above.

A narrative has emerged – unsupported by the facts – that the presidential election was rigged by the opposition. Simultaneously, there have been calls directed at the Marshal of the Sejm not to convene the National Assembly, which is constitutionally tasked with administering the oath of office to the president-elect, an act which, under Polish law, marks the formal assumption of the office of President of the Republic of Poland. The allegations challenging the results of the presidential elections and suggesting electoral fraud are unfounded, particularly in light of the fact that the elections were conducted under the observation of the international community, including the OSCE. In its communiqué, the OSCE confirmed that the elections were held smoothly and professionally. Its criticism focused instead on the electoral campaign and its financing, conducted by the candidate of the ruling camp – that is, the same camp from which the Minister of Justice–Prosecutor General originates.

The Minister of Justice–Prosecutor General attempted, with the assistance of subordinate prosecutors, to destabilize the operations of the Supreme Court's Chamber of Extraordinary Control and Public Affairs. Contrary to the Polish Constitution, he demanded the disqualification of all judges comprising that Chamber from adjudicating on the validity of the presidential election, despite the Chamber's clearly defined statutory powers in this regard. Furthermore, through his subordinate prosecutors, the Minister of Justice–Prosecutor General sought the release of copies of nearly fifty thousand submitted election protests. Notably, more than forty thousand of these protests were prepared using a template provided by a lawyer who is also a member of the Sejm and belongs to the ruling party that supported the ultimately unsuccessful presidential candidate from its ranks. This unprecedented volume of protests significantly hindered the functioning of the Chamber and risked rendering it impossible to determine the validity of the election within the statutory timeframe. Additionally, public statements documented appeals from prominent politicians of the ruling camp and prosecutors affiliated with the Lex Super Omnia Association urging the Prosecutor General to initiate and conduct an investigation in which prosecutors would review all ballots and recount all votes cast in the presidential elections. Simultaneously, calls were directed at the Marshal of the Sejm to halt the convening of the National Assembly, thereby preventing the president-elect from taking office.

It must once again be emphasized that the Public Prosecutor's Office has no statutory authority to oversee or control the organization or conduct of elections. Under the applicable Polish criminal procedure, pre-trial proceedings may only be initiated where there exists a justified suspicion that a crime has been committed – a determination that, as established above, should be made by a prosecutor acting with impartiality and political neutrality, not at the behest of politicians dissatisfied with the sovereign's electoral decision. As has been demonstrated, there are no circumstances suggesting any credible suspicion of systemic election rigging. This is all the more evident given the practical impossibility of orchestrating such an operation by the opposition, which lacks any meaningful influence over the principal organs of the state responsible for organizing and conducting elections, as well as those charged with safeguarding the internal and external security of the Republic of Poland.

Despite the absence of any circumstances indicating systemic falsification of the result of the presidential election, the National Prosecutor – who is directly subordinate to the Minister of Justice–Prosecutor General and who was appointed in flagrant violation of the law – proceeded, in fulfillment of the political expectations of his political patrons, to establish a special team of prosecutors within the National Prosecutor's Office. This team was tasked with coordinating pre-trial investigations conducted by all prosecutorial units across the country concerning alleged irregularities in determining the result of the presidential election. It should be emphasized that in the history of the Polish Public Prosecutor's Office, no such situation has ever occurred; never before has this institution been used to question the results of an election.

The foregoing circumstances justify the conclusion that, as a result of the actions of the Minister of Justice–Prosecutor General and prosecutors subordinate to him – who were improperly appointed to leadership positions within the prosecutorial organizational structure and who originate from the Lex Super Omnia Association – the Public Prosecutor's Office is currently being instrumentalized as a tool for political struggle aimed at preserving power for the political formation from which the Minister of Justice derives. This supports the thesis that, due to the actions of the Minister of Justice – who is simultaneously a member of the Council of Ministers and thus part of the State's executive branch – the presidential election was not conducted on equal terms. The Public Prosecutor's Office was exploited as a mechanism to discredit the counter-candidate running against the candidate supported by, and originating from, the political milieu of the Minister of Justice. At present, the Public Prosecutor's Office is being used to undermine the legitimacy of an election in which the opposition candidate emerged victorious, or at the very least to cultivate the perception that the victory was achieved through electoral fraud. Such actions are flagrantly inconsistent with the essence and constitutional role of this vital institution, whose purpose in a democratic state is to safeguard the rule of law.

**Krzysztof Dąbkiewicz**
*(Judge of the District Court in Toruń)*

# The Debate in Końskie on April 11, 2025, from the Perspective of Electoral Law

**I.** On April 11, 2025, a debate took place in Końskie involving candidates for the office of President of the Republic of Poland. The event was organized by the election staff of Rafał Trzaskowski, utilizing resources belonging to Telewizja Polska S.A., which is currently in liquidation. The manner in which the debate was organized, the production of its broadcast signal, and its dissemination became the subject of extensive analysis and evaluation, not only from a legal perspective. Almost immediately, public discourse raised questions concerning the financing of the event, on the one hand, and, on the other hand, the legal basis for the involvement of public television in organizing a debate that seemingly favored one particular campaign – in this case, that of Rafał Trzaskowski, the candidate of Platforma Obywatelska, which is currently part of Poland's governing coalition.

To ensure clarity in the subsequent discussion, it is necessary to make several preliminary remarks of both general and jurisprudential significance. First and foremost, it is essential to underscore that democracy is a continuous process that must be nurtured through free and pluralistic debate. Equally important is the recognition that the state bears a positive obligation to intervene, where necessary, to guarantee effective pluralism in the audiovisual sector – an obligation that is not limited to specific periods. Radio and television broadcasts play a vital role in political debate, enabling the large-scale dissemination of ideas and opinions on matters of public interest. Such broadcasts drive political discourse, contribute to the shaping of public priorities, and help form public opinion necessary for effective participation in the country's social and political life. Radio, television, and now digital media provide modern forums for debate and discussion, facilitating the exchange of information and viewpoints from diverse perspectives and assisting the public in navigating and selecting significant information. Given the paramount importance of freedom of political debate, the Tribunal has highlighted that any political force is entitled to seek to present its ideas and views within the framework of the public radio and television broadcasting system, thereby contributing to the guarantee of pluralism. Democracy is fundamentally grounded in freedom of expression, and its essence lies in enabling the presentation and discussion of various political projects and proposals.

Electoral law must ensure that the outcome of elections accurately reflects the will of the Nation to the fullest extent possible. This imperative is intrin-

sically linked to the concept of fair elections, which are required to uphold, to a significant degree, the principle of substantive equality. Simultaneously, the process of selecting representatives must conform to the electoral standards respected in democratic states. These standards include guarantees of political freedom for voters and parties to nominate candidates, freedom to formulate and disseminate electoral programs, and freedom of electoral choice. Equally essential are genuine freedoms of expression and assembly, the maintenance of an orderly media landscape within the state, and access to local media markets. One of the fundamental components of free elections is the existence of free public debate during the election campaign, involving all citizens concerned. The principle of freedom of elections requires that a fair and honest campaign environment ensures citizens' access to truthful information concerning public affairs, candidates, and their political programs.

Pursuant to Article 2 of the Constitution, the Republic of Poland is a democratic state. Among the essential attributes of a democratic state are free and fair elections held at reasonable intervals. One of the most important elements of free elections is the existence of free public debate conducted during the election campaign by all interested citizens. Article 2 of the Constitution implies, among other things, the obligation of the legislature to enact regulations that ensure a fair election campaign, enabling citizens to access truthful information about public affairs and candidates. The election campaign should facilitate the free formation of voters' will and the decision expressed through the act of voting. Special regulations introduced into electoral legislation derive their foundation from the principle of a democratic state, as well as from other constitutional values.

These special regulations include, in particular, the provisions of Article 120 § 1 of the Act of January 5, 2011 – the Electoral Code (Journal of Laws of 2025, item 365). Under this provision, in the case of the election of the President of the Republic, Telewizja Polska S.A. is obliged to conduct debates between the candidates. The detailed rules and procedures for conducting these debates are regulated – pursuant to the statutory delegation contained in Article 120 § 2 of the Electoral Code – by the Ordinance of the National Broadcasting Council of July 6, 2011, on the detailed rules and procedure for conducting debates by Telewizja Polska Spółka Akcyjna (Journal of Laws of 2011, No. 146, item 878, as amended). This legal act specifies, among other things: the national television channel on which the debates are to be broadcast; the duration of the debates; the manner of preparing and broadcasting the debates; and the procedures for disseminating information about the date of the debates.

According to the normative provisions set forth in the ordinance, a debate between candidates in the presidential election should: last at least 45 minutes and be clearly distinguished in the program schedule; commence between 18:00 and 22:15; be broadcast during the last two weeks preceding election day. Moreover, Telewizja Polska S.A. is required to ensure equal con-

ditions for all candidates participating in the debate by: enabling participation in the same number of debates; providing equal speaking time for all candidates; ensuring the same broadcast start time for all debates, with an allowable variance of ±15 minutes; notifying candidates or their representatives at least 48 hours in advance about the date and topics of the debate; conducting debates without an audience present in the studio.

The legislature's imposition on Telewizja Polska S.A. of the obligation to conduct debates between candidates in presidential elections is directly linked to its status as a nationwide public broadcaster and to the public mission it is required to fulfill in a democratic society. This legislative intent is expressed explicitly in Article 21 of the Act on Broadcasting of December 29, 1992 (Journal of Laws of 2022, item 1722). According to this provision, public broadcasting performs a public mission by providing, under the conditions set out by the Act, diverse programs and other services for the entire society and its individual segments, covering the areas of information, journalism, culture, entertainment, education, and sports. These programs and services are to be characterized by pluralism, impartiality, balance, independence, innovation, high quality, and integrity of broadcasting.

The programs and other services of public broadcasting entities, as part of their public mission, should be guided by a sense of responsibility for the content they broadcast and by a commitment to protect the good name of public broadcasting. They are required to accurately present the full spectrum of events and phenomena occurring both domestically and abroad; to foster the free formation of citizens' views and the development of public opinion; and to enable citizens and their organizations to participate actively in public life by presenting diverse views and positions, as well as exercising the right to social oversight and criticism. Further, the normative provision contained in Article 24 of the aforementioned Act on Broadcasting specifies that public television is also obliged to provide entities participating in the election for the office of President of the Republic of Poland with the opportunity to broadcast election programs on public radio and television channels.

To recapitulate the issues raised thus far, it must first be emphasized that the legal basis for the obligation of Telewizja Polska S.A. to conduct debates between candidates in the presidential election is found in Article 120 of the Electoral Code, which is the statutory instrument governing the principles and procedures for nominating candidates, conducting elections, and determining the validity of elections for, among others, the office of President of the Republic of Poland (see Article 1(2) of the Electoral Code). The relevant provision is located in Chapter 13 of the Electoral Code, titled "Election Campaign in the Programs of Radio and Television Broadcasters." Thus, the debate between candidates for the office of President of the Republic of Poland is an integral element of the electoral process envisaged by the legislature. It constitutes a fundamental mechanism for implementing the principle of a democratic state governed by the rule of law. On one hand, it enables candi-

dates to present themselves – their positions and opinions – to an audience of millions; on the other hand, it provides voters with the opportunity to form their own judgments regarding their electoral preferences.

It should further be stated, however, that the Electoral Code and the regulation cited earlier contain a comprehensive and detailed framework, not only regarding the obligation to hold debates and identifying the entity required to fulfill this obligation, but also governing the rules and procedures for conducting debates. These rules cover aspects such as the duration of debates, the national television channel on which they are to be broadcast, the manner of preparing and broadcasting the debates, and the procedures for disseminating information about the date and time of their broadcast. By organizing an electoral debate, Telewizja Polska S.A. in liquidation thereby fulfills obligations imposed directly by electoral law, which are also closely connected to its public mission as set out in the Act on Broadcasting.

The provisions cited above serve a dual purpose. Firstly, they are designed to protect the constitutional rights of candidates. Secondly, they ensure that citizens have access to truthful information about candidates and that voters are protected from manipulation. These normative regulations are also intended to safeguard the integrity of the electoral process. Ensuring the correctness of social communication and the accuracy of information about candidates is fundamental to enabling voters to make informed and appropriate decisions based on truthful and objective information.

In conclusion, in light of the standards applicable in a democratic state governed by the rule of law, it is the duty of the legislature to establish legal mechanisms and institutions that, on one hand, promote free political debate and ensure full access to information relevant to electoral decisions, and, on the other hand, guarantee that the information disseminated is reliable and truthful. Within this context, the electoral debate primarily serves the purpose of protecting the truth.

**II.** After these preliminary – though necessary – remarks, let us return to the circumstances surrounding the organization of the debate in Końskie and the role played by public television in this matter.

On April 9, 2025, Rafał Trzaskowski, the candidate of Platforma Obywatelska – a party forming part of the governing coalition – publicly challenged his principal rival for the office of President of the Republic of Poland, Karol Nawrocki, a civic candidate supported by the Prawo i Sprawiedliwość party, to a debate. According to Trzaskowski's proposal, the debate was to take place two days later, on April 11, 2025, in Końskie. Immediately following this announcement, Telewizja Polska S.A., which is in liquidation, volunteered to organize the event and provide its media coverage, announcing that the "2025 Pre-Election Debate" would be held on April 11, 2025. In a public statement, it declared its readiness "to produce the television signal wave for the 'Pre-Election Debate' in Końskie with the participation of the candidates for the office

of President: Karol Nawrocki and Rafał Trzaskowski." Concurrently, public television reached a swift agreement with private broadcasters TVN and Polsat, who also intended to broadcast the debate. A further joint statement was issued confirming that "TVP S.A., TVN24, and Polsat News are prepared to carry out the broadcast and make the TV signal available free of charge to other interested media outlets."

Karol Nawrocki's campaign team initially agreed to the proposal but made his participation contingent on allowing two other private broadcasters – Telewizja Republika and wPolsce24 – to participate in the debate as well. However, this condition was not accepted by Rafał Trzaskowski's campaign team. Negotiations held at the headquarters of Telewizja Polska S.A. in liquidation failed to produce any concrete agreement. While representatives of TVN and Polsat were present, representatives from Telewizja Republika and wPolsce24 were not permitted to attend. Given this state of affairs, Telewizja Republika decided to organize its own debate on April 11, 2025, also in the market square in Końskie, albeit at an earlier time.

Simultaneously, the very concept of organizing a one-on-one debate by Telewizja Polska S.A. in liquidation, featuring only Karol Nawrocki and Rafał Trzaskowski, immediately provoked strong criticism from other candidates running for the office of President of the Republic of Poland. One of these candidates, Szymon Hołownia, Marshal of the Sejm, expressed his objections bluntly, stating to journalists that: "It cannot be the case that a representative of the ruling party hand-picks someone to a 'duel' and the public media rushes to organize it." In a statement published on social media, he further wrote: "TVP's organization of a debate between selected candidates before the first round is an absolute scandal and a violation of democratic procedures."

At the same time, on April 10, 2025, the head of Szymon Hołownia's electoral staff sent a letter to the president of Telewizja Polska S.A. in liquidation, asserting that: "Organizing a debate exclusively for selected presidential candidates constitutes a blatant violation of Article 127(1) of the Constitution of the Republic of Poland and Article 287 of the Electoral Code, which guarantee that presidential elections are equal and that all candidates must be treated equally." The letter demanded that the management of public television comply with the law, refrain from violating electoral rules, and extend invitations to all other registered candidates to participate in the debate.

On the same day, Telewizja Polska S.A. in liquidation presented the official rules for the "Pre-Election Debate 2025," scheduled for April 11, 2025, at 8:00 p.m. in Końskie, between Karol Nawrocki and Rafał Trzaskowski. The debate was to be moderated by three journalists, one each from Telewizja Polska S.A. in liquidation, TVN, and Polsat. In response, Karol Nawrocki's campaign team, while emphasizing their willingness to participate, reiterated their demand that journalists from Telewizja Republika and wPolsce24 also be allowed to moderate the debate. They unequivocally stated that the debate, as proposed by public television in cooperation with TVN and Polsat, did not meet their

approval. A statement posted on social media succinctly indicated: "We want a fair play debate."

The situation outlined above gave rise to numerous concerns in the public discourse regarding the organization and financing of the debate. Questions were publicly raised about who bore the costs associated with renting the venue, providing technical support such as sound and lighting, transporting and installing equipment, and covering the labor costs of individuals involved in the production. Most importantly, questions arose about the legal basis authorizing a public broadcaster such as Telewizja Polska S.A. in liquidation to organize a debate seemingly for the benefit of one presidential candidate – in this case, Rafał Trzaskowski. These questions were not without merit – under the normative framework of the Electoral Code, an election campaign may be conducted solely by electoral committees. A legal entity such as public television does not constitute such a committee and, therefore, does not have the legal right to expend public funds on activities promoting a particular candidate or to support any candidate in any manner during the campaign.

In short, significant doubts were raised concerning the legality of the actions undertaken by Telewizja Polska S.A. in liquidation, particularly in light of compliance with the Electoral Code, the sub-statutory ordinance of the National Broadcasting Council of July 6, 2011, on the detailed rules and procedures for conducting debates by Telewizja Polska Spółka Akcyjna (Journal of Laws of 2011, No. 146, item 878, as amended), and the Act on Radio and Television Broadcasting of December 29, 1992 (Journal of Laws of 2022, item 1722). The latter act imposes a duty on public television to maintain neutrality, fulfill its public mission, and provide programming characterized by pluralism, impartiality, and balance.

The confusion generated in the media, social, and political spheres prompted a response from public television, which abruptly began to distance itself from its earlier declarations that it was the organizer of the debate proposed to Karol Nawrocki by Rafał Trzaskowski. In a letter dated April 11, 2025, addressed to Szymon Hołownia's campaign team, the General Director of Telewizja Polska S.A. in liquidation stated that "public television is neither the initiator nor the host of the debate, nor does it have any influence on the number of participants." This statement failed to dispel the doubts; on the contrary, it exacerbated them. Szymon Hołownia responded tersely: "A bizarre answer from TVP. If not public television, then who is organizing this debate? Trzaskowski's staff?" Another candidate, Adrian Zandberg, announced his intention to file a criminal complaint against both Telewizja Polska S.A. in liquidation and Rafał Trzaskowski's campaign team. When asked whether he would participate in the planned debate if invited, he emphatically stated: "I am running for the office of president in the Republic, not for the office of a clown in a circus. What some candidates are doing today, especially those more desperate from the ruling coalition, who are losing support and desperately trying to reverse that trend, is, in my view, simply embarrassing

for the Polish state." He further declared that he participates "in all debates organized in accordance with the law," adding: "On Monday there is a debate organized on civilized, normal principles on TV Republika, in which I intend to participate. As far as I know, there will also be a debate in May organized by all commercial TV stations, which will comply with Polish electoral law, and in this I also intend to take part. But I will not participate in a rigged spectacle behind the garages." Other candidates running for President of the Republic were similarly critical.

On the following day – April 11, 2025 – from the early morning hours, the situation continued to evolve rapidly. First, Szymon Hołownia posted a statement on social media announcing that he was going to Końskie for the debate, despite not having been invited. "The situation has changed," he wrote. "I will not allow half of Poland to be excluded from the elections. The outcome is to be decided by the people, not by candidates and TV stations over the phone. Public television has a duty to defend the principles of free and fair elections. I am going to Końskie to appear in the debate." In another statement, he declared: "I have decided that I cannot watch this calmly (...) I expect TVP to withdraw from acting as Prime Minister Donald Tusk's call-in television. This cannot continue." Following Hołownia's declaration, other candidates – also formally uninvited – announced their intention to go to Końskie. Krzysztof Stanowski posted: "There is no consent on my part for public television to interfere in democratic elections. I demand access on equal terms with other candidates. Końskie, see you there." Essentially, they were putting the event organizers in a position where they would be forced to allow them to participate in the debate. Only Adrian Zandberg and Sławomir Mentzen declined to join the spontaneous effort. Mentzen stated: "I have meetings today with voters in Ustrzyki Dolne, Lesko, Brzozów, and Krosno. I am not going to cancel them or mislead the people waiting there by going to Końskie to try to enter a debate to which I wasn't invited."

Largely as a result of these developments, and the pressure exerted by independent media outlets such as Telewizja Republika and wPolsce24 – which organized their own debate in Końskie that same day with the participation of nearly all the candidates – a sudden change occurred in the late afternoon of April 11. Exactly 100 minutes before the scheduled debate organized by Telewizja Polska S.A. in liquidation together with private broadcasters TVN and Polsat, Rafał Trzaskowski issued a public invitation via social media at 6:20 p.m., inviting all candidates to participate in the debate. This last-minute invitation was met with further criticism from several candidates. Sławomir Mentzen commented bluntly: "Are you serious? You're inviting me at 6:20 p.m. for an event starting at 8:00 p.m.? Should I teleport there?" He added: "I want to engage in discussions under normal conditions, at a predetermined time, without being asked at the last minute to participate in a debate to which I was not initially invited." Adrian Zandberg likewise dismissed the invitation, describing the situation as a "circus, clownishness, embarrassment."

Meanwhile, Anna Maria Żukowska assessed Trzaskowski's last-minute invitation critically, stating: "When the fire got too hot, he decided to back out in reverse."

Ultimately, out of 13 registered candidates, 11 participated in the debate, and its proceedings were broadcast across all major television networks. Nevertheless, the event did not proceed without disruptions. For example, members of Karol Nawrocki's election staff, including his spokesperson, encountered difficulties entering the venue where the debate was held. This was not the only incident that occurred outside the sports hall. Security personnel used physical force to prevent a journalist from Telewizja Republika from entering the building, thereby obstructing the exercise of his rights under the press law.

Despite the debate ultimately being held with the participation of the majority of registered candidates, it did not resolve the ongoing public debate regarding the role of public television in organizing the event, nor did it dispel doubts as to whether its actions were compliant with electoral law. During the debate itself, the moderator announced at the outset that the debate had been organized by Rafał Trzaskowski's election committee. In the following week, Telewizja Polska S.A. in liquidation issued a statement clarifying that "all costs related to the preparation of the debate, including the production and broadcast of the television signal, are borne by the organizer of this event, and the only cost incurred by TVP is the remuneration of the presenter and the producer." However, this statement failed to clarify the broader issues surrounding the debate's organization and financing.

The question of how the event was financed continued to generate significant controversy, particularly given the lack of transparency in this regard. As a consequence, Krzysztof Bosak, one of the leaders of the Konfederacja coalition, called for law enforcement authorities to investigate the matter. Meanwhile, members of the Prawo i Sprawiedliwość party, following a parliamentary inspection of Telewizja Polska, filed a notice with the prosecutor's office alleging a reasonable suspicion that a crime had been committed by Telewizja Polska S.A. in liquidation. Specifically, they alleged that the broadcaster had conferred an unlawful non-monetary financial benefit on an election committee, contrary to statutory provisions, and that Rafał Trzaskowski's election committee had unlawfully accepted such a benefit on its behalf.

Similarly, the Chairman of the National Broadcasting Council requested that the Chairman of the National Electoral Commission examine whether the debate held on April 11, 2025, in Końskie was organized in a manner consistent with the applicable provisions of electoral law. Following this, the spokesperson for the National Electoral Office announced that the National Electoral Commission would be able to comprehensively address the financial issues related to the debate only after reviewing the financial report submitted by Rafał Trzaskowski's electoral committee concerning the presidential campaign. Meanwhile, representatives of Trzaskowski's electoral staff

stated – via media outlets – that the committee had covered all costs associated with organizing the debate in question.

**III.** In light of the circumstances outlined above, the broadcast aired by Telewizja Polska S.A. in liquidation on April 11, 2025, must be assessed through the lens of an electoral debate. Consequently, it should be unequivocally concluded that the legal framework presented earlier in this study was fully applicable to this event. In particular, this includes the key provision of Article 120 of the Electoral Code and the Ordinance of the National Broadcasting Council of July 6, 2011, on the detailed rules and procedures for conducting debates by Telewizja Polska Spółka Akcyjna (Journal of Laws 2011, No. 146, item 878, as amended), issued pursuant to the statutory delegation contained in that provision. At the same time – and based on the established facts regarding the manner of organization, the format of the debate, and the degree of involvement by public television – it is reasonable to conclude that the debate violated three specific provisions of the National Broadcasting Council's ordinance of July 6, 2011. First, § 5(1) was violated, as the principle of guaranteeing equal conditions for all candidates to participate in the debate was breached, excluding several registered candidates for the office of President of the Republic of Poland. Second, there was a violation of § 5(4), due to the failure to inform all candidates of the date and topics of the debate at least 48 hours before the broadcast. Third, the norms of § 3(3) were violated because the debate was aired on a date inconsistent with the regulation, which specifies that debates should be broadcast during the last two weeks preceding election day.

In assessing the legality of the event held in Końskie on April 11, 2025, one must also consider the normative regulations contained in Articles 116–122 of the Electoral Code. These provisions establish an exhaustive list of permissible forms through which an election campaign may be conducted in the programs of radio and television broadcasters. According to these rules, such activities may take the form of either an electoral debate – which Telewizja Polska S.A. is obliged to organize – or electoral agitation through paid or unpaid election broadcasts.

Even if one were to assume, as public television later claimed in its statements, that the material aired from the event in Końskie on April 11, 2025, did not constitute a debate within the meaning of Article 120 of the Electoral Code, it would necessarily have to be classified as a form of electoral agitation under the relevant election law provisions. The Electoral Code does not provide for any other forms of broadcaster involvement in the electoral campaign. In such a situation, however, this would result in a violation by Rafał Trzaskowski's electoral committee, which disseminated the material, of the obligation set forth in Article 109 § 2 of the Electoral Code. According to this provision, electoral materials must bear a clear designation identifying the electoral committee from which they originate. The meaning of this regula-

tion is explicit and requires no interpretive effort. Electoral committees are legally obliged to clearly label any election materials they produce with their registered name or abbreviation. The legal definition of "election materials" is found in Article 109 § 1 of the Electoral Code, stipulating that such materials encompasses any publicized and recorded communication originating from an electoral committee and relating to the elections, i.e., leaflets, brochures, books, posters, spots, interviews, as well as films and broadcasts. Failure to include such a clear designation on election materials constitutes an offense under Article 496 of the Electoral Code. According to this provision, anyone who, in connection with an election, fails to include in election materials a clear indication of the electoral committee from which they originate, is subject to a fine. This is a common, formal offense, committed by omission, prosecuted ex officio, for which a fine ranging from PLN 20 to PLN 5,000 may be imposed (*arg. ex.* Article 24 § 1 of the Electoral Code).

Moreover, in the analyzed situation, it is the electoral committee that should bear the costs of the broadcast event pursuant to the rules set forth in Article 119 of the Electoral Code. In other words, if the event of April 11, 2025, was fully organized by the electoral staff of Rafał Trzaskowski, then it was likewise this electoral committee that disseminated the material from the event and was therefore obliged to label it as election material originating from the electoral committee of Rafał Trzaskowski. Because it was this committee that produced the material, undertook its preparation, and ultimately determined its format, the obligation to mark it as election material rested squarely with that committee. This conclusion follows not only from the aforementioned statements by the authorities of public television but also from the declaration made at the outset by the co-host of the debate – a journalist of Telewizja Polska S.A. in liquidation – who stated: "The organizer of the debate is the electoral staff of presidential candidate Rafał Trzaskowski, and Telewizja Polska, TVN24, and Polsat News undertook to carry out and produce this debate," as well as from the statements made by Rafał Trzaskowski's electoral staff itself. Thus, it follows that the broadcast material did not originate from public television as its own content but rather should be classified as election material. Consequently, under Article 109 § 2 of the Electoral Code, Rafał Trzaskowski's electoral committee was under a legal obligation to clearly mark this electoral material as originating from it. The debate broadcast, including on Telewizja Polska S.A. in liquidation, lacked such labeling, which constitutes a clear breach of the aforementioned provisions of the Electoral Code.

Moreover, accepting that the event in Końskie on April 11, 2025, constituted an electoral broadcast by Rafał Trzaskowski's electoral committee – in a format that was admittedly unusual and peculiar, yet functionally a "debate" – leads to a certain paradox. If one considers the normative regulation contained in Article 116a § 2 of the Electoral Code, it is inescapable that the election law was violated in this instance as well. This provision unequivocally stipulates that electoral broadcasts of one electoral committee may not con-

tain content that constitutes electoral agitation on behalf of another electoral committee or its candidates. Therefore, if the event in Końskie on April 11, 2025, was not a "debate" within the meaning of Article 120 of the Electoral Code but instead constituted an "electoral broadcast" of Rafał Trzaskowski's electoral committee, then, during nearly three hours of its broadcast, content constituting electoral agitation on behalf of the other ten electoral committees of registered candidates for the office of President of the Republic of Poland was repeatedly presented.

With respect to the financing of the analyzed event, without prejudging the issue – which, as indicated, will ultimately be resolved by the National Electoral Commission following its examination of the financial report of Rafał Trzaskowski's electoral committee – two issues merit particular attention in this context.

First, if, contrary to the declared statements, these costs were in fact borne by public television, then, contrary to the provisions of Article 117 of the Electoral Code, there occurred a free dissemination of an electoral broadcast. It is worth recalling that under this normative regulation, the right to free dissemination of electoral broadcasts on the channels of public radio and television broadcasters – that is, at the broadcasters' expense – is granted only from the 15th day before election day until the end of the election campaign.

Second, this would not be the only violation of electoral law. Indeed, if public television incurred any expenses in connection with the production and broadcast of election material prepared by the electoral committee, this would constitute impermissible financing of the electoral campaign. According to Article 132 § 4 and § 5 of the Electoral Code, electoral committees are prohibited from accepting financial contributions and non-monetary benefits from legal entities.

However, regardless of these considerations, it cannot be overlooked that – even if Telewizja Polska S.A. in liquidation received payment from Rafał Trzaskowski's electoral committee for the production of the debate – this circumstance does not alter the fundamental issue that it should not have acted in this manner. The involvement of public television in the electoral campaign of one party runs counter to its statutory obligation to remain an objective medium. Moreover, it must be emphasized that public television, through its actions, failed to respect the norms enshrined in Article 21(1) of the Act on Broadcasting of December 29, 1992 (Journal of Laws 2022, item 1722). Under this provision, public television is obliged to pursue its public mission by offering programming characterized by pluralism, impartiality, and balance. The involvement of public television in the campaign activities of one of the candidates for the office of President of the Republic of Poland – namely Rafał Trzaskowski – by, among other things, making available the resources of Telewizja Polska S.A. in liquidation to organize a debate proposed by the electoral staff of the Platforma Obywatelska candidate, can reasonably be assessed as a violation of these statutory principles.

It is also pertinent to note that the National Broadcasting Council's analysis of the election campaign conducted prior to the first round of the presidential elections revealed breaches of the principles of impartiality, pluralism, and balance in the presentation of the campaign and the candidates. The monitoring unequivocally showed that the Platforma Obywatelska candidate, Rafał Trzaskowski, was portrayed most often in a positive light, whereas Karol Nawrocki, the civic candidate supported by Prawo i Sprawiedliwość, was presented almost exclusively in a critical and negative context.

These findings were also underscored by the Office for Democratic Institutions and Human Rights (ODIHR) in two consecutive reports. In the first report, entitled *Poland, Presidential Election, First Round, 18 May 2025: Statement of Preliminary Findings and Conclusions*, the ODIHR highlighted that – quoting *in extenso* – "The management of public media, Telewizja Polska (TVP), Polskie Radio, and the Polish Press Agency (PAP), was replaced shortly after the change of government in December 2023,80 through a process that departed from legally required procedures."

Elaborating further, the report noted:

> In December 2023, following a resolution of the Sejm urging the restoration of the "constitutional order and impartiality of public media" due to the alleged political control of the previous government, the Minister of Culture dismissed the management of the three public media, bypassing the National Media Council, which has the authority to do so. On 18 January 2024, the Constitutional Tribunal ruled that using commercial law to implement changes in the management of public media or to liquidate them is unconstitutional; however, the decision was not published in the Official Gazette by the current government in order to become legally binding, due to the disputed composition of the Tribunal.

As a mere *obiter dictum*, it should be noted that the last statement by ODIHR is erroneous and stems from an insufficient understanding of the Polish legal order. Under Article 190(1) and (3) of the Polish Constitution, judgments of the Constitutional Tribunal have universally binding force and are final, entering into force on the day they are pronounced in open court. The subsequent publication of a ruling is purely technical in nature. It constitutes – in essence – a formal means of making the ruling publicly accessible. As a result – and contrary to the provisions of the highest legal act in the Polish hierarchy of sources of law, namely the Constitution – the government has ignored the final ruling of the Constitutional Tribunal, and this state of affairs persists to this day.

Returning to the first ODIHR report, it also noted that:

> The subsequent suspension of public media funding [which was a consequence of the forcible and illegal takeover of public media – author's note] by the media regulator and the President coincided with the public media being put into a state of liquidation, in order to allow for direct ad hoc government

> funding. This, combined with the insufficient safeguards against political interference in editorial decisions and funding allocation mechanisms, undermined their editorial independence and financial sustainability.

Equally significant – in the context of public television's duties and the manner in which they were performed – were the conclusions of ODIHR's second report, entitled *Republic of Poland – Presidential Election, Second Round, 1 June 2025*. It emphasized that:

> Although public TVP1 and TVP-Info [in liquidation – author's note] dedicated comparable amounts of prime-time news coverage to both candidates, they engaged in partisan reporting despite their public service duties, mainly covering Mr. Nawrocki in a neutral or negative manner.

Equally critical observations concerning public television were made in a report prepared by Fundacja Instytut Bezpieczeństwa Narodowego. That document indicated that "the course of the campaign indicates a lack of equality. Noticeably, candidates affiliated with the government were able to count on support from public institutions and resources available to the government. This glaringly applied to the promotion and support of Rafał Trzaskowski," who "had the support of the government and public media," which took the form, in particular, of using the resources of Telewizja Polska S.A. in liquidation for campaign activities in favor of Civic Coalition candidate Rafał Trzaskowski, while at the same time undertaking actions against Karol Nawrocki.

To conclude, it is worth quoting a telling opinion published in *Press* magazine, which, politically speaking, is associated with the left. The statement aptly summarizes the role, level, and degree of involvement of Telewizja Polska S.A. in liquidation during the electoral campaign. The author, in an article reflecting on the course and outcome of the presidential election, succinctly but pointedly observed: "The presidential election was lost not only by Rafał Trzaskowski, but also by TVP, TVN and Onet, which wanted to win it for him."

**Łukasz Piebiak**
*(Doctor of Legal Sciences, former Deputy Minister of Justice, President of the Prawnicy dla Polski Association, judge of the District Court for the Capital City of Warsaw)*

# Illicit Foreign Financing of Coordinated Hate Campaigns on Social Media Against Opposition Candidates

Beginning on April 10, 2025, political advertisements began appearing on Facebook from previously unknown profiles titled Wiesz Jak Nie Jest [You Know How It's Not] and Stół dla Dorosłych [Table for Adults]. Some of these ads, designed to resemble conversations with ordinary citizens, criticized presidential candidates Karol Nawrocki and Sławomir Mentzen, while others praised Rafał Trzaskowski.

The matter of illegal financing of political ads on Facebook during this year's presidential campaign came to broader public attention following a statement issued by NASK (*Naukowa i Akademicka Sieć Komputerowa* – Scientific and Academic Computer Network, which is a State Research Institute tasked with protecting electoral processes and information security) on May 15, 2025. In its communiqué, NASK reported a possible attempt to interfere in the election campaign. The institute identified political advertisements on Facebook which, according to its statement, could have been financed from abroad. NASK further noted that in the week preceding May 14, the accounts in question had spent more on political content than any registered electoral committee (https://nask.pl/aktualnosci/mozliwa-proba-ingerencji-w-kampanie-wyborcza).

According to data from Facebook itself, advertisements published on these two profiles cost their anonymous administrators approximately PLN 420,000. "In the last week alone, it amounted to over PLN 230,000 – more than any of the legitimate electoral committees spent," stated NASK. Allegedly following NASK's intervention, these accounts were blocked. However, Meta (the owner of the Facebook platform) subsequently denied this version of events. In response to inquiries from investigative journalists, Meta clarified that NASK had neither blocked the pages nor initiated any blocking. Instead, the paid campaign periods for these ads had simply concluded. Furthermore, the Wirtualna Polska portal received confirmation from Meta that the administrator of the Wiesz Jak Nie Jest and Stół Dorosłych pages was located in Poland – not abroad – and that no evidence of foreign interference had been found. Thus, while NASK initially pointed to possible involvement of hostile

foreign actors, it ultimately emerged that activists from a well-known Polish foundation and their business partners were behind the operation. NASK's Disinformation Analysis Center, tasked with analyzing online disinformation, therefore misled the public by spreading serious disinformation itself – purportedly in the name of combating foreign interference, but effectively interfering in the elections. Journalists from Wirtualna Polska discovered that the organization Akcja Demokracja (Action Democracy) – led by an individual affiliated with Koalicja Obywatelska (assistant to an MP representing the main ruling party) – was involved in the campaign. Akcja Demokracja provides communication and technology services and operates a donation-collection system. The foundation's board admitted that one of its employees had assisted a foreign partner in finding individuals willing to appear in video recordings, which were falsely presented as neutral, civic "pro-turnout" content (https://wiadomosci.wp.pl/tu-powinny-byc-dymisje-komentarze-po-ustaleniach-wirtualnej-polski-7156933143321120a).

In 2023, the revenues of Akcja Demokracja amounted to PLN 4.3 million. The largest portion of these revenues came from a category in its financial statements listed as "Donations from individuals received through PayU, PayPal, Stripe, Facebook," totaling PLN 1.4 million. Nearly PLN 2 million originated from various grants, the majority funded by foreign organizations. The organization is responsible for numerous media initiatives, many of which have been directed against the current President of Poland, Andrzej Duda, and the Zjednoczona Prawica government.

On May 9, 2025, NASK published a photograph of a meeting held as part of the Parasol Wyborczy (Election Umbrella) campaign. Participants included Deputy Prime Minister and Minister of Digital Affairs Krzysztof Gawkowski, alongside experts and journalists. Among those discussing secure elections was Jakub Kocjan, the president of Akcja Demokracja. Kocjan is also the recipient of the first edition of the Tadeusz Mazowiecki Prize, awarded in 2020 by the Mayor of the Capital City of Warsaw, Rafał Trzaskowski (Koalicja Obywatelska's candidate in the presidential election), who publicly praised Kocjan "for his pro-democracy and anti-fascist activities, and in particular for his active defense of judicial independence." Kocjan has also participated in rallies organized by the politically active Iustitia association of judges, images of which were circulated on the X platform (https://niezalezna.pl/polska/kto-stoi-za-hejterskimi-reklamami-w-sieci-szef-fundacji-pojawil-sie-niedawno-na-imprezie-nask/543561). This association, too, has received funding from foreign foundations (https://prawicowyinternet.pl/zagraniczne-finansowanie-polskich-sedziow-i-jego-rola-w-obaleniu-konserwatywnego-rzadu-w-2023-roku/).

A publicist for Wirtualna Polska reported that Jakub Kocjan was indirectly involved in anti-campaigning against Donald Trump during the 2024 U.S. presidential election. From a post on X by journalist Wojciech Mucha, it appears that Kocjan advocated supporting Kamala Harris, stating:

> She will face an extremely dangerous duo – convicted pro-Russian criminal Donald Trump and his newly announced running mate, JD Vance. Vance is a fundamentalist pushing for a ban on abortion even in cases of rape, urging women to stay in violent relationships, and saying outright that he is completely uninterested in the fate of Ukrainian men and women (https://tvrepublika.pl/Polityka/Kocjan-ktorego-nie-zna-Trzaskowski-robil-to-juz-wczesniej/188949).

Investigative journalists determined that the foreign partner who had commissioned the Facebook spots in Poland turned out to be Estratos Digital GmbH, based in Vienna – formerly known as Datadat. Estratos is led by two Hungarians: Ádám Ficsor (who served as Minister for Special Services in the left-wing Gordon Bajnai government of 2009–2010, i.e., before the Viktor Orbán era) and Viktor Szigetvári. Estratos' majority shareholder is Higher Ground Labs Fund III LP, a fund connected to the U.S. Democratic Party. In Hungary, Estratos has faced allegations of illegal processing of personal data and concealing the sources of campaign financing (https://businessinsider.com.pl/polityka/reklamy-wyborcze-finansowane-z-zagranicy-popieraly-rafala-trzaskowskiego/55c6dv6).

The ruling party's (Koalicja Obywatelska) ties to the campaign promoting controversial spots are evidenced by facts revealed by the Demagog.org.pl portal. Between May 6–14, the Wiesz Jak Nie Jest profile promoted a spot that criticized Karol Nawrocki for his acquaintance with "Wielki Bu." A week earlier, on April 28, an almost identical spot was shared in quick succession on social media by a number of KO politicians. Prior to April 28, this spot had not appeared online, either on Facebook, Instagram, X, or TikTok. This suggests that KO politicians had access to it directly from the spot's creators (https://echopolski.pl/demagog-ujawnia-trzaskowski-promowal-nielegalna-kampanie/).

Immediately after the elections, observers from the OSCE (Organization for Security and Cooperation in Europe) expressed reservations about the conduct of the elections in their report, mentioning, among other things, the actions of Akcja Demokracja, which paid for 600 digital billboards and published three online ads, including on Meta and Google platforms. (https://wpolityce.pl/polityka/731413-raport-obwe-ws-wyborow-miazdzacy-dla-rzadu-i-nask).

As a result of a notice filed by the Prawo i Sprawiedliwość party, the prosecutor's office opened an investigation into the use of funds derived from benefits related to the commission of a criminal act, which were allegedly used to produce and distribute election campaign ads on Facebook during the election for the President of the Republic of Poland (https://www.pap.pl/aktualnosci/rzecznik-pk-jest-sledztwo-ws-finansowania-kampanii-prezydenckiej-z-nielegalnych-srodkow).

Opposition politicians, however, accuse Koalicja Obywatelska of also violating Articles 132 § 4 and 5 of the Electoral Code, since the funds of the

electoral committee of a candidate for President of the Republic of Poland can come only from contributions made by Polish citizens with permanent residence in the Republic of Poland, and electoral committees cannot accept such material benefits as election spots, especially when these do not bear the logo of the committee.

It is worth noting that the National Electoral Commission, in its post-election statement, also asked the Internal Security Agency to answer several questions regarding doubts about the financing of the election campaign of the candidate of the largest ruling party, Rafał Trzaskowski. To date, however, no response has been made public (https://wpolsce24.tv/polska/abw-milczy-ws-pisma-pkw-dotyczacego-trzaskowskiego,36779).

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

# The NASK Case – Question Marks

## 1. What is NASK?

By the Ordinance of the Council of Ministers of June 7, 2017, Naukowa i Akademicka Sieć Komputerowa (Scientific and Academic Computer Network) in Warsaw, referred to as "NASK," was granted the status of a state research institute. According to the ordinance, the purpose of NASK's activities is, in particular, to conduct scientific research and development work in telecommunications, data communications, information technology, cyber security, the functioning of the Polish Internet domain registry, and the information society, and to implement the results of this work and research.

According to the aforementioned ordinance, among NASK's tasks that are particularly important for the planning and implementation of state policy – whose performance is necessary to ensure public safety, the development of education, and the improvement of the quality of life of citizens – is, in particular, the provision of cyber security to public entities within the scope commissioned and indicated by the supervising minister. In its activities, NASK is supervised by the Minister of Digitization.

## 2. Unlawful interference in the process of electing the President of the Republic of Poland in 2025, according to NASK's information provided to the public

According to NASK's statement on the attempted interference in the presidential election campaign, published at www.nask.pl on May 15, 2025, NASK's Disinformation Analysis Center identified political ads on the Facebook platform displayed in Poland that may have been financed from abroad. It was noted that in situations involving disinformation threats and suspicions of possible campaign financing from abroad, NASK forwards such cases to the relevant services. In view of the fact that the scale and scope of the activities carried out by entities broadcasting untagged political ads "began to raise doubts," NASK informed the Internal Security Agency about them. It noted that the questioned political ads were not signed by any election committee. NASK also called on the owner of the Facebook platform, Meta, to halt the broadcast of 135 political ads. The findings that led NASK to conclude that foreign entities were involved in the activities under investigation were handed over

to the Internal Security Agency. Approximately 10,000 accounts alleged to be involved in disinformation actions were also reported.

It should be noted that according to the provision of Article 132 § 4 of the Act of January 5, 2011 – the Electoral Code (consolidated text: Journal of Laws of 2025, item 365), the funds of the electoral committee of a candidate for President of the Republic of Poland may come only from contributions of Polish citizens with permanent residence in the Republic of Poland, from the electoral funds of political parties, and from bank loans taken for election purposes. According to the provision of Article 506 § 6 of the Electoral Code, whoever gives an electoral committee of an organization or an electoral committee of voters – or accepts on behalf of these committees – a financial benefit from a source other than a Polish citizen with permanent residence on the territory of the Republic of Poland, shall be punished by a fine from PLN 1,000 to PLN 100,000.

It is important to note that the cited NASK statement of May 15, 2025, does not include any information regarding the specific entities involved in unlawful interference in the process of electing the President of the Republic of Poland, nor the possible beneficiaries of these actions.

In an interview titled "Dyrektor NASK: afera z reklamami atakującymi konkurentów Rafała Trzaskowskiego to może być prowokacja" [NASK director: scandal with ads attacking Rafał Trzaskowski's competitors may be a provocation], given on May 16, 2025, to the daily newspaper *Rzeczpospolita*, the director of the institution, Radosław Nielek, confirmed in general terms the NASK's position communicated to the public in the announcement of May 15, 2025, without specifying the factual premises for this position.

### 3. Journalistic investigation – indignation of public opinion

On May 15, 2025, the Wirtualna Polska portal published an article entitled "Ujawniamy. Ingerencja w wybory, spoty bez autora i Akcja Demokracja" [We reveal. Interference in elections, spots without an author and Akcja Demokracja]. It put forward the thesis that the political ads published online promoting presidential candidate Rafał Trzaskowski – and attacking his competitors Karol Nawrocki and Sławomir Mentzen – were orchestrated by employees and volunteers of the Akcja Demokracja foundation, whose president until recently was an assistant to a Platforma Obywatelska deputy. The issue concerns a series of political ads published by profiles on the Facebook platform titled Wiesz Jak Nie Jest ("You Know How It's Not") and Stół ~~dla~~ Dorosłych ("Table ~~for~~ Adults"), whose administrator remains unknown. The related expenses exceeded those incurred by the electoral committees of both Rafał Trzaskowski and Karol Nawrocki. Three individuals featured in the ads confirmed to journalists that they were recruited to participate in this venture by people connected with the Akcja Demokracja foundation. The foundation's management admitted to reporters that an employee of the foundation had assisted

its foreign partner in finding people willing to participate in the recordings. A statement from the foundation's management, quoted by the journalists, said: "We did a courtesy for the company with which we regularly cooperate, and that was the end of our role." According to the journalists' findings, the president of the Akcja Demokracja foundation, Jakub Kocjan, had met a few days earlier with Deputy Prime Minister and Minister of Digitization Krzysztof Gawkowski to discuss "the safe conduct of the elections." Until recently, Kocjan was an assistant to a Koalicja Obywatelska deputy and had received an award from Warsaw Mayor Rafał Trzaskowski in 2020. Information obtained by journalists from Meta, the company that owns the Facebook platform, indicates that ads published through the Wiesz Jak Nie Jest and Stół dla Dorosłych profiles cost their anonymous administrator about PLN 420,000 – including over PLN 230,000 in just the week preceding the publication by Wirtualna Polska – which is more than the expenses of any of the legitimate election committees.

The journalists concluded that persons connected with the Akcja Demokracja foundation were involved in running the political advertising campaign in question. The actions of these individuals were presented to journalists as a "courtesy" to a company that regularly collaborates with the foundation. That company is the Vienna-based Estratos GmbH, headed by two Hungarians. Estratos provides the Akcja Demokracja foundation with technological services and communications consulting. The authors of the text on the Wirtualna Polska portal specified that this foreign company specializes in digital political marketing and campaigns, with a particular focus on online fundraising. The company's activities also include "supporting progressive political initiatives, social movements, NGOs, and civic campaigns." Estratos offers digital tools to engage supporters, analyze data, and run online election campaigns. It was highlighted that the majority shareholder of Estratos is Higher Ground Labs Fund III LP, affiliated with the US Democratic Party.

Regarding the leadership of the Akcja Demokracja foundation, it was pointed out that its president, Jakub Kocjan, has long been associated with Koalicja Obywatelska. Until March 2025, he served as an assistant to KO deputy Iwona Karolewska. He is also the first recipient of the Tadeusz Mazowiecki Prize of the Mayor of Warsaw, awarded by Rafał Trzaskowski in 2020. The award was given to Jakub Kocjan for his "pro-democracy and anti-fascist activities, and in particular for his active defense of judicial independence." In 2022, Kocjan was recommended by KO MP Michał Szczerba to attend the "School of Political Leaders." During the presidential campaign, Kocjan did not conceal his criticism of candidate Karol Nawrocki. Journalists from the Wirtualna Polska portal also pointed out that, according to information obtained from Meta, the owner of the Facebook platform, an administrator associated with the Wiesz Jak Nie Jest and Stół dla Dorosłych profiles confirmed his identity and is located in Poland.

## 4. An undisclosed NASK report on the financing of election advertisements during the presidential campaign

As referenced above, this report – according to the statement of Konfederacja MP Grzegorz Płaczek, published on the X platform on July 10, 2025 – allegedly indicates the involvement of external actors and foreign intelligence services in the Polish presidential campaign. Citing the document's classified status, MP Płaczek called for the declassification of the report to inform the public of "the facts concerning foreign financing of the election campaign in Poland and the names of the key actors involved." After reviewing the 300-page document, MP Płaczek characterized its classified status as "detrimental to public debate and transparency in public life."

## 5. Summary

While the findings of the journalistic investigation require rigorous verification to confirm or disprove the presence of foreign interference in Poland's electoral process, the matter has long been part of public discourse. This is due to the substantial likelihood of unlawful influence on the democratic order safeguarded by the Constitution of the Republic of Poland and relevant legislation – specifically the Electoral Code, which is designed to prevent the influence of foreign powers and interests on Polish electoral campaigns. Citizens of the Republic of Poland have an unequivocal right to be informed about both the mechanisms of unlawful interference with their electoral will and the individuals or entities employing illicit methods to undermine the democratic system. A precondition for a meaningful public debate on this matter is the release of the NASK report, as cited by MP Płaczek. This is a matter of fundamental significance for the protection of Poland's constitutional order. As a democratic and sovereign state, the Republic of Poland is obliged to establish and preserve institutions capable of resisting external attempts to subvert its constitutional framework. Withholding critical information from the public concerning such interference risks undermining public trust in the foundational constitutional principle that the Republic of Poland is the common good of all its citizens.

**Anna Gąsior-Majchrowska**
*(Judge of the Circuit Court in Piotrków Trybunalski)*

# Coordinated Media-Political Attack on Presidential Candidate Karol Nawrocki: Limits of the Law and Abuse of Freedom of Speech in the 2025 Election Campaign

## 1. Introduction

The 2025 presidential election in the Republic of Poland occurred in a context marked by extreme political and media polarization, heightened ideological conflict, entrenched social divisions, and the effective failure of state institutions to safeguard democratic standards of public discourse. A key symptom of this dysfunction was the evident lack of institutional guarantees ensuring the neutrality of public media.

One of the most significant – and simultaneously most controversial – features of the campaign was an unprecedented smear campaign targeting presidential candidate Karol Nawrocki. Disseminated through traditional media, digital platforms, and social media, the campaign relied on defamatory content, manipulative messaging, and demonstrably false insinuations. Multiple indicators suggest that these actions were coordinated and deliberate, with the clear objective of undermining the moral and political legitimacy of the candidate.

Karol Nawrocki is a Polish historian, politician, and civic activist, holding a doctorate in the humanities. From 2017 to 2021, he served as director of the Museum of the Second World War in Gdańsk and, since 2021, as president of the Institute of National Remembrance (*Instytut Pamięci Narodowej*). Nawrocki represents a distinctly patriotic ideological orientation, consistently emphasizing conservative values, national sovereignty, and a politics grounded in historical memory. Although not formally affiliated with any existing party bloc, his candidacy enjoyed strong support from center-right and independence-oriented constituencies. His public service record – particularly his tenure at the Institute of National Remembrance and his outspoken defense of Polish historical interests in international forums – rendered him both a highly recognizable figure among patriotic circles and a frequent target of attacks from liberal opinion leaders.

Against this backdrop, the emergence of a multi-layered and apparently orchestrated defamation campaign, executed across a range of communication channels, is especially troubling. The campaign included the circulation

of unsubstantiated and often absurd allegations: that Nawrocki was implicated in pimping, that he owned real estate with unclear legal status, and that he maintained connections with individuals linked to the criminal underworld. Although these accusations were unverified and frequently grotesque, their format and widespread dissemination suggest an intentional effort to defame, potentially meeting the legal thresholds for slander and violation of personal rights under Polish law.

Equally notable is the amplification of these narratives by prominent figures affiliated with the ruling coalition, including the leader of Platforma Obywatelska Donald Tusk. This raises serious concerns about the possible coordination between political actors and media outlets, suggesting not merely an opportunistic use of freedom of speech, but a possible breach of the constitutional principle of equal electoral opportunity.

The purpose of this chapter is to reconstruct and analyze the mechanics of this discrediting campaign in light of Polish law and to assess its compatibility with constitutional and international standards governing democratic elections, freedom of expression, and the protection of personal rights. Particular attention is paid to whether these actions amounted to an effort to exclude a legitimate candidate from the public sphere through the systematic abuse of mass communication tools.

## 2. The Structure of the Delegitimization Campaign and the Mechanisms of Discrediting

Reconstruction of the campaign's progression reveals a deliberate strategy of publicizing disinformation, synchronized with key moments in the electoral and media calendar.

The disinformation and discrediting campaign targeting Karol Nawrocki unfolded in multiple stages. Its structure indicates deliberate and coordinated actions involving media outlets, government institutions, and law enforcement agencies. The narrative undermining the candidate's reputation followed a model of cascade amplification, wherein successive stages served to test, reinforce, and ultimately legitimize the defamatory content.

The initial phase involved social media platforms and fringe websites, where unverified claims were circulated alleging Nawrocki's association with criminal networks and the misuse of public resources. These initial messages appeared to function as probes to gauge public and political reaction.

Subsequently, the allegations were picked up by the *Gazeta Wyborcza* daily, which accused Nawrocki of unlawfully occupying apartments belonging to the Museum of the Second World War during his tenure as director. These claims lacked any substantiating official documentation but nonetheless prompted prosecutorial involvement. The prosecutor's office issued a public communiqué referencing "exceeding powers by public officials," without identifying any specific individuals as responsible.

On February 24, 2025, following preliminary verification, the District Prosecutor's Office in Gdańsk initiated a formal investigation into suspected criminal conduct by public officials – specifically, directors of the Museum of the Second World War in Gdańsk – related to alleged abuses occurring between October 18, 2017, and June 2024. The investigation concerns allegations that the museum's rooms and apartments were made available in a manner inconsistent with the internal regulations established by Order No. 50/2017 of October 18, 2017, and Order No. 16/2020 of May 25, 2020. These orders govern the allocation of institutional accommodations to museum staff. According to the prosecutor's office, such actions may have resulted in harm to the public interest and were potentially committed for financial gain. The case was classified under Article 231 §1 and §2 of the Polish Penal Code, in conjunction with Article 12 §1. Article 231 addresses the abuse of power by a public official, with §2 increasing the penalty where the act causes significant harm or is committed for personal gain. The offence carries a penalty of one to ten years' imprisonment. The pre-trial proceedings were assigned to the Anti-Corruption Division of the Provincial Police Headquarters in Gdańsk. It is important to note that public disclosure of the initiation of the investigation occurred at the peak of the presidential campaign. Given the political context, this timing suggests a possible instrumentalization of criminal law mechanisms to shape public perception and damage the electoral prospects of a prominent candidate.

During the 2025 presidential campaign, a central element in the media campaign targeting Karol Nawrocki was the renewed focus on a real estate transaction involving him and his wife. The property in question was a 28.5 square meter studio apartment located on Zakopiańska Street in Gdańsk, purchased from Jerzy Ż. In 2012, Nawrocki, his wife, and Jerzy Ż. entered into a preliminary sales agreement formalized by notarial deed. This agreement stipulated that the sale would be executed in 2017 at a price of PLN 120,000 and contained a clause stating that the amount had already been paid to Jerzy Ż. In 2017, the final sale agreement, also certified by a notarial deed, was concluded. Although the transaction occurred years earlier and complied fully with applicable legal requirements, the sudden media revival of the matter in May 2025 was clearly not coincidental. Rather, it formed part of a calculated discrediting strategy, triggered by Nawrocki's high-profile visit to the United States. On May 1, 2025, he met with members of the U.S. Congress and officials at the White House, followed by a meeting with former President Donald Trump.

This visit received broad coverage in both Polish and international media and carried unmistakable political symbolism. Nawrocki was publicly positioned as a candidate opposed to the liberal-left governing coalition, actively seeking support from conservative, patriotic, and Eurorealist environments. It was the first major international event of his campaign, with the potential to significantly enhance his standing among voters aligned with those ideological values.

Within days of his return, on May 6, 2025, Nawrocki appeared on Bogdan Rymanowski's television program, where he addressed the 2012 notarial deed and acknowledged that the PLN 120,000 "was not paid on that date." This statement was immediately taken out of context and weaponized by media outlets to generate a scandal. The clear aim was not to clarify the legal circumstances of the transaction but to undermine the candidate's credibility by casting doubt on his integrity. In fact, the transaction was lawful. The Council of the Gdańsk Notary Chamber conducted a review of the documentation and interviewed the notaries involved, concluding unequivocally that there were no procedural violations. The Council further noted that responsibility for the accuracy of statements within a notarial deed rests with the parties involved, and that notaries lack any legal authority to verify the truthfulness of such declarations. Nevertheless, this clarification failed to counterbalance the impact of the emotionally charged and insinuation-laden media coverage. The timing of the Council's communiqué – issued on May 30, 2025, just hours before the statutory campaign silence began at 00:00 on Saturday, May 31 – further diminished its capacity to correct public misperceptions. The media narrative surrounding the apartment case exhibited classic traits of information manipulation. It involved the deliberate extraction of facts from their temporal and legal context, the omission of formal legal assessments, and the propagation of evidence-free suggestions couched in evaluative language. Moreover, this narrative was intentionally conflated with unrelated allegations concerning Nawrocki's directorship at the Museum of the Second World War, despite the differing legal foundations and timeframes of those matters. These tactics formed part of a broader media strategy aimed not at informing the electorate but at generating moral indignation. The use of "half-truths" – factual fragments stripped of context, legal interpretation, and proportionality – constitutes a recognized disinformation technique. The repetition of such claims at strategic intervals – prior to the May 12 televised debate, ahead of the first voting round on May 18, and during the week before the second round – contributed to the construction of a "depraved candidate" narrative, supplanting the conditions necessary for substantive democratic debate.

The actions undertaken against presidential candidate Karol Nawrocki during the 2025 campaign constituted a violation of fundamental legal and ethical standards governing democratic elections. Under the case law of the European Court of Human Rights, neither state authorities nor political actors may foster conditions of informational inequality that mislead the electorate about the integrity or intentions of a candidate. The Strasbourg Court has repeatedly emphasized that manipulation of public information during an electoral campaign – particularly when perpetrated or amplified by state-dependent or publicly funded media – violates not only Article 10 of the European Convention on Human Rights (freedom of expression) but also the principles of electoral equality. In the Polish constitutional framework, such actions infringe several key provisions. Article 127(1) of the Constitution

guarantees equal access to the office of President of the Republic. Article 32 prohibits discrimination, while Article 54(1), read in conjunction with Article 14, ensures freedom of expression and media pluralism.

All available evidence points to the existence of an organized effort to delegitimize Karol Nawrocki following his visit to the United States. This operation focused on undermining his personal and political credibility through emotionally charged messaging and symbolic language. The campaign was systemic in nature, involving various components of the media, certain public institutions, and law enforcement agencies.

Compounding the issue, Prime Minister Donald Tusk publicly announced plans to introduce legal measures aimed at "protecting seniors from fraudsters," while the National Prosecutor's Office declared that it was conducting "urgent analyses" regarding the unlawful seizure of elderly individuals' property. These statements were unconnected to the facts at hand and served solely to sustain media pressure and reinforce the narrative framework surrounding the accusations, despite the absence of a legal foundation.

Local authorities also participated in the campaign. The Gdańsk municipal government filed notifications with the prosecutor's office and promoted the apartment case through media channels, further multiplying the sources of public accusation.

The campaign reached a critical point when state institutions were directly engaged in substantiating the accusations. The prosecutor's office initiated proceedings without clear legal grounds and issued public statements that went beyond the neutral role expected of prosecutorial bodies during an election period. Concurrently, the Supreme Audit Office (*Najwyższa Izba Kontroli*), despite not having completed its audit, released preliminary findings concerning the Institute of National Remembrance. These findings, immediately seized upon by the media, were weaponized against Nawrocki. Notably, they concerned the use of institutional apartments – an issue distinct from, yet deliberately conflated with, the earlier allegations involving the Museum of the Second World War – to create a continuous and consistent narrative of alleged property misuse.

Additionally, reports emerged indicating that the Internal Security Agency (*Agencja Bezpieczeństwa Wewnętrznego*) had initiated a security review. Information pertaining to this classified investigation was leaked to the media and publicly commented upon by government officials. This raises serious concerns about unauthorized access to, and political exploitation of, confidential state materials.

It must also be noted that in the second half of May 2025 – particularly during the intensified period between the first and second rounds of the presidential election – a wave of media publications emerged suggesting that Karol Nawrocki had ties to individuals engaged in criminal activity, including an alleged "pimp" operating an escort agency. A key component of this narrative centered on Nawrocki's brief employment in 2007 at the Grand Hotel in

Sopot. At the time, while a university student studying history, Nawrocki took casual work as a security guard – a physically demanding but menial position with no managerial or operational responsibilities. Despite the passage of more than two decades, this incidental employment was weaponized during the 2025 election campaign as part of one of the most aggressive attempts to undermine the candidate's integrity.

The narrative was activated on May 26, 2025 – just days before the second round of voting – and was based on anonymous statements from alleged former hotel staff who claimed that Nawrocki had been involved in facilitating illicit services for guests. Media reports implied that he contacted clients, acted as an intermediary in procuring women, and even transported them to the hotel. In fact, as available records indicate, during Nawrocki's period of employment, there were no criminal investigations or proceedings involving the Grand Hotel. Years later, third parties – who had no connection to the hotel's security staff at the time – became subjects of pimping investigations. No legal documents, court decisions, or findings link Karol Nawrocki to any unlawful conduct.

The timing of these publications – strategically released at the peak of the campaign – raises serious concerns about their intent and coordination. The media offensive was deliberately constructed around a narrative of alleged "associations with pimps." This coverage juxtaposed unrelated facts: a casual student job in 2007, later criminal investigations involving unrelated individuals, and the current presidential campaign. This manipulation relied heavily on morally charged terminology – such as "prostitutes," "pimping mafias," and "trafficking in women" – expressly designed to provoke emotional reactions and damage Nawrocki's reputation by association.

Such conduct constitutes a clear instance of information manipulation. According to established case law of the European Court of Human Rights, these practices not only violate an individual's right to protection of reputation but also erode the foundations of a democratic state governed by the rule of law. The Court has consistently affirmed that the presumption of innocence and the right to reputation cannot be disregarded for the sake of political advantage, particularly when state-influenced media or privileged access to public records are employed without procedural safeguards or balance. What is especially troubling in this case is the passive or even implicit complicity of public authorities. The reproduction of these narratives by government officials – or their tacit endorsement through silence – further undermines democratic norms.

In the context of the 2025 presidential campaign, the attack on Karol Nawrocki through the narrative related to the Grand Hotel was not only an attempt to publicly judge the candidate without any legal basis, but also a deliberate effort to provoke moral outrage and discredit him in the eyes of voters. It exemplifies the far-reaching instrumentalization of past events and insinuations as tools of political attack – carried out without accountability

but with severe consequences for the integrity of the electoral process. The campaign employed visual strategies such as memes and manipulated photographs. These memetic techniques facilitated the mass dissemination of defamatory content while avoiding explicit language that might give rise to legal liability. The climax occurred when the narrative entered official political discourse. Representatives of the ruling coalition, including Prime Minister Donald Tusk, publicly made remarks about the candidate's allegedly "unclear housing transactions" and "problematic social relations." These comments were immediately picked up by the media and amplified by propaganda accounts on social media. The timing and consistency of the language, graphic motifs, and hashtags suggest the likelihood of a coordinated effort involving media and political actors. Editorial boards of certain media outlets, including liberal-progressive portals (publishing reports based on "anonymous sources"), opinion magazines, and selected television stations – especially after the leadership change in public media – actively participated in this campaign. These outlets demonstrated a clear lack of balance in their election coverage. Simultaneously, anonymous accounts on platforms such as X and Facebook intensified their activity, spreading narratives from the press and producing their own, often more radical, memes and accusations. Politicians of Koalicja Obywatelska reinforced these media narratives through allusive comments, thereby lending them political credibility. Particularly troubling was the repetition of identical messaging – first by the media, then by political figures – indicating the possibility of a planned media-political operation.

The collected evidence demonstrates that the campaign to discredit Karol Nawrocki was organized, multi-layered, and institutionally reinforced. Media reports were rapidly followed by prosecutorial measures, announcements from the services, audits by the Supreme Audit Office, or political statements from members of the ruling coalition. Repetition of unverified claims by state authorities – such as the prime minister, ministers, or prosecutors – served to lend plausibility to the accusations. The allegations were also interconnected and repeated cyclically: for example, issues concerning apartments at the Museum of the Second World War and the Institute of National Remembrance were used to maintain the broader narrative of Nawrocki's alleged abuse of public office. These actions were taken solely against the opposition candidate, without any comparable measures directed at the candidate supported by the ruling coalition, in violation of the principle of equal opportunity for candidates set forth in Article 127 of the Polish Constitution and Article 287 of the Electoral Code. Karol Nawrocki thus became the target of a coordinated defamation campaign involving the media – both public and private – law enforcement and intelligence services, oversight institutions such as the Supreme Audit Office, local government authorities including the city of Gdańsk, the parliament, and politicians affiliated with the ruling coalition.

These actions exceeded the boundaries of legitimate political competition and exhibited clear signs of state instrumentalization aimed at eliminating a

political opponent. Analysis of media content and communications issued by state institutions reveals that the discrediting campaign against Karol Nawrocki was not only synchronized in timing but also structured around a coherent and self-reinforcing narrative. The objective of this narrative was not to present verified facts or legal findings, but to prompt public condemnation through emotional stimuli, insinuations, and associations with criminality, social pathology, and abuse of public trust.

A recurring component of this construction was the portrayal of Karol Nawrocki as someone who unlawfully benefited from public resources, notably in connection with apartments owned by the Museum of the Second World War and the Institute of National Remembrance. This portrayal was framed through the repeated use of suggestive terminology such as "abuse of office," "personal gain," and "illegal use," despite the absence of any confirmed legal wrongdoing or judicial decision establishing culpability. This narrative was reinforced by the actions of oversight and investigative bodies, which initiated proceedings and publicized them in a manner that lent credibility to media-originated accusations.

One of the most aggressive aspects of the campaign was the framing of the so-called "Nawrocki's studio apartment" case. A legitimate private transaction involving an elderly individual was recast as exploitative conduct, invoking emotionally charged labels such as "extortion," "defrauding seniors," and "housing scam" – language deliberately chosen to evoke images associated with criminal activity. In reality, neither the notarial deed nor the statements issued by the Gdańsk Notary Chamber supported any interpretation suggesting illegality or misconduct.

By elevating the issue to the national level and recommending the introduction of legislation purportedly to protect elderly citizens from property fraud, Prime Minister Donald Tusk amplified and politicized the narrative. His actions served to embed Karol Nawrocki into a symbolic framework of criminal and morally reprehensible behavior, notwithstanding the lack of legal foundation.

The campaign further relied on a technique of associative distortion – subtly linking disparate cases involving the Institute of National Remembrance, the Museum of the Second World War, and alleged private use of institutional apartments into a single overarching narrative. Though these cases concerned separate institutions, governed by distinct regulations and occurring at different times, they were presented as if they comprised a unified pattern of systemic abuse. This constructed narrative positioned Nawrocki as the embodiment of an alleged "rot" within elite historical institutions, and as a representative figure of a broader pathology.

Available evidence demonstrates that the campaign to discredit Karol Nawrocki functioned as a coordinated communication operation, carried out jointly by entities across the media landscape, public administration, and the ruling political camp. The media – both commercial and public – took the lead

in initiating and shaping the narrative, employing suggestive language and staging successive waves of accusations.

These media messages were swiftly reinforced by state institutions, particularly the prosecutor's office, the Supreme Audit Office, and the security services. By initiating investigations, releasing public statements, or supplying information to selected outlets, these institutions conferred a degree of official legitimacy on unproven allegations. Politicians – both within the executive and legislative branches – then entered the discourse, validating and intensifying the narrative with value-laden, accusatory rhetoric.

The campaign was marked by clear temporal coordination. Each notable increase in support for Karol Nawrocki, or each high-profile campaign event – such as his participation in a televised debate or his visit to the United States and meeting with President Donald Trump – was followed by the emergence of new allegations, leaks, or institutional interventions. This recurring pattern, based on the timely release of ostensibly new information, maintained continuous media pressure and sustained negative associations with the opposition candidate. The design and execution of these activities exhibited the characteristics of a deliberate communication strategy. Its objective was not to inform the public or clarify contested issues, but to systematically erode the credibility and reputation of a specific presidential candidate through a synchronized deployment of media narratives, institutional procedures, and political messaging.

Media and political communications concerning Karol Nawrocki made extensive use of emotionally charged language. These were not terms derived from factual findings or legal categories, but rhetorical tools employed to construct a negative image designed to provoke disgust, moral outrage, and a perception of threat. The objective was not to present the circumstances impartially or assess actions based on verified facts and legal standards, but rather to incite public condemnation and attribute morally degrading characteristics to the candidate – even in the absence of any formal proceedings or proof of wrongdoing. Taken as a whole, these actions clearly indicate that the disinformation campaign targeting Karol Nawrocki was neither incidental nor spontaneous, but rather a systematic effort aimed at permanently undermining his credibility in the 2025 presidential election. The narrative constructed around Nawrocki was not intended to inform the public, but to evoke associations with abuse of power, dishonesty, and the exploitation of vulnerable individuals. From a legal perspective, such actions constituted a violation of core principles of democratic electoral competition. The principle of equality among candidates, as guaranteed by Article 127 of the Polish Constitution and Article 287 of the Electoral Code, was directly infringed by the use of public institutions to damage the reputation of one electoral contender. Moreover, the principle of impartiality of public authorities, protected under Article 32 of the Polish Constitution, was disregarded, while the manipulation of public information for campaign purposes violated constitutionally pro-

tected freedom of expression (Article 54(1) of the Polish Constitution), when considered in conjunction with Article 10 of the European Convention on Human Rights. Such practices erode public trust, distort democratic debate, and threaten the integrity of the electoral process.

In a democratic state governed by the rule of law, elections must be conducted fairly, transparently, and in accordance with the principle of equal treatment for all candidates. This is not merely a matter of ethical standards or political culture, but a requirement grounded in the Polish Constitution, domestic legislation, and international legal norms, including jurisprudence developed by the Court of Justice of the European Union and the European Court of Human Rights.

In the 2025 presidential election, however, public institutions – including the prosecutor's office, the Supreme Audit Office, state-owned media, and elements of the security services – were plainly engaged in actions directly targeting a single candidate: Karol Nawrocki. Such conduct must be assessed as incompatible with fundamental principles of the rule of law.

Article 127 of the Polish Constitution stipulates that presidential elections must be equal, meaning that all candidates should enjoy the same conditions for conducting their campaigns. Yet actions taken by state organs – such as the publicizing of media accusations by the prosecutor's office, parallel interventions by the Supreme Audit Office, and information leaks originating from the security services – seriously disrupted this equality. According to numerous legal experts and electoral monitoring bodies, this interference shaped public perception of the candidate and may have weakened his position at critical moments in the campaign.

Article 32 of the Polish Constitution provides that all citizens are entitled to equal treatment by public authorities. This includes the obligation of state institutions – among them law enforcement bodies, regulatory agencies, intelligence services, and public media – to maintain strict neutrality with regard to electoral candidates. In practice, however, these institutions were employed in a manner that advantaged the campaign of a single candidate – namely, the one supported by the parliamentary majority and the executive. Examples include the premature publication of a Supreme Audit Office post-audit statement (following an audit of the Institute of National Remembrance's financial operations for the period 2022–2025, which lasted nearly five months), without proper consideration of the explanations submitted by the Institute concerning the legality of its decisions and expenditures incurred under the presidency of Karol Nawrocki. Additional examples include the extensive publicity given by state media to Nawrocki's private and financial affairs, as well as the initiation of special parliamentary committee sessions – all of which were selective and disproportionate. No comparable actions were undertaken with respect to other candidates.

The European Court of Human Rights has consistently held that a state must not use its institutional authority to support one candidate over another

in an election. In the context of the 2025 presidential campaign, the actions of the Polish authorities violated these standards. Information originating from public institutions was selectively presented and disseminated by media outlets in a manner designed to construct a negative image of Karol Nawrocki. The result resembled a smear campaign orchestrated by elements of the state apparatus against an opposition candidate. Both the Polish Constitution (Article 54) and the European Convention on Human Rights (Article 10) guarantee citizens the right to access information and to participate freely in public debate. However, for these rights to be meaningful, the information presented – especially by public media and state institutions – must be accurate, complete, and free from manipulation.

In the case of Karol Nawrocki, this standard was not met. Instead, the campaign employed one-sided narratives, systematically omitted the candidate's responses or reduced them to caricatures. This practice constituted a form of disinformation, whose primary function was to provoke emotional rejection rather than foster informed and rational public discourse. The 2025 campaign exposed serious institutional failures and abuses. Rather than fulfilling their constitutional role as neutral guarantors of legality and democratic order, state bodies – including the prosecutor's office, the Supreme Audit Office, public broadcasters, and security agencies – actively contributed to a process that compromised electoral equality and undermined the freedom of choice. From a legal standpoint, such actions stand in direct violation of the Polish Constitution, the Electoral Code, and binding international obligations. The scope, methods, and timing of these actions exhibit the characteristics of an instrumentalization of state structures for political purposes. Such conduct is incompatible with the principles of democratic governance and the rule of law.

## 3. Summary

In light of the analysis of the 2025 presidential campaign, the actions undertaken against candidate Karol Nawrocki must be understood not merely as manifestations of political rivalry or sharp rhetoric, but as an instance of systemic abuse of the state apparatus for campaign-related purposes. The state, which under the Constitution is obligated to remain neutral in matters of political competition and to safeguard the equality of citizens before the law, was engaged in operations aimed at discrediting one of the candidates through administrative, investigative, and communicative means.

In the case examined, public entities – including law enforcement agencies, oversight institutions, security services, and segments of the government administration – not only failed to maintain neutrality but actively participated in efforts that had an exclusionary and destabilizing effect on an opposition candidate. These actions significantly impacted the integrity of the democratic process, contributing to a decline in public confidence in

state institutions and in the electoral process as a free and equal expression of political will. The instrumentalization of criminal and regulatory mechanisms – including the initiation of investigations, premature publication of inspection findings, and public statements by state officials and leaders of the ruling majority that implied the candidate's guilt – posed a serious threat to the constitutional framework.

The aforementioned actions undermined the integrity of the presidential election and violated foundational principles of the rule of law. The campaign against Karol Nawrocki was based not on judicially established facts, but on media allegations, inflammatory political statements, and selective leaks, all of which fostered an atmosphere of suspicion and public condemnation. This dynamic was especially evident in the so-called "studio apartment case," which generated intense media coverage despite the absence of formal irregularities and despite the Council of the Notary Chamber confirming the legality of the procedures in question.

These actions amounted to an attempt to subject a candidate to public judgment in advance of any legal adjudication. This form of pressure – particularly when originating from government representatives – not only violates the principle of the presumption of innocence, but may also be construed as exerting improper influence on the independence of the judiciary.

Such practices stand in contradiction to the Constitution of the Republic of Poland and to the international commitments Poland has undertaken as a member of the European Union and the Council of Europe. The case law of both the Court of Justice of the European Union and the European Court of Human Rights makes it unequivocally clear that a state must not use its institutions to favor certain candidates or to interfere in elections through campaigns of defamation.

Accordingly, the state, in its capacity as the organizer of elections, should implement constitutional and legislative safeguards to prevent the recurrence of such abuses. Protection against the misuse of security services, prosecutorial mechanisms, state auditing authorities, or access to personal data must be enhanced through targeted legislation and systemic review of information governance within public institutions during electoral periods. Only a state that is impartial and capable of effective self-restraint can provide citizens with a fair and credible electoral environment.

This report is not merely a documentation of one of the most controversial electoral campaigns in the history of the Republic of Poland. It serves as a warning – a demonstration of how quickly the democratic equilibrium can be disturbed when state institutions abandon neutrality and public debate is overrun by innuendo, leaks, and media-driven verdicts.

Elections must be moments in which citizens make decisions based on accurate information and free debate, not under the pressure of engineered emotions, coordinated smear campaigns, or politically motivated interventions by state entities.

This is therefore not simply the account of one candidate's experience, but a broader cautionary statement. It underscores the need – regardless of political affiliation – to defend the foundational principles of democracy. Without their protection and vigilant enforcement, the credibility of the electoral process and public trust in the rule of law are at serious risk.

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**Wojciech Głowacki**
*(Judge of the Circuit Court in Gliwice)*

# Threats Under the Electoral Code (Certificates of Voting Eligibility)

Pursuant to Article 10 § 1 of the Act of 5 January 2011 – The Electoral Code (consolidated text: Journal of Laws of 2025, item 365; hereinafter referred to as the "Electoral Code"), the right to vote (active suffrage) in the election of the President of the Republic of Poland is held by every Polish citizen who is at least 18 years of age on the day of voting. The following individuals are excluded from the right to vote: 1) persons deprived of public rights by a final court judgment; 2) persons deprived of electoral rights by a final decision of the State Tribunal; 3) persons declared legally incapacitated by a final court decision.

The date of the presidential election was set by the Marshal of the Sejm on January 15, 2025 (Journal of Laws, item 48) for Sunday, May 18, 2025, in accordance with Article 128(2) of the Constitution of the Republic of Poland and Articles 289 § 1 and 290 of the Electoral Code.

Voting was conducted in 32,143 precincts. Of these, 29,815 electoral commissions were appointed in permanent precincts within Poland. An additional 1,812 commissions were established in separate precincts, including: 932 in healthcare institutions, 122 in penal institutions (prisons and detention centers), 41 in external wards of such institutions, 14 in student dormitories and student housing complexes, and 703 in social welfare homes. Furthermore, 511 commissions operated abroad, and 5 were designated for Polish-flagged vessels. The total number of members appointed to the precinct electoral commissions was 266,658, of whom 239,863 represented electoral committees.

As a rule, voters cast their ballots in the permanent precincts corresponding to their registered permanent residence. This also applies to voters who reside permanently in a municipality without having a permanent address in that municipality – they are assigned to a precinct according to the address of permanent residence. However, there are circumstances where, due to work, personal obligations, or travel, a voter may not be present in their designated precinct on election day. In such cases, the voter must obtain a certificate of voting eligibility (*zaświadczenie o prawie do głosowania*), which permits voting at any precinct electoral commission in Poland or abroad.

According to Article 32 of the Electoral Code, a voter who changes their place of residence before election day is entitled to receive, upon application submitted to any municipal office of their choice, a certificate confirming

their right to vote at the place of their current stay. The application must be submitted in writing, in paper form with a handwritten signature, during the period from 44 days to 3 days before election day. The certificate is issued by the mayor (or equivalent) of the municipality to which the application was submitted and must be collected either by the voter or an authorized representative. Once a certificate of voting eligibility is issued, the voter is removed from the electoral register in the municipality of their prior registration.

The voting certificate includes the following information:

1. given name(s);
2. surname;
3. PESEL (Personal Identification Number);
4. address of residence;
5. indication of the specific election in which the voter is entitled to participate;
6. citizenship status, in the case of a European Union citizen who is not a Polish national and is voting in the European Parliament elections.

In the election of the President of the Republic of Poland, a voter who changes their place of residence before the day of the first vote is entitled, upon request, to receive two certificates of the right to vote: one authorizing participation in the first round of voting, and a second authorizing participation in the second round.

A voter who changes their place of residence after the first round and before the second round is entitled, upon request, to receive a certificate of voting eligibility for the second round only.

The Ordinance of the Minister of Internal Affairs and Administration of July 28, 2023, on the templates for applications for inclusion in a voting precinct, removal from the Central Register of Voters, change of voting place, and the template and method for recording certificates of voting eligibility (Journal of Laws of 2023, item 1495), in § 6, specifies the official template for the certificate of voting eligibility and additional conditions for its issuance. These include assigning the certificate a unique number and securing it with a holographic mark. For the presidential election, this holographic mark bears the letters "PRP" and the year of the election, i.e., "PRP2025".

The use of certificates of voting eligibility is governed by Article 51 § 1 of the Electoral Code. Under this provision, only voters entered in the register of voters, their proxies, or voters added to the register in accordance with § 2–4 may vote. According to § 2, the precinct electoral commission must add the following persons to the register on election day:

1. a person presenting a valid certificate of voting eligibility, with the certificate attached to the voter list, provided that the regulations for the given election allow for such a certificate;
2. a person who was erroneously omitted from the list, provided the mayor (or equivalent municipal official) confirms that the omission was due to an administrative error;

3. a person removed from the register of a given voting precinct due to being included in the voter register of a facility such as a healthcare institution, nursing home, penal institution, detention centre, or the external ward of such institutions, provided the person documents having left the facility prior to election day.

Also in force is Resolution No. 165/2025 of the National Electoral Commission of April 23, 2025, on guidelines for precinct electoral commissions regarding tasks and procedures for the preparation and conduct of voting in precincts established in Poland for the election of the President of the Republic of Poland scheduled for 18 May 2025 (*Monitor Polski* 2025, item 418), as amended by Resolution No. 189/2025 of the National Electoral Commission of 8 May 2025 (*Monitor Polski* 2025, item 455). According to its provisions:

Adding voters to the register of voters

45. On election day, in accordance with Article 51 § 2 and 4 of the Electoral Code, the commission shall add to the register of voters, using a supplementary register form, and permit to vote: 1) A person presenting a certificate of voting eligibility. A member of the precinct electoral commission is required to pay particular attention to whether the certificate was issued for the first round of voting scheduled for 18 May 2025. For this purpose, the commission member must verify that the certificate explicitly states that the voter "has the right to vote on May 18, 2025, in the precinct of the place of residence in the election for the President of the Republic of Poland on the day of the first vote." The commission must take into account that the certificate of voting eligibility for both rounds of voting will indicate the election date as May 18, 2025 (the date on which the election was scheduled). Therefore, the distinguishing element between the certificates for the first and the second round of voting will be the respective phrases "on the day of the first round of voting" and "on the day of the second round of voting." The commission is required to collect the certificate from the voter and attach it to the register. In the remarks section, the notation "Certificate 18.05" or "From 18.05" should be entered. Only after this procedure may a ballot be issued. The same process applies to voters who received a certificate with the intention of voting in a different precinct but later decided to vote in their assigned precinct. The commission must also verify that the certificate is an original, bearing a hologram with "PRP 2025." If there is any doubt, the commission must contact the relevant municipal office. Certificates issued by a consul do not bear a hologram. The commission must not issue a ballot to a voter who, on May 18, 2025, presents a certificate of voting eligibility issued for the re-vote, i.e., a certificate indicating that the voter "has the right to vote on May 18, 2025, in the precinct of the place of residence in the election for the President of the Republic of Poland on the day of the second vote."

185. On the day of the second vote (June 1, 2025), voters presenting a certificate of voting eligibility for the second round shall be added to the register based on the certificate. The certificate will state that the voter "has the right to

vote on May 18, 2025, in the precinct of the place of residence in the election for the President of the Republic of Poland on the day of the second vote." In the remarks section of the register, the commission shall enter the notation 'Certificate 01.06' or 'From 01.06.' The commission must pay special attention to ensuring that certificates submitted on that day pertain specifically to the second round of voting. A ballot shall not be issued to a voter who, on June 1, 2025, submits a certificate issued for the first vote – i.e., one indicating the right to vote "on the day of the first vote."

Based on certificates of voting eligibility, 315,503 voters cast ballots in the first round, and 531,446 voters in the second round of the presidential election.

Since the elections to the Sejm and Senate of the Republic of Poland held on 15 October 2023, there have been media reports alleging instances of so-called "electoral tourism," in which voters used certificates of voting eligibility to cast their ballots in selected districts in order to increase the number of votes received by specific electoral committees. This practice allegedly contributed to certain committees gaining additional parliamentary seats. It should be noted that Annex No. 1 to the Electoral Code establishes 49 constituencies for elections to the Sejm, each with an assigned number of deputies to be elected from that constituency. This issue was examined in greater detail in the reasoning of the Supreme Court – Chamber of Extraordinary Control and Public Affairs in its judgment of 9 January 2024 (case no. I NSW 284/23), which included the following thesis: "The institution of the certificate of voting eligibility at the place of residence on election day, as provided for in Article 32 § 1 of the Act of 5 January 2011 – the Electoral Code (Journal of Laws of 2023, item 2408), should be assessed as compromising the requirements of reliability and representativeness that should characterize the electoral process." In contrast, for the election of the President of the Republic of Poland, the entire territory of the country is effectively a single constituency. Although the National Electoral Commission formally divides the country into 49 constituencies for organizational purposes, the vote in both the first and second rounds is cast for the same candidates across all polling stations nationwide. In this context, the use of multiple certificates of voting eligibility raised concerns about the potential for a single individual to vote more than once by unlawfully using duplicated or forged certificates.

In an effort to counter such risks, the Ruch Kontroli Wyborów [Election Control Movement] association launched a website at https://testnr.org/numer/ (currently inactive), which allowed users to verify whether a particular certificate of voting eligibility had already been submitted at another precinct electoral commission, based on the unique certificate number. According to media coverage and statements by several politicians, the platform became known as the "Matecki app," named after MP Dariusz Matecki, although he repeatedly denied being the author of the site. The stated purpose of the verification tool was to track the numbers of certificates, not personal voter data, which is protected under data protection regulations.

However, it should be emphasized that on the day of the second round of the presidential election (1 June 2025), attempts were made to obstruct the verification of certificate of voting eligibility. The Chairperson of Constituency Electoral Commission No. 35 in Gdańsk issued a letter to the chairpersons and deputy chairpersons of precinct electoral commissions within the jurisdiction of that constituency, explicitly prohibiting any verification of the authenticity of certificate of voting eligibility submitted by voters. In response, the National Electoral Commission stated at a press conference that attempts to verify the validity of the certificates – using any lawful and acceptable means – could not be prohibited. At the same time, it was clarified that the website maintained by the Ruch Kontroli Wyborów association was not authorized by the National Electoral Office. Nonetheless, it was stressed that refusal to issue a ballot solely on the basis of such verification was unjustified. Furthermore, the Commission indicated that members of precinct electoral commissions and election observers could not be prevented from recording the numbers of certificates of voting eligibility submitted by voters. Following this clarification, the Deputy Chairperson of the Constituency Electoral Commission in Gdańsk issued a communication to all precinct commissions within the constituency, stating that the verification of certificate numbers using the aforementioned website was not prohibited.

During a session of the Supreme Court's Chamber of Extraordinary Control and Public Affairs held on 1 July 2025, Judge Sylwester Marciniak, Chairman of the National Electoral Commission, reported that during the first round of the election (18 May 2025), only three cases were recorded in which a ballot was refused on the grounds that a vote had allegedly already been cast at another precinct using the same certificate. No such cases were recorded in the second round (1 June 2025). This information was also reflected in the report submitted by the National Electoral Commission pursuant to Article 320 of the Electoral Code, which stated: "The reported cases concerned, in particular, the use of unauthorized software by some members of precinct electoral commissions for informal verification of certificates of voting eligibility. These actions may have led, in some instances, to the unjustified refusal to allow eligible voters holding valid certificates to cast their ballots, which constitutes a violation of the constitutionally protected right to vote."

These circumstances indicate that concerns regarding the impact of certificate verification on the exercise of electoral rights were unjustifiably exaggerated.

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

# Election Protests – The Credibility of Elections as the Foundation of Democracy

The right to vote is not merely one among many civic rights – it is the cornerstone of a democratic state governed by the rule of law. Public confidence in the electoral process does not derive solely from the act of casting a vote. The foundation of democracy lies in the credibility of the entire electoral procedure: from the campaign period, through the organization and conduct of voting, to the announcement of results and the impartial adjudication of any election-related protests.

The right to file an election protest is enshrined in the Constitution of the Republic of Poland. It derives from Articles 2 and 62 of the Constitution and is governed in detail by the Electoral Code. A protest may be lodged within 14 days of the official announcement of the election results, in accordance with Article 321 § 1 of the Electoral Code. Under Article 82 § 1 of the Electoral Code, a protest challenging the validity of an election may be filed in the following circumstances:

- when an electoral offence has occurred – these include the criminal acts listed in Chapter XXXI of the Penal Code (e.g., vote rigging, breach of ballot secrecy, electoral bribery). Crucially, it must be demonstrated that the offence affected the voting process, the determination of voting results, or the final election outcome;
- when a violation of the Electoral Code has taken place – this refers to any significant procedural irregularity (e.g., improper functioning of the electoral commission, failure to meet the required number of commission members, breach of vote-counting procedures) that has influenced the election result.

A procedural irregularity, in and of itself, is insufficient to uphold a protest. It must be shown that the irregularity had a concrete impact on the outcome of the election. As stated in the judgment of the Supreme Court of 22 November 2011, III SW 77/11: "For a protest to be effective, it is necessary not only to demonstrate a violation of the law or the commission of a crime, but also to make it plausible that the violation in question had an actual impact on the outcome of the election." Similarly, the Supreme Court resolution of 19 November 2007, III SW 248/07, emphasized: "The impact of irregularities on the outcome of elections must be assessed concretely and not hypothetically – there must be a causal link between the violation and the outcome of the vote." Mechanisms for controlling the legality of elections are intended to serve the

protection of citizens' rights, not to be used instrumentally for the pursuit of partisan political objectives. However, the 2025 presidential election demonstrated how legal procedures can be held hostage to political strategy.

Following the second round of the presidential election in June 2025, the Supreme Court received more than 54,000 election protests. Of these, 49,598 were identical in content, drafted using a template prepared by attorney Roman Giertych, who also serves as a member of the Sejm. An additional 3,960 protests were submitted based on a template circulated by attorney Michał Wawrykiewicz, a Member of the European Parliament. Both templates were widely disseminated via social media and endorsed by certain MPs who, fully aware of their formal deficiencies, publicly encouraged citizens to submit them.

In many instances, the submissions lacked essential information such as the name, PESEL number, or any specific allegations. Some merely stated, "I support Roman Giertych's protest," or were handwritten on torn pieces of notebook paper. As such, these submissions failed to meet the formal requirements outlined in the Electoral Code.

Despite the unprecedented scale of submissions, the Supreme Court acted with full professionalism and in accordance with established jurisprudence. It applied the standard practice of bundling identical or similar protests, as was done in the 1995 presidential election (when 594,963 protests were filed, including 139,391 concerning a single candidate), and again in 2020 (when 4,085 protests were grouped together).

This bundling ensured procedural economy and compliance with statutory deadlines. All allegations were subject to legal scrutiny, including through requests for opinions from the National Electoral Commission and the Prosecutor General.

As a result, the mass protests – due to their insufficient formal basis – were left without further examination. At the same time, over 400 individual protests were considered on their merits. Eight of these were upheld, confirming that the protest mechanism functions effectively when used in good faith and in compliance with the law. Examples of substantiated protests included:

- irregularities involving certificate of voting eligibility issued for voting outside the place of residence: electoral commissions either incorrectly registered these certificates or failed to deliver election packages, thereby restricting citizens' right to vote;
- errors in the counting of votes: in more than a dozen precincts, the Supreme Court ordered a review of the ballots and confirmed minor irregularities (e.g., in 13 ballots).

Within the statutory 30-day timeframe, the Supreme Court issued a resolution affirming the validity of the election of the President of the Republic.

An election protest is a constitutionally protected right of every citizen. However, it must not be transformed into a tool for media agitation or oppor-

tunistic political spectacle. In this instance, thousands of citizens were drawn – by political figures, including a former Minister of Education – into a performative exercise that undermined the credibility of democratic institutions.

This was not an effort to uncover the truth, but a political operation designed to paralyze the functioning of the state's highest judicial body. These actions distorted the constitutional purpose of the electoral protest mechanism, which is intended to protect individual legal interests, not to express collective dissatisfaction with an electoral outcome.

What is most alarming is the involvement of sitting members of parliament who deliberately used their public office to mislead citizens. Claims that mass protests could invalidate the election were manipulative and deeply damaging to the civic order. This conduct represents a misuse of legal instruments and a fundamental breach of the responsibilities of a parliamentarian, whose oath is to uphold the Constitution, not partisan agendas. Exploiting the institutional authority of the Sejm to sow distrust in the legality of elections undermines public confidence in the rule of law and weakens the credibility of democratic institutions.

The experience of the 2025 presidential election should prompt serious consideration of possible legislative amendments, including:

- the introduction of a symbolic fee for filing an election protest;
- the possibility of imposing procedural costs in cases of manifest abuse of legal mechanisms.

Regardless of whether such legislative changes are implemented, the most critical factor remains civic awareness and the sense of responsibility among political elites.

According to the case law of the European Court of Human Rights interpreting Article 3 of Protocol No. 1 to the European Convention on Human Rights, elections must be free, fair, and transparent, and the state bears a positive obligation to ensure the availability of effective legal remedies in cases of electoral violations.

An election protest must not be reduced to a caricature of legal process. Its purpose is the protection of an individual right – not a platform for mass political agitation.

Democracy is not defined by universal satisfaction with electoral outcomes. Its legitimacy lies in the public's confidence that the process was fair and transparent. Undermining that belief is an assault on the very foundations of democratic governance.

**Łukasz Zawadzki**
*(Judge of the Circuit Court in Opole)*

# The Politics of Negationism, Destruction, and Anarchisation: The Attack on the Supreme Court's Chamber of Extraordinary Control and Public Affairs by Liberal-Left Circles, Including Political Authorities, in the Republic of Poland

The Constitution of the Republic of Poland, as the supreme law of the land, establishes the framework for the separation and balance of powers among the legislative, executive, and judicial branches (Articles 8(1) and 10(1) of the Constitution). Legislative authority is vested in the democratically elected Sejm and Senate; executive authority is exercised by the President of the Republic of Poland and the Council of Ministers; and judicial authority is entrusted to the courts and tribunals (Article 10(2)).

The structure of the judiciary comprises common courts (district courts, circuit courts, and courts of appeal), administrative courts (provincial administrative courts and the Supreme Administrative Court), military courts (garrison military courts and military circuit courts), and the Supreme Court. The tribunal system includes the Constitutional Tribunal, which adjudicates on the conformity of legal acts with the Constitution (Article 188), and the State Tribunal, which determines the constitutional and legal responsibility of the highest public officials (Article 198(1)).

The functions of the Supreme Court are governed by the Act of December 8, 2017, on the Supreme Court (consolidated text: Journal of Laws of 2024, item 622). These functions include, among other things, the adjudication of election protests and the determination of the validity of elections to the Sejm, Senate, and the Presidency of the Republic of Poland, as well as elections to the European Parliament. The Supreme Court also rules on protests against the validity of national referenda and constitutional referenda, and determines their validity (Article 1(3) of the cited Act).

These responsibilities are expressly conferred on one specific chamber of the Supreme Court – the Chamber of Extraordinary Control and Public Affairs – pursuant to Article 26 § 1(2) of the aforementioned Act. This Chamber was established in Polish law upon the entry into force of the Act of December 8, 2017, on the Supreme Court, which became effective on April 3, 2018.

Since its inception, the status of the Chamber of Extraordinary Control and Public Affairs has been continuously challenged – both in political discourse and in judicial fora – by political figures (formerly in opposition, now forming the government), as well as by judicial associations such as Iustitia and Themis, and by certain judges of the Supreme Court, the European Court of Human Rights and the Court of Justice of the European Union. These statements – ranging from journalistic commentary to judicial reasoning – have contributed to ongoing, unsubstantiated assertions regarding the alleged politicization of the National Council of the Judiciary following the amendments to the Act of May 12, 2011, on the National Council of the Judiciary (consolidated text: Journal of Laws of 2024, item 1186).

Pursuant to Article 9a (cf. Article 1(1)) of the Act of December 8, 2017, amending the Act on the National Council of the Judiciary (Journal of Laws of 2018, item 3), introduced into that law on December 8, 2017, the mechanism for selecting the fifteen judicial members of the National Council of the Judiciary was situated within the Sejm, which elects them for a joint four-year term. Meanwhile, judges in the Republic of Poland are appointed by the President of the Republic upon the motion of the National Council of the Judiciary, for an indefinite term, in accordance with Article 179 of the Constitution. This mechanism for electing members of the National Council of the Judiciary has become the basis for certain segments of the legal community to assert allegations of legal defectiveness in all judicial appointments made after the entry into force of the aforementioned Article 9a of the Act of May 12, 2011, on the National Council of the Judiciary (consolidated text: Journal of Laws of 2024, item 1186), including appointments to the Supreme Court's Chamber of Extraordinary Control and Public Affairs. The proponents of such assertions appear undisturbed by the fact that, in its judgment of March 25, 2019 (case no. K 12/18), the Constitutional Tribunal – the sole body within the Polish legal system empowered to issue binding rulings on the constitutionality of statutes (Article 188(1) of the Constitution) – held that Article 9a of the said Act is consistent with Article 187(1)(2) and (4), in conjunction with Articles 2, 10(1), and 173 of the Constitution.

In an interview with *Gazeta Wyborcza* published on December 8, 2022, entitled "Izba do zadań specjalnych. Tak władza okopała się w Sądzie Najwyższym" ["A Chamber for Special Tasks. How the Authorities Entrenched Themselves at the Supreme Court"], Judge Krystian Markiewicz – then President of the Iustitia Association of Polish Judges – stated, among other things:

> According to the resolution of the combined chambers of the Supreme Court and the judgments of the European Court of Human Rights in Strasbourg, individuals appointed to the Chamber of Extraordinary Control and Public Affairs should not issue judgments. And yet they disregard it completely – they knowingly violate the European Convention on Human Rights and the resolution of the combined chambers. Soon, we will find ourselves in a situ-

> ation where the validity of elections will depend on their rulings. No one is as interested as they are in consolidating the current political arrangement, because it ensures their continued tenure.

Similarly, on 28 November 2022 – i.e., during the period when Poland was governed by a conservative parliamentary majority and the Zjednoczona Prawica coalition – the portal onet.pl published an article titled "Ten organ może przesądzić o wynikach wyborów. Panuje wokół niego cisza – Wiadomości" ["This Body May Decide the Outcome of the Elections. Yet Silence Surrounds It – News"], in which the following assertion appeared:

> Iustitia President Krystian Markiewicz points out that the current government possesses seemingly legal tools to retain power even after a potentially lost election. As he notes, a real threat to the freedom and integrity of elections in Poland is the fact that their validity and the adjudication of election protests are currently decided by a single entity – the Chamber of Extraordinary Control and Public Affairs (IKNiSP) of the Supreme Court.

As a side note, it is worth highlighting that Judge Krystian Markiewicz – who had repeatedly questioned the legitimacy of judges appointed under the aforementioned amended version of the Act of May 12, 2011, on the National Council of the Judiciary (consolidated text: Journal of Laws of 2024, item 1186) – subsequently assumed the position of Chair of the Commission for the Codification of the Judicial System and the Public Prosecution following the parliamentary elections of October 15, 2023. This appointment was made pursuant to the Council of Ministers' Decree of March 5, 2024, on the establishment, organization, and procedures of the Commission for the Codification of the System of the Judiciary and the Public Prosecution (Journal of Laws of 2024, item 350).

In turn, the Supreme Court, in a resolution adopted by three combined Chambers – Civil, Criminal, and Labor and Social Security – on January 23, 2020 (ref. no. BSA I-4110-1/20), stated, among other things:

> This means that the Chamber [of Extraordinary Control and Public Affairs], composed entirely of defectively appointed judges, oversees the correctness of judicial appointments – at the request of the likewise defectively constituted National Council of the Judiciary.

In its judgment of November 8, 2021, in the case of *Dolińska-Ficek and Ozimek v. Poland* (applications nos. 49868/19 and 57511/19), the European Court of Human Rights found the judicial appointment procedure involving the restructured National Council of the Judiciary to be incompatible with the requirement of "an independent and impartial tribunal established by law." This finding also extended to the Chamber of Extraordinary Control and Public Affairs of the Supreme Court (see para. 368 of the judgment).

Subsequently, in Case C-718/21, the Court of Justice of the European Union (CJEU), on December 21, 2023, declined to issue a preliminary ruling in response to a reference submitted on October 20, 2021, by the Chamber of Extraordinary Control and Public Affairs of the Supreme Court. The CJEU held the reference inadmissible on the grounds that the referring body did not meet the criteria of a "court or tribunal" within the meaning of Article 267 of the Treaty on the Functioning of the European Union. In its reasoning, the CJEU made favorable reference to the above-cited ECtHR judgment in *Dolińska-Ficek and Ozimek v. Poland*.

In the midst of the presidential election campaign – on April 10, 2025 (a date of symbolic significance for patriotic and conservative circles as the anniversary of the 2010 plane crash near Smolensk that claimed the lives of President Lech Kaczyński and other leading state figures) – Advocate General Dean Spielmann of the Court of Justice of the European Union issued an opinion in Case C-225/22. Responding to a request for a preliminary ruling submitted by a Polish court to which the Supreme Court's Chamber of Extraordinary Control and Public Affairs had referred the case, Advocate General Spielmann opined that a national court is obliged to disregard, or treat as legally non-existent, a ruling of a higher court that does not meet the requirements of a tribunal established by law. In his view, such action is not precluded by the hierarchical structure of the judicial system.

The undermining of the legal status of the Supreme Court's Chamber of Extraordinary Control and Public Affairs has also had ramifications for political life in Poland. On August 29, 2024, the National Electoral Commission rejected the financial report submitted by the Electoral Committee of the conservative Prawo i Sprawiedliwość (PiS) party concerning the parliamentary elections held on October 15, 2023. Although the party won the largest share of the vote in that election, it was unable to form a parliamentary majority and thus relinquished power to a coalition of liberal-left parties. The Commission's decision carried severe financial consequences for the party, including a substantial reduction in both public subsidies and subventions. As a result, the decision was appealed to the Supreme Court – in accordance with Article 26 § 1(2) of the Act of December 8, 2017, on the Supreme Court (consolidated text: Journal of Laws of 2024, item 622) – specifically to the Chamber of Extraordinary Control and Public Affairs.

In a decision dated December 11, 2024, the Supreme Court, in Case No. I NSW 55/24, upheld the complaint lodged by the Prawo i Sprawiedliwość Electoral Committee, finding it to be well-founded. Consequently, on December 30, 2024, the National Electoral Commission adopted Resolution No. 421/2024, in which, in Paragraph 1, it ruled to accept the financial report of the Prawo i Sprawiedliwość Electoral Committee. In Paragraph 2, however, it stated, among other things, that this decision should not be construed as prejudging whether the Chamber of Extraordinary Control and Public Affairs constitutes a court within the meaning of the Constitution of the Republic of

Poland, nor as confirming the effectiveness of the Chamber's ruling of December 11, 2024.

The political intention to deprive the largest opposition party of its sources of funding – and thereby politically marginalize it – is evidenced by activity on Prime Minister Donald Tusk's account on the social media platform X. On December 30, 2025, he posted the following message: "There is no money and there won't be any. To my mind, this much is clear from the PKW's [National Electoral Commission] resolution," despite the unambiguous content of § 1 of the aforementioned resolution. Similarly, Minister of Finance Andrzej Domański, who bears responsibility for implementing the resolution of the National Electoral Commission, announced via X that he had requested an interpretation of the resolution – despite the fact that this action had been preceded by a letter from the Chairman of the National Electoral Commission, dated December 30, 2024 (ref. ZKF.820.2.3.2024), in which the Minister was informed that the legal basis for reducing the subsidy to which the Prawo i Sprawiedliwość party was entitled had ceased to exist.

Following the victory of Karol Nawrocki in the presidential election in Poland (with the second round of voting held on June 1, 2025) – that is, the candidate supported by the opposition Prawo i Sprawiedliwość party – there were unprecedented efforts to question the democratic decision of the electorate. These efforts came not only from political circles aligned with the current parliamentary coalition, but also from members of the judiciary and certain legal academics. One strategy used to deny the legitimacy of Karol Nawrocki's election as President of the Republic was to challenge the constitutional role and institutional status of the Chamber of Extraordinary Control and Public Affairs, which – as outlined above – is the body responsible for adjudicating the validity of elections.

On June 24, 2025, a written declaration began circulating in the media, signed by 28 judges of the Supreme Court, in which they unequivocally asserted – referring, among other things, to the case law of the Court of Justice of the European Union and the European Court of Human Rights – that the Chamber of Extraordinary Control and Public Affairs does not constitute a court. Among the signatories was Judge Włodzimierz Wróbel, who, in a social media post in 2024, had mockingly commented: "The Chamber of Extraordinary Control and Public Affairs of the Supreme Court is like the Bobice Municipality Office" and "The Chamber of Extraordinary Control and Public Affairs bears all the hallmarks of an extraordinary court prohibited by the Constitution," cf. "Włodzimierz Wróbel: Izba Kontroli Nadzwyczajnej i Spraw Publicznych Sądu Najwyższego jak Urząd Gminy w Bobicach – Monitor Konstytucyjny" ["Włodzimierz Wróbel, The Chamber of Extraordinary Control and Public Affairs of the Supreme Court like the Bobice Municipality Office, Monitor Konstytucyjny"].

Also among the signatories of the aforementioned statement was Judge Jarosław Matras, who, in an interview published on the Law.pl portal on Janu-

ary 8, 2024, stated, among other things, that the Chamber in question "should not exist" and "is not a court" (Prawo.pl: "Izba Kontroli nie jest legalnym sądem" [The Control Chamber is not a legitimate court"]). The rhetoric of this position was echoed by five former Presidents of the Constitutional Tribunal: Andrzej Rzepliński, Marek Safjan, Jerzy Stępień, Bohdan Zdziennicki, and Andrzej Zoll. In a written statement dated June 26, 2025, they likewise challenged the authority of the Supreme Court's Chamber of Extraordinary Control and Public Affairs to rule on the validity of the 2025 presidential election (quoted in GazetaPrawna.pl: "Oświadczenie byłych prezesów TK: O wyborze prezydenta muszą orzekać sędziowie, których status nie wywołuje najmniejszych wątpliwości" ["Statement of former Constitutional Tribunal Presidents: The presidential election must be decided by judges whose status raises not the slightest doubt"]):

> According to the Act on the Supreme Court, the body competent to adjudicate the validity of the presidential election is the Chamber of Extraordinary Control and Public Affairs. The case law of both the Court of Justice of the European Union and the European Court of Human Rights regarding the procedure by which this Chamber was constituted has been unequivocal: adjudicating panels of the Supreme Court's Chamber of Extraordinary Control and Public Affairs do not constitute independent and impartial courts previously established by law (cf. CJEU judgment in Case C-718/21; ECtHR judgments in *Dolińska-Ficek and Ozimek v. Poland*, *Wałęsa v. Poland*).

These same conclusions were reiterated in the resolution adopted by the Council of Bench Judges of the Supreme Court on 13 June 2025 (cf. rp.pl: "Ławnicy SN alarmują: Izba Kontroli Nadzwyczajnej nie ma prawa orzekać o ważności wyborów" ["Supreme Court Benchers Alert: Extraordinary Control Chamber has no right to rule on the validity of elections"]). Notably, the Council's chairman, Andrzej Kompa, is known for his political activism, including his participation in protests against the nomination of Przemysław Czarnek as Minister of National Education in the conservative government prior to the October 15, 2023, parliamentary elections (naTemat.pl: "Łódzki wykładowca i KOD organizują protest przeciwko nominacji Czarnka" ["Łódź lecturer and KOD organize protest against Czarnek's nomination"]).

On 21 June 2025, the Themis judges' association published the following statement on its official profile on the X platform: "Reminder. The Supreme Court's Chamber of Extraordinary Control and Public Affairs is not a court! And only a Court can determine the validity of elections!"

Given these circumstances – wherein the constitutional status of the Chamber of Extraordinary Control and Public Affairs is challenged by members of the judiciary, including judges of the common courts (see Case C-225/22), Supreme Court judges, retired Presidents of the Constitutional Tribunal, and international case law (Supreme Court, ECtHR, CJEU) – it is

unsurprising that such arguments and allegations have also been raised by politicians affiliated with the ruling parliamentary majority in Poland. This is due to the fact that the candidate endorsed by them – Rafał Trzaskowski – was defeated in the presidential runoff election held on June 1, 2025. Particular prominence in contesting the election outcome has been given to MP Roman Giertych, who was quoted as follows (rp.pl: "Roman Giertych pyta konstytucjonalistów, czy można odroczyć zaprzysiężenie Karola Nawrockiego" ["Roman Giertych asks constitutionalists whether the swearing-in of Karol Nawrocki can be postponed"]):

> The Extraordinary Control Chamber, which is a sham court – a tumor within the Supreme Court building – denied me access to these documents, handing the ruling to Mrs. (Małgorzata) Manowska (First President of the Supreme Court – ed.). I went to her. She said she would not release these documents.

Roman Giertych – note: an active lawyer – is currently not only a Member of Parliament representing the principal grouping of the governing coalition in power since December 13, 2023, but also serves as head of the so-called "reviewing team," established by the co-governing Koalicja Obywatelska to pursue an aggressive strategy of legal and political accountability targeting the opposition Prawo i Sprawiedliwość party.

The constitutional status of the aforementioned Chamber has also been publicly challenged by Adam Bodnar, the current Minister of Justice and Prosecutor General in the liberal-left government. This position elicited a response from, among others, the First President of the Supreme Court, Małgorzata Manowska (cf. "I prezes SN: wywody Bodnara, że Izba Kontroli Nadzwyczajnej nie jest sądem – hybrydową praktyką dezinformacyjną" ["First President of the Supreme Court: Bodnar's argument that the Extraordinary Control Chamber is not a court – a hybrid disinformation practice"]):

> Among the ministers questioning the legal provisions establishing the Chamber of Extraordinary Control and Public Affairs, Minister of Justice Adam Bodnar stands at the forefront. Contrary to his widely publicized disinformation statements, in practice – whether as Prosecutor General or as Minister of Justice – Adam Bodnar has repeatedly taken procedural positions in cases adjudicated before the Chamber of Extraordinary Control and Public Affairs, noted President Manowska.
>
> She enumerated that in 2024 alone, the Chamber received 64 extraordinary complaints submitted by Adam Bodnar; the National Prosecutor's Office submitted substantive positions in 33 cases concerning protests against the validity of European Parliament elections; and formal positions from the Prosecutor General were received in proceedings related to the validity of elections.
>
> "Moreover, in 2024, prosecutors subordinate to Prosecutor General Adam Bodnar participated in hearings conducted by the Chamber of Extraordinary Control and Public Affairs," added the First President of the Supreme Court.

> "Any claim advanced by a politician serving as Minister of Justice and Prosecutor General that the Chamber of Extraordinary Control and Public Affairs either does not exist or does not constitute a court must therefore be regarded as a form of hybrid disinformation, weakening the Republic of Poland and undermining citizens' trust in state institutions – claims that require an appropriate response from the bodies responsible for state security," President Manowska stressed.

In a similar vein to Roman Giertych and Adam Bodnar, MEP Michał Wawrykiewicz also questioned the legal status of the Chamber following the 2025 presidential election (cf. Wpolityce.pl: "Wawrykiewicz złożył protest wyborczy. Kwestionuje izbę SN" ["Wawrykiewicz filed an election protest. He questions the legitimacy of the Supreme Court chamber"]): "A separate issue is that the Supreme Court building houses the Chamber of Extraordinary Control and Public Affairs, which is not the Supreme Court within the meaning of the Polish Constitution, nor by European standards (...)."

The negationist positions of Roman Giertych, Adam Bodnar and Michał Wawrykiewicz are all the more paradoxical given that the validity of the parliamentary elections held on October 15, 2023 – and the elections to the European Parliament on June 9, 2024 – in which they each obtained mandates as MP, Senator, and MEP respectively, was confirmed by this very same Chamber of Extraordinary Control and Public Affairs of the Supreme Court (cf. resolution of January 1, 2024, ref. I NSW 1237/23 and resolution of September 3, 2024, ref. I NSW 44/24).

This inconsistency came into particularly sharp relief in a situation that revealed what can only be described – charitably – as a lack of logic in Minister of Justice Adam Bodnar's approach to the Chamber of Extraordinary Control and Public Affairs. Namely, on July 1, 2025, a hearing was held before this Chamber in case no. NSW 9779/25 concerning the resolution on the validity of the presidential elections held on May 18 and June 1, 2025. During the hearing, Adam Bodnar was present in the courtroom, and his conduct was widely described in the media as manifestly incoherent (cf. Wpolityce.pl: "Uznaje IKNISP SN czy nie? Bodnar się zamotał. 'Wysoki Sądzie'" ["Does he recognize the Chamber of Extraordinary Control and Public Affairs or not? Bodnar in confusion. 'Your Honor'"]):

> Prosecutor General and Minister of Justice Adam Bodnar participated in the proceedings before the Supreme Court's Chamber of Extraordinary Control and Public Affairs regarding the validity of the presidential election. During the hearing, Bodnar consistently addressed the judges using proper judicial forms such as "Your Honor," while simultaneously disputing the Chamber's legitimacy as a judicial body. In the course of a single appearance, he managed to completely contradict himself.

In response to such attitudes, Judge Maria Szczepaniec – a member of the Chamber of Extraordinary Control and Public Affairs of the Supreme Court and the reporting judge in case no. I NSW 9779/25, considered at the sitting on July 1, 2025 – publicly and directly addressed Adam Bodnar (cf. Gazeta.pl: "Wymiana zdań na posiedzeniu o ważności wyborów. Sędzia do Bodnara: Czuje się pan neosenatorem?" ["Exchange of opinions at the session on the validity of elections. Judge to Bodnar: Do you feel like a neo-senator?"]):

> In the 2023 elections to the Sejm and Senate, you were elected to the Senate. I would like to remind you that the validity of those elections was determined by our Chamber. In that context, I would like to ask: Do you consider yourself to be a defectively elected senator – a so-called "neo-senator"?

The neologism "neo-senator" is, to the Polish public, an unmistakable reference to the pejorative and politically charged term "neo-judge," which lacks any legal grounding. This label is used by certain media outlets supportive of the current governing coalition, as well as by some members of the present parliamentary majority, to refer to judges in Poland – including those of the Chamber of Extraordinary Control and Public Affairs – appointed following procedures that included participation of the National Council of the Judiciary as restructured by the Act of December 8, 2017, amending the Act of May 12, 2011, on the National Council of the Judiciary (Journal of Laws of 2024, item 1186, consolidated text; originally: Journal of Laws of 2018, item 3).

Beyond this rhetorical controversy, the most paradoxical case involves Supreme Court judges Leszek Bosek and Grzegorz Żmij, who – despite themselves serving as members of the Chamber of Extraordinary Control and Public Affairs – have publicly questioned the very legitimacy of the Chamber in which they sit (sic!). This development was reported by msn.com: "Protesty wyborcze pod lupą. Dwaj sędziowie odsunięci od orzekania" ["Election protests under the magnifying glass. Two judges removed from ruling"]):

> Supreme Court spokesman Aleksander Stępkowski addressed the matter in an interview with TVN24, stating that the Court "is determined to adjudicate all election protests and to adopt a resolution on the validity of the presidential election."
> "However, two judges have repeatedly blocked proceedings, preventing the cases from moving forward (...) These judges refuse to adjudicate, asserting that the Chamber should not exist in its current form," Stępkowski explained, adding that Bosek and Żmij should "resign from their positions" if they do not accept the legal framework in which the Chamber of Extraordinary Control and Public Affairs operates.
> In prior months, Judges Bosek and Żmij had pointed out that proceedings before the Chamber should be suspended. Notably, in mid-May 2025 – when the Supreme Court was reviewing the validity of the March Senate by-election in Kraków – both judges submitted dissenting opinions to the resolution. Judge

> Bosek justified his position as follows: "The Supreme Court cannot disregard the jurisprudence of the CJEU and the ECHR, nor its own jurisprudence and that of the Constitutional Tribunal, even in matters that do not contain an EU or international component."

Both judges Leszek Bosek and Grzegorz Żmij also submitted dissenting opinions (*votum separatum*) to the Supreme Court's resolution of July 1, 2025, in case no. I NSW 9779/25, reiterating the same rationale – while notably refraining from questioning the validity of the presidential elections held on May 18 and June 1, 2025, themselves.

Efforts to deny the constitutional and legal status of the Supreme Court's Chamber of Extraordinary Control and Public Affairs do not withstand scrutiny when measured against binding legal norms. As noted at the outset, the Chamber was lawfully established under the Act on the Supreme Court of December 8, 2017 (Journal of Laws of 2024, item 622, consolidated text), which clearly defines its jurisdiction in Articles 26 § 1 *et seq*. The judges serving in the Chamber were appointed in accordance with Article 179 of the Constitution – that is, by the President of the Republic of Poland upon the recommendation of the National Council of the Judiciary, for an indefinite term – and each fulfils the eligibility requirements as set forth in the aforementioned statute, specifically Articles 29 § 1 and 30 § 1 et seq.

As indicated, the negationist stance toward the aforementioned Chamber of the Supreme Court is rooted in unsubstantiated claims concerning the alleged politicization of the National Council of the Judiciary – that is, the constitutional body responsible for submitting motions to the President of the Republic of Poland for judicial appointments (Article 179 of the Constitution). The proponents of these claims, concentrated in the Iustitia and Themis judicial associations, have not hesitated to assume prominent positions of overtly political character following the parliamentary elections of October 15, 2023. For example: Judge Dariusz Mazur, former spokesperson of the Themis association, currently serves as Undersecretary of State at the Ministry of Justice; Judge Krystian Markiewicz, formerly President of the Iustitia association, now chairs the Commission for the Codification of the Judiciary and the Public Prosecution Service – an entity known for drafting legislation that, contrary to the Constitution, removed thousands of Polish judges from office. Notably, since March 26, 2022, Adam Bodnar – Minister of Justice and Prosecutor General – has been an honorary member of the Themis association, and in this very capacity participated, among other things, in the Extraordinary General Assembly of the Themis Judges' Association held on November 23, 2024 (cf. Gov.pl Portal: "Przywracamy elementarny ład w wymiarze sprawiedliwości – Ministerstwo Sprawiedliwości" "We are restoring elementary order in the administration of justice – the of Justice"]).

The alleged politicization of the National Council of the Judiciary is said to stem from the model introduced by the Act of December 8, 2017, amending

the Act on the National Council of the Judiciary (Journal of Laws of 2018, item 3), according to which 15 members of the judicial component of the Council are elected by the Sejm for a joint four-year term. The earlier model – i.e., in force prior to December 8, 2017 – excluded any form of democratic oversight over the Council, entrusting the relevant competences to an oligarchic professional judiciary. Only the above-mentioned Act of December 8, 2017, implemented the constitutional principle of a democratic state governed by the rule of law (Article 2 of the Constitution). Contrary to the distorted narrative advanced by certain judicial and political circles, Article 187(1)(2) of the Constitution does not require that members of the judicial component of the National Council of the Judiciary be elected exclusively by judges from among their own ranks. Moreover, this issue has – at least in legal terms – been definitively resolved by the Constitutional Tribunal's judgment of March 25, 2019, in case ref. K 12/18. In that decision, the Tribunal found that Article 9a of the aforementioned Act is consistent with Article 187(1)(2) and (4), in conjunction with Articles 2, 10(1) and 173 of the Constitution. Of particular note: judgments of the Constitutional Tribunal have universally binding force and are final (Article 190(1) of the Constitution).

Historically, the Constitutional Tribunal has repeatedly found provisions regulating the judicial appointment process to be unconstitutional. Its jurisprudence supports the following conclusions: first, the appointment of judges in Poland is the prerogative of the President of the Republic, and the President's decision is not subject to appeal or review by any authority or in any legal procedure; further, the President is not bound by the National Council of the Judiciary's positive recommendation and may refuse to appoint a person so recommended. Indeed, the President himself has no legal standing to challenge an act of judicial appointment – neither his own nor that of his predecessors. Secondly, there are no legal grounds to question the judicial status of individuals who may have participated in a procedurally defective appointment process, provided that they subsequently satisfied the statutory criteria for judicial office, as defined in constitutional statutes (the Act on the Supreme Court, the Act on the Organization of Common Courts, the Act on the Organization of Administrative Courts) and received a presidential act of appointment under the prerogative. Finally, it is the President alone who assesses whether, at the time of appointment, a given candidate satisfies the statutory – including ethical – requirements for assuming judicial office (notably the criterion of impeccable character). These principles have been reaffirmed in multiple rulings of the Constitutional Tribunal, including: the judgment of October 24, 2007 (ref. SK 7/06), the judgment of November 29, 2007 (ref. SK 43/06), the judgment of May 27, 2008 (ref. SK 57/06), the judgment of June 5, 2012 (ref. K 18/09), the judgment of June 4, 2012 (ref. K 18/09), the judgment of June 2, 2020 (ref. P 13/19), the judgment of April 20, 2020 (ref. U 2/20), the judgment of March 4, 2020 (ref. P 22/19), and the judgment of January 23, 2022 (ref. P 10/19).

The jurisprudence of national courts is not a source of law in the Republic of Poland; likewise, the rulings of the European Court of Human Rights and the Court of Justice of the European Union do not constitute sources of law (cf. Article 87(1)–(2) *et seq.* of the Constitution). Within the scope of its constitutional competence to review the conformity of international agreements with the Constitution (Article 188(1) of the Constitution), the Constitutional Tribunal ruled on March 10, 2022, that Article 6(1) of the aforementioned Convention, insofar as it empowers the European Court of Human Rights or domestic courts to assess the compatibility of statutory provisions – governing the judiciary, judicial jurisdiction, and the organization powers, procedures, and selection of members of the National Council of the Judiciary – with the Constitution or the Convention, is inconsistent with Article 188(1)–(2) and Article 190(1) of the Constitution (judgment ref. K 7/21).

The role of the Court of Justice of the European Union is to ensure the uniform interpretation and application of European Union law. However, it is not authorized to adjudicate on matters that fall within the exclusive competence of sovereign Member States and have not been conferred upon the Union – this includes the organization of the judiciary in the Republic of Poland. This issue is not within the scope of the EU's exclusive competence, shared competence, or supporting competence (cf. Articles 3, 4, and 6 of the Treaty on the Functioning of the European Union, respectively).

Accordingly, unless the positions expressed in the aforementioned rulings are granted normative force through the legislative process – i.e. by enactment of a statute by the Polish Parliament, its signature by the President of the Republic, and its promulgation in the *Journal of Laws* – they remain legally irrelevant within the Polish legal order. This conclusion applies *a fortiori* to journalistic or politically motivated declarations, including those expressed in offensive or derogatory terms by politicians and members of the judiciary, particularly those associated with the Themis and Iustitia judicial associations.

The ongoing questioning of the systemic role of the Supreme Court's Chamber of Extraordinary Control and Public Affairs forms part of a broader campaign to negate the legitimacy of judges appointed after 2017 by the democratically elected President of the Republic of Poland. It thus constitutes a persistent attempt to undermine the democratic legitimacy of the political formation that won the parliamentary elections in 2015 and 2019, and the presidential elections in 2015 and 2020. At present, this strategy – pursued through extra-institutional attacks against the Chamber and its judges – is aimed at depreciating the democratic mandate of Karol Nawrocki, the winner of the presidential elections held on May 18 and June 1, 2025. It should be noted that such statements have been voiced not only by representatives of the current left-liberal parliamentary majority, but also in case law issued by the Supreme Court, the European Court of Human Rights, and the Court of Justice of the European Union, as well as by members of the judiciary associated

with the Iustitia and Themis associations. (It is noteworthy that, according to media reports, the latter associations have received both direct and indirect funding from foreign entities.)

What has emerged, in practice, is an alliance between part of the judicial community and the left-liberal political camp – currently in power – supported by structures of the European Union, including the Court of Justice of the European Union. The negationist, destructive, and anarchic stance toward the judges of the Chamber of Extraordinary Control and Public Affairs, and its jurisprudence, is therefore not grounded in coherent legal reasoning or verifiable facts. Rather, it has served for many years now as a political instrument for undermining the conservative opposition – currently in opposition, formerly in government until December 13, 2023 – by the present liberal-left political authorities in the Republic of Poland.

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

# An Attempted Coup on the Elections by Means of the "Episodic Law"

By order dated January 15, 2025, the Marshal of the Sejm, Szymon Hołownia – representing the Polska 2050 party, a member of Prime Minister Donald Tusk's governing coalition – scheduled the presidential elections pursuant to the Constitution of the Republic of Poland. Polish citizens were to decide who would succeed President Andrzej Duda, whose term of office ends on August 6, 2025. In the arena of political contestation for the highest office in the state, two candidates emerged as dominant: Rafał Trzaskowski, representing Koalicja Obywatelska led by Donald Tusk, and Karol Nawrocki, a non-partisan candidate (at the time, President of the Institute of National Remembrance), supported by the principal opposition party, Prawo i Sprawiedliwość.

Pursuant to the Constitution of the Republic of Poland, the validity of presidential elections is determined by the Supreme Court. According to Article 129(3) of the Constitution, if the election of the President of the Republic is declared invalid, a new election is to be held. Under Article 131(2)(3) of the Constitution, the Marshal of the Sejm temporarily assumes the duties of the President of the Republic if the presidential election is declared invalid. This entails, among other things, the authority to sign acts passed by the government led by Donald Tusk. Consequently, if the Supreme Court were to invalidate the 2025 presidential election, the Marshal of the Sejm, Szymon Hołownia, would temporarily assume the functions of the Head of State.

It should be emphasized that the Constitution does not specify which chamber of the Supreme Court is competent to adjudicate on the validity of the presidential election. This competence is defined by statute – namely, the Act on the Supreme Court of December 8, 2017. Under Article 26 § 1(2) of that Act, the Chamber of Extraordinary Control and Public Affairs is the designated body responsible for such determinations. This newly established chamber of the Supreme Court is composed of prominent Polish jurists of acknowledged authority, who previously had not had the opportunity to apply for the office of Supreme Court judge, as discussed further below. The composition of the chamber was formed in 2018 through a public and transparent competitive process conducted by the National Council of the Judiciary, culminating in the act of nomination by the President of the Republic of Poland and the taking of the judicial oath before the Head of State.

From its inception, the Chamber of Extraordinary Control and Public Affairs was subject to extensive criticism from the then parliamentary op-

position, segments of the post-communist establishment, and certain judicial associations such as Iustitia and Themis. These groups did not accept the reformed system of judicial appointments to the Supreme Court. Previously, judicial selection was carried out via co-optation: candidates – two for each vacancy – were nominated exclusively by Supreme Court judges, from whom the National Council of the Judiciary selected one to be submitted to the President for appointment. This procedure was abolished in 2017, triggering justified concerns among a segment of the then-serving Supreme Court judges, who feared accountability for their past actions. At the time, a significant contingent of Supreme Court judges had professional roots in the communist era and had issued rulings obstructing processes of decommunization and transitional justice. Over the years, these judges mentored successors who, through the aforementioned co-optation mechanism, were elevated to judicial office alongside them, thereby ensuring a form of material and legal immunity. It is therefore unsurprising that this environment, fearing for its future, made ongoing attempts to discredit newly appointed Supreme Court judges – particularly through the systematic contestation of the National Council of the Judiciary, the constitutional body involved in the judicial nomination process in the Republic of Poland.

On December 23, 2024, on the eve of Christmas Eve, a group of deputies from the governing coalition led by Donald Tusk submitted to the Marshal of the Sejm a draft law on special measures for the consideration by the Supreme Court of cases relating to the election of the President of the Republic of Poland and the by-elections to the Senate of the Republic of Poland scheduled for 2025 (Sejm print no. 923). The bill originally provided that the validity of the 2025 presidential election would be adjudicated by the Supreme Court sitting in a joint panel composed of the Civil, Criminal, and Labor and Social Insurance Chambers, with the proceedings to be presided over by the judge most senior in judicial service. This legislative maneuver ensured that the decision on the validity of the 2025 presidential election would be taken by judges associated with the communist-era judiciary and their successors, as these three chambers retained a majority of such members.

The bill was accompanied by a cursory justification. It stated, among other things, that the aim of the proposed legislation was to ensure that decisions of fundamental importance to democracy – particularly those concerning the adjudication of election protests and the validity of elections – would not be subject to doubts regarding their effectiveness, especially by individuals participating in the electoral process in various capacities. Furthermore, it asserted that the primary objective was to guarantee the stability of the functioning of the Republic, especially in the context of the presidential election scheduled for 2025. In the Regulatory Impact Assessment appended to the bill, the drafters stated, among other things, that the operation of the Supreme Court's Chamber of Extraordinary Control and Public Affairs – currently possessing statutory jurisdiction to hear election cases – was allegedly

questionable in light of the jurisprudence of international courts. This assertion was manifestly inaccurate, as no international court has ever declared the Chamber of Extraordinary Control and Public Affairs unlawful; the cited cases concerned individual proceedings. Moreover, selected rulings of the Court of Justice of the European Union and the European Court of Human Rights that challenged the status of individual judges (not entire chambers or courts) and which exceeded treaty competences (*ultra vires*), were eliminated from the Polish legal order by rulings of the Constitutional Tribunal.

Simultaneously with the submission of the bill, a media campaign was launched in pro-government outlets such as TVN, Polish Television (unlawfully seized and brought under governmental control), *Gazeta Wyborcza*, and the German-owned Onet (Ringier Axel Springer), targeting the judges of the Supreme Court, including the First President of the Court, Professor Małgorzata Manowska. This campaign was echoed by Supreme Court judges themselves – those who, according to the bill, would be responsible for adjudicating electoral disputes. The wave of criticism was also taken up by members of the aforementioned judges' associations, who frequently disseminated hostile content via social media, labeling the judges of the Chamber of Extraordinary Control and Public Affairs with derogatory epithets such as "neo-judges," "gowned disguisers," or "Constitution fences." All of these actions served to reinforce the government's narrative suggesting a purported defectiveness in the electoral procedure.

Ultimately, as a result of the legislative work in the Sejm, the draft law was amended in such a way that the authority to determine the validity of the elections was entrusted to the fifteen Supreme Court judges with the longest tenure on the bench. This solution implied that the adjudicating panel would consist of trusted, pro-government Supreme Court judges – individuals who, during the period in which Donald Tusk's party remained in parliamentary opposition (2015–2023), were reported by the media as having participated in confidential meetings with politicians, appeared at political rallies, engaged in media commentary, and received distinctions for their alleged "fight for the rule of law," including funding from international non-governmental organizations (such as USAID). These judges also undertook political lobbying activities abroad – travelling to Brussels (European Commission), Luxembourg (European Parliament and the Court of Justice of the European Union), and Strasbourg (European Court of Human Rights) – to appeal for the application of legal and financial pressure on Poland. These efforts, conducted in close coordination with opposition politicians, yielded tangible results. Through decisions of the European Commission and the CJEU, disbursement of Poland's Recovery and Resilience Facility funds was suspended, specific legal procedures were initiated, and financial penalties were imposed. Furthermore, under the amended draft, a majority of the designated judges would be those appointed during the era of the People's Republic of Poland – that is, under the rule of the communist regime.

In the form described above, the bill completed the full legislative procedure (having been adopted by the Sejm and passed unchanged by the Senate) and was then submitted to President Andrzej Duda for signature. On March 8, 2025, President Duda exercised his constitutional veto right, requesting a reconsideration by the Sejm, thereby causing the draft law to fall. In the written justification of his decision, the President stated, among other things, that the proposed law violated fundamental principles of the constitutional legal order, including the principles of judicial independence and the separation of powers, and that it introduced an impermissible differentiation between judges. President Duda also recalled that the legal basis for the functioning of the National Council of the Judiciary – challenged by representatives of the governing majority – had been found consistent with the Constitution of the Republic of Poland by the Constitutional Tribunal in its judgment of March 25, 2019 (ref. K 12/18).

Although the draft law did not come into force, the hostility towards the so-called "neo-judges" of the Supreme Court – i.e. those recommended by the National Council of the Judiciary after 2018 – intensified. Representatives of the governing coalition escalated their rhetoric, publicly attacking the President and urging him to reverse his veto.

In the end, the presidential election in Poland was conducted in a peaceful and lawful manner. It was won by Karol Nawrocki, the candidate supported by Prawo i Sprawiedliwość, and on July 1, 2025, the Supreme Court, sitting in the Chamber of Extraordinary Control and Public Affairs, declared the election valid. Donald Tusk failed to "close the loop" – that is, to ensure simultaneous control over both the executive and the presidency. It would appear that the so-called "Romanian variant" has likewise been unsuccessful, although as of the date of this part of the report, it remains uncertain whether President-elect Karol Nawrocki will be sworn into office on 6 August 2025.

**Andrzej Golec**
*(Prosecutor of the Lustration Bureau of the Institute of National Remembrance, President of the Ad Vocem Independent Prosecutors' Association)*

# Extra-legal Verification of the Results of the 2025 Presidential Election by the Prosecutor's Office

## 1. Introduction

The 2025 presidential election concluded with the official victory of the civic candidate, President of the Institute of National Remembrance Karol Nawrocki, who defeated the Mayor of Warsaw, Rafał Trzaskowski, by approximately 370,000 votes. In its post-election report, the National Electoral Commission (PKW) noted certain irregularities in the vote-counting process – particularly during the second round – such as the misattribution of vote totals to individual candidates.

The PKW referred the implications of these incidents to the Supreme Court for assessment, which, pursuant to Article 129(1) of the Constitution of the Republic of Poland, adjudicates on the validity of presidential elections. Nevertheless, even prior to the Supreme Court's ruling of July 1, 2025, concerning the validity of the election, prosecutorial authorities undertook unprecedented activities aimed at an **extra-legal verification of the election results**. These actions – consisting of a widespread recount of votes in hundreds of electoral commissions and coordinated by the National Prosecutor's Office – have given rise to serious legal controversy.

The present article provides an overview of this issue, taking into account: the communications and actions of the National Prosecutor's Office following the 2025 elections; public statements by the Minister of Justice and Prosecutor General, Adam Bodnar, concerning prosecutorial independence, the legality of the actions in question, and the alleged violations of law; the Supreme Court's resolution of July 1, 2025, on the validity of the elections (including judicial reasoning, as well as the positions of the Prosecutor General and the Chairman of the PKW); the current status of investigations into electoral irregularities; expert assessments and media commentary following the decision of July 1, 2025; and an analysis of the legal provisions potentially infringed by the actions described above.

## 2. Activities of the National Prosecutor's Office after the 2025 Elections

### 2.1. Scope and Nature of Actions Taken

Immediately following the second round of the presidential election (held on June 1, 2025), prosecutorial authorities launched wide-ranging investigations into alleged irregularities in the counting of votes. As early as mid-June, the National Prosecutor's Office issued a communiqué indicating the discovery of irregularities in at least two precinct electoral commissions. These findings – uncovered during an inspection of ballot papers undertaken at the behest of the Supreme Court in connection with the examination of electoral protests – cast serious doubt on the reliability of the work of the relevant commissions and "suggest the possibility of an electoral offence."

In the aftermath of these disclosures, local and regional prosecutor's offices across the country initiated their own investigations. By July 10, 2025, proceedings concerning vote-counting irregularities had been instituted in, among others, the district prosecutor's offices in **Poznań, Włocławek, Jelenia Góra, Opole, Bielsko-Biała, Katowice, Kraków, and Łódź**. In all cases, the proceedings were based on Article 248(4) of the Penal Code – i.e., **the offence of malfeasance during the acceptance or counting of votes**. This offence carries a penalty of up to three years' imprisonment. Investigations focused primarily on allegations of misreporting the results in the relevant commissions by reversing the number of votes between candidates or erroneously allocating a portion of votes.

### 2.2. Coordination by the National Prosecutor's Office

The nationwide activities were brought under centralized control. On June 30, 2025 – i.e., on the eve of the Supreme Court hearing concerning the validity of the elections – **Prosecutor Dariusz Korneluk, current head of the National Prosecutor's Office, established a special unit** within the Pre-Trial Proceedings Department to coordinate investigations into election-related irregularities. According to statements by Prosecutor General's spokeswoman, Prosecutor Anna Adamiak, the formation of this unit followed the receipt by Prosecutor General Adam Bodnar of two independent **expert opinions** concerning the electoral process. The key opinion was that of Dr Jacek Haman (a sociologist at the University of Warsaw), who identified **specific precinct electoral commissions** in which there existed a "very high or high probability of errors." The special unit, composed of three members, focused on analyzing two tables compiled by Dr Haman. Selected information was then transmitted to the relevant **regional prosecutor's offices, which in turn referred the data to the appropriate district offices.**

In practice, this arrangement resulted in the National Prosecutor's Office initiating a **recount of ballots** in hundreds of precinct electoral commissions

on the basis of statistical indications. On July 8, 2025, Minister of Justice and Prosecutor General Adam Bodnar publicly announced that the physical verification of ballots in **296 selected election commissions** would begin the following week. Relevant instructions were provided to the regional and district prosecutors, who collected documentation and were to proceed with ballot inspections in the presence of representatives of electoral committees, thereby ensuring procedural transparency. Adam Bodnar estimated that the verification process would take approximately two weeks. According to the official communications, the aim of the prosecutorial activities was not to generate an independent "election result," but rather to determine whether criminal violations had occurred in the electoral process, including the **falsification or destruction of protocols and electoral documentation**. Nevertheless, despite such assurances, it must be acknowledged that the Prosecutor's Office had effectively embarked on a parallel verification of the election results, outside the procedure established by the Electoral Code.

### 2.3. Statements by Prosecutor General Adam Bodnar – Independence of the Prosecutor's Office and Legality of Actions

The Minister of Justice and, simultaneously, Prosecutor General Adam Bodnar found himself at the center of a public dispute as to whether the prosecutorial actions undertaken in the post-electoral context amounted to a defence of the rule of law or rather an abuse of power. In his public statements, he justified the measures taken by reference to the need to safeguard the integrity of the electoral process. In media interviews, he emphasized that the prosecutor's office must respond to indications of possible electoral offences in order to "uphold the rule of law" in accordance with its statutory mandate (Article 2 of the Act on the Public Prosecutor's Office). At the same time, he maintained that, until the competent authority – the Supreme Court – declared the election invalid, the constitutional **presumption of its validity** remained in force. In practice, this meant balancing two distinct roles: on the one hand, Adam Bodnar acted as a guardian of the legality of the electoral process; on the other, he acknowledged the authority of the Supreme Court to issue the final ruling. "There is a constitutional presumption of the validity of elections, and so far this presumption has not been overturned," he stressed while reporting on preparations for the recount of votes in selected commissions. He affirmed that these actions were being conducted **professionally and transparently**, with the participation of electoral committee representatives, precisely to ensure their procedural legitimacy. In his public statements, Adam Bodnar also addressed the issue of **prosecutorial independence** from political influence. Paradoxically, although it was he – acting as a member of the executive – who initiated the non-standard deployment of the prosecutor's office in the electoral matter, he simultaneously announced plans to reform and strengthen the institutional independence of the prosecution service.

### 2.4. Legality of Actions Taken and Signaled Violations of Law

In official communications, Adam Bodnar and his spokesperson sought to demonstrate that all actions undertaken remained within the bounds of the law. Prosecutor General's spokeswoman Anna Adamiak explained that the Prosecutor General, as a **participant in the proceedings before the Supreme Court** concerning the validity of the election, is authorized to submit evidentiary motions, including requests for the inspection of ballots – thus enabling a recount of votes in specific commissions. Such motions, however, must – pursuant to the Electoral Code – refer to commissions identified in specific electoral protests. Adam Bodnar submitted to the Supreme Court a request for the **inspection of ballots in more than 1,400 precinct electoral commissions** in which statistical anomalies had been identified by experts. This constituted an unprecedented move – according to experts, **a national vote recount is legally permissible only when a strong probability exists that large-scale irregularities occurred**, substantially exceeding the known incidents. Professor Krzysztof Urbaniak, an electoral law expert, commented that a vote recount request "is legally possible, but only when it is made probable that the scale of irregularities could be very substantial." In his assessment, such a level of justification had not, as yet, been established. In other words, the actions of the prosecutor's office – although formally situated within the frameworks of criminal proceedings and the protest mechanism – **exceeded the typical parameters** of investigations into isolated incidents, particularly in terms of their scope and scale.

Adam Bodnar himself acknowledged that the final assessment of the identified irregularities lay with the Supreme Court. In a position submitted to the Court on June 30, 2025, he formally requested a **declaration of the validity of the elections**. At the same time, however, he called for "the protocols of precinct electoral commissions and the announcement of the National Electoral Commission dated June 2, 2025, to be corrected by including the proper election results," reflecting the findings arising from the judicial inspection of the ballots. In other words, the Prosecutor General advocated for the maintenance of the election result, albeit with adjustments for the errors (or falsifications) discovered during the protest proceedings. It is important to note that Bodnar conditioned the presentation of this position on the composition of the judicial panel (discussed below). Should that condition not be met, he announced that he would **withdraw from participating in the proceedings before the Supreme Court**. From this, it can be inferred that he was aware of the sensitivity of the situation: he highlighted potential violations of electoral law (errors in the precinct electoral commissions), but refrained from alleging the invalidity of the election as a whole, attempting instead to act within the legal remit of the Prosecutor General.

### 3. Supreme Court Resolution of July 1, 2025 – Course and Reasoning

Pursuant to Article 129(1) of the Constitution and the Electoral Code, the validity of the presidential election is determined by the Supreme Court in the form of a resolution. A plenary session of the Supreme Court's Chamber of Extraordinary Control and Public Affairs to adjudicate this matter was held on **July 1, 2025**. Participants included the chamber's judges as well as Minister of Justice and Prosecutor General Adam Bodnar and Chairman of the National Electoral Commission (PKW), Sylwester Marciniak, among others. The hearing was marked by considerable controversy due to prior challenges to the composition of the adjudicating bench. Adam Bodnar questioned the competence of the Chamber of Extraordinary Control and Public Affairs to rule in the matter and moved for the case to be transferred to the Labor and Social Insurance Chamber, **whose judges**, he argued, **had been appointed through a procedure compliant with the standards of judicial independence**. This argument referenced the ongoing public and legal dispute concerning the legitimacy of judicial appointments made with the participation of the so-called "new National Council of the Judiciary." Bodnar maintained that the composition of the Chamber of Extraordinary Control and Public Affairs Chamber "does not meet the criteria of an independent court, and thus the entire Chamber fails to meet these standards." As recently as June 30, a spokesperson for the Prosecutor General's Office had announced that Adam Bodnar would **refrain from presenting a formal position** if the matter were adjudicated by the Extraordinary Control Chamber. However, the Supreme Court **rejected the motion** to recuse the judges of the Chamber, holding that it retained jurisdiction in accordance with its statutory mandate.

After hearing statements from the Prosecutor General and the National Electoral Commission Chairman, the Supreme Court **adopted a resolution declaring the presidential election valid**. The resolution – pursuant to binding legal provisions – was passed by a **majority** of the full Chamber and was final, thereby enabling the swearing-in of the President-elect, which is to take place on August 6, 2025. The oral justification of the ruling emphasized that while certain irregularities in vote counting had occurred, they **were not of a nature or magnitude sufficient to affect the outcome of the election**. A few days prior (on June 27), a three-judge panel of the Chamber of Extraordinary Control and Public Affairs had reviewed the record number of election protests – approximately 56,000 – and found eight of them to be substantiated. However, the panel concluded that the confirmed irregularities had no bearing on the final result. The vast majority of the submissions – nearly 50,000 – were dismissed on formal grounds as they consisted of identical protests based on a standardized template prepared by MP Roman Giertych. Accordingly, the Supreme Court found no legal basis to invalidate the election in its entirety. This assessment was reinforced by the statement of the National Electoral Commission Chairman Sylwester Marciniak during the hearing, in

which he affirmed that "the PKW did not identify any breaches of electoral law that could have influenced the vote totals or the outcome of the election."

The session also addressed the issue of the cooperation between the prosecution service and the Supreme Court in the context of protest investigations. On the same day, First President of the Supreme Court Małgorzata Manowska issued a public statement refuting reports that prosecutors had been denied access to case files or had encountered obstructions in their evidentiary activities. Manowska clarified that "all of the prosecutors' requests were granted" and underscored that, despite the Chamber's increased workload, such requests were dealt with promptly – often on the same day – and that prosecutors were granted access to the files in the Supreme Court's reading room. Manowska also pointed out that the Prosecutor General's objections regarding the composition of the Chamber of Extraordinary Control and Public Affairs failed to acknowledge that this same chamber had ruled on the validity of numerous elections since 2019, including the 2023 parliamentary elections (Sejm and Senate), the 2024 local government elections, and the 2024 European Parliament elections. In other words, the Supreme Court defended both the legal continuity and the legitimacy of its jurisprudence in electoral matters, despite the ongoing public and institutional dispute regarding the status of some of its judges.

## 4. Current Status of Investigations into Election Irregularities

Following the final declaration of the outcome of the presidential election, the Public Prosecutor's Office has continued to conduct criminal investigations initiated in connection with alleged irregularities in the counting of votes. As of July 2025, a total of **29 investigations are underway** into suspected offences against the electoral process under Article 248 of the Penal Code, with an additional **53 verifying proceedings** concerning related matters. Specialized prosecutorial teams have been formed to complete the analysis of the recount of ballots in the 296 selected precinct electoral commissions. It has been announced that preliminary findings from this extensive operation will be transmitted to the National Prosecutor's Office in the second half of July 2025, and that the process as a whole may culminate in the publication of a summary report. Although the form of such publication has not been officially confirmed, media reports suggest that the prosecution aimed to finalize the physical recount prior to the swearing-in of the new President, scheduled for August 6, 2025.

It is also worth noting the outcome of the mass election protests filed by citizens. Of the approximately 56,000 submissions, as many as **49,598 were identical and dismissed by the Supreme Court without further consideration** on formal grounds, including procedural deficiencies and failure to meet statutory deadlines. These protests were based on a standardized form circulated online by MP Roman Giertych. The remaining protests were re-

viewed on an individual basis; a small number were found to be well-founded, but none were deemed to have affected the election outcome. These decisions of the Supreme Court are final and binding.

In accordance with Article 321 §3 of the Electoral Code, the Supreme Court is obliged to transmit materials gathered in the course of protest examination to the prosecutorial authorities where there is an indication that a criminal offence may have occurred. Consequently, evidence of procedural misconduct – such as inaccuracies in electoral protocols – has entered the evidentiary files of the ongoing criminal investigations. It can thus be expected that, in the coming months of 2025, the Public Prosecutor's Office will begin to **file indictments** against individuals deemed responsible for the most serious forms of electoral misconduct, such as deliberate falsification of official election documentation. As of July 2025, no charges have yet been publicly announced. The prosecutorial proceedings remain in the phase of evidence-gathering and legal analysis in unprecedented scale within the context of post-electoral investigations in Poland.

## 5. Expert Opinions and Comments after July 1, 2025

The involvement of law enforcement authorities on such an extensive scale after the elections has provoked an avalanche of commentary within the legal and political community. **Experts in constitutional and electoral law** pointed to the unprecedented nature of the situation, highlighting both potential threats to the legal order and positive elements arising from the clarification of actual irregularities.

On the one hand, there were voices **supporting Adam Bodnar's efforts** to ascertain the substantive truth concerning the conduct of the elections. It was argued that the mass protests (which numbered approximately 56,000) pointed to **a crisis of civic confidence in the integrity of the electoral process**, and that the Public Prosecutor's Office, as an institution mandated to safeguard the rule of law, had a duty to investigate any substantiated suspicions of electoral fraud. Professor Ryszard Balicki – a constitutional scholar and also a member of the National Electoral Commission – stated in the PKW's report that the **repeated occurrence of certain errors** in the precinct protocols necessitated "a detailed analysis of their causes and character." This recommendation by the PKW has in practice become a mandate for the Public Prosecutor's Office to undertake such an analysis, given that the Supreme Court lacks the resources to conduct investigations beyond the adjudication of election protests. Supporters of the actions taken by the prosecutorial services also emphasized that, under Article 2 of the Act on the Public Prosecutor's Office, the institution is obligated to safeguard the rule of law – which necessarily includes the integrity of the electoral process, as a foundational component of a democratic state governed by the rule of law. Where there is credible evidence (as in Bielsko-Biała) that the official results were incorrect

in certain precincts, the prosecution not only may, but **must intervene**, regardless of political repercussions. Furthermore, representatives of the ruling coalition from the outset declared that they did not intend to challenge the President-elect's assumption of office, but merely sought to ascertain the truth. Prime Minister Donald Tusk publicly stated that he would respect any ruling issued by the Supreme Court on the matter, including one delivered by the contested Chamber of Extraordinary Control and Public Affairs. This approach – respecting the formal outcome while simultaneously inquiring whether "you're curious about the real results" (as Tusk phrased it on the X platform) – found support among numerous representatives of "civil society" advocating for "full transparency in the electoral process."

On the other hand, **critics** accused the Public Prosecutor's Office and Adam Bodnar of operating at the margins of legality, potentially violating the principle of the separation of powers and undermining the stability of electoral institutions. A key argument raised was that **Polish law contains no provision allowing the prosecutor's office to initiate a "recount" of votes** independently of the judicial procedures for reviewing protests before the Supreme Court.

Expert commentators also pointed to a broader systemic issue: **the political entanglement of the prosecutorial service**. They recalled that the 2016 reform, which merged the offices of the Minister of Justice and the Prosecutor General, introduced the risk of instrumentalizing the prosecution service for political purposes. In the eyes of some analysts, the case of the post-election ballot verification epitomized this risk: the Prosecutor General – being simultaneously a cabinet minister – found himself in a conflict of interest, as a member of a government whose candidate had lost the election and, at the same time, as a constitutional guardian of the rule of law. **Even in the absence of improper intent**, the actions of the Public Prosecutor's Office were inevitably interpreted through the lens of political rivalry. Legal scholars such as Professor Ewa Łętowska suggested in public statements that, for the health of a democratic constitutional state, it should be avoided that executive authorities – including the prosecution – become involved in the review of electoral results; such matters belong solely within the competence of independent courts. In this context, Adam Bodnar's declared intention to separate the functions of Minister of Justice and Prosecutor General was viewed positively. Nevertheless, critics observed a troubling inconsistency: "the government recognizes the Extraordinary Control Chamber on Fridays" (when prosecutors participate in hearings on protests), "but not on Tuesdays" (when the Prosecutor General refuses to present his position before the same chamber). This contradiction was highlighted by, among others, **Obserwator Praworządności**, which noted that representatives of the Prosecutor General's Office had actively participated in the Supreme Court session on June 27 (concerning the examination of protests), while Adam Bodnar notably declined to present a position at the July 1 hearing.

In summation, post-July 1, 2025 assessments were sharply divided. Supporters of the government and Adam Bodnar contended that **the election process had been scrutinised with the utmost thoroughness** and in compliance with legal norms (noting that the Supreme Court upheld the results, while the prosecutor's office merely prosecuted criminal conduct, without infringing on democratic procedures). Critics, however, warned that a dangerous precedent had been set: involving the prosecution in post-election verification might, in the future, be exploited for partisan ends. They argued that contested elections should be left exclusively to electoral courts, and while this instance ended with validation of the results, the **erosion of institutional boundaries** – particularly between the National Electoral Commission, the Supreme Court, and the Public Prosecutor's Office – could produce long-term consequences.

## 6. Analysis of Violated Laws

The actions undertaken by the Public Prosecutor's Office to verify the results of the 2025 presidential election outside of the constitutionally and statutorily prescribed procedures have raised serious questions regarding compliance with a number of legal norms. Below are the key legal provisions whose potential violations were cited in the public and expert debate:

- **Constitution of the Republic of Poland:**

  – *Article 129(1) of the Constitution* – provides that **it is the Supreme Court that adjudicates on the validity of the election** of the President of the Republic. Undertaking activities by other state authorities which *de facto* aim to undermine or verify the outcome of the elections after they have been held may constitute a violation of this provision. Critics argued that the Public Prosecutor's Office, by independently conducting a *de facto* recount (albeit under the guise of criminal proceedings), encroached upon the constitutional prerogatives reserved exclusively for the Supreme Court. Representatives of the ruling coalition, by contrast, claimed that the prosecutor's office did not rule on the validity of the elections, but only gathered evidence in the context of potential electoral crimes – the final ruling remained with the Supreme Court and was ultimately issued. Nevertheless, the possibility of a **constitutional conflict regarding competences under Article 129** was a significant legal concern.

  – *Article 2 of the Constitution (the principle of a democratic state ruled by law)* – entails, among other things, the integrity of electoral procedures and the stability of the rules governing political competition. The actions of the prosecutor's office, interpreted by some as bypassing the official electoral process, may have undermined public

trust in the state and the law, a core element of the principle of the rule of law. Supporters of Adam Bodnar, however, maintained that the actions were precisely aimed at defending the rule of law (Article 2), by seeking to rectify electoral errors that otherwise would have remained unaddressed.

– *Article 7 of the Constitution (the principle of legalism)* – establishes that public authorities shall function on the basis of and within the limits of the law. This raises the question of **whether there existed a clear and sufficient legal basis** for the prosecutor's office to initiate a nationwide verification of ballots. While the Code of Criminal Procedure authorizes prosecutors to secure evidence (including ballots) in the context of ongoing investigations, and the Electoral Code allows the Prosecutor General to file evidentiary motions in proceedings regarding election protests, no statute grants the prosecutor's office the competence to "audit" or verify electoral results on its own initiative. If the actions of Adam Bodnar and the prosecutors are understood as exceeding the prosecution of individual criminal offenses and entering the domain of result verification, this would constitute a potential breach of Article 7 due to a lack of adequate legal foundation.

– *Articles 10 and 173 of the Constitution* – guarantee **the separation of powers** (Article 10) and **the independence of the courts and judges** (Article 173). Any executive interference – in this case, by a prosecutorial authority under government control – in the judicial functions of the Supreme Court may be interpreted as a violation of these principles. The attempt by the Prosecutor General to reassign the matter from the Chamber of Extraordinary Control and Public Affairs to another chamber also raised constitutional doubts, as it concerned the independence of the judiciary and the integrity of judicial jurisdiction. Adam Bodnar defended his position by invoking the case law of the CJEU and the ECtHR, which questioned the independence of the Chamber due to its formation through appointments involving the new National Council of the Judiciary. Nevertheless, in the formal legal order of the Republic of Poland, the competence to adjudicate on the validity of elections is assigned by statute to the Chamber of Extraordinary Control and Public Affairs, which was upheld by the Supreme Court and eventually recognized by the government.

- **Electoral Code (Act of January 5, 2011):**

  – *Article 321 §1–3 of the Electoral Code* – sets forth the procedure for the filing and examination of election protests by the Supreme Court, including the obligation to transmit materials to competent author-

ities (e.g., the prosecutor's office) if circumstances arise that may indicate the commission of an electoral offense. In the present case, the Supreme Court did in fact transmit information on irregularities (e.g., errors in protocols) to the prosecutor's office for potential prosecution. The problem, however, lay in the fact that **the prosecutor's office undertook parallel actions independent of the Supreme Court**. It did not wait for the conclusion of the protest proceedings but initiated its own inspection of electoral documents. The Electoral Code **contains no provisions allowing for a recount of votes at the request of the prosecutor's office** – such a recount may only be ordered by the Supreme Court in connection with an election protest (which it did in the case of 13 precinct electoral commissions). By carrying out a recount *ex post* in 296 commissions, the prosecutor's office overstepped the code-based procedure for determining election results. It may therefore be argued that the actions in question circumvented the provisions of the Electoral Code that assign exclusive authority to the National Electoral Commission in determining election results and to the Supreme Court in verifying their validity.

– *Criminal provisions of the Electoral Code* – many of which refer to the Penal Code (e.g., Article 248). The prosecutor's office itself cited these provisions as the legal basis for its proceedings. From a formal legal standpoint, the investigations were grounded in criminal procedure concerning electoral offenses, as permitted under the Electoral Code. Law enforcement authorities may investigate electoral crimes independently of the election protest procedure. Thus, there was no violation of criminal provisions of electoral law – on the contrary, those provisions were being enforced through the pursuit of offenses under Article 248 of the Penal Code. Rather, the concerns raised pertain to the **scale and timing** of the actions rather than their legal admissibility (each investigation was reportedly initiated under a specific provision).

- **Code of Criminal Procedure:**

– *Article 303 of the Code of Criminal Procedure* stipulates that an investigation is to be initiated upon reasonable suspicion of a criminal offense. The legal question here is whether the prosecutor's office had sufficient grounds to launch dozens of investigations simultaneously across the country. Prosecutor General Adam Bodnar pointed to **statistical expert opinions** and initial signals from district courts (e.g., Bielsko-Biała) as the basis for action. It appears that, in formal terms, the prosecutor's office could substantiate the claim of *reasonable suspicion* in specific commissions – particularly where the

Supreme Court itself ordered a ballot inspection and confirmed discrepancies. However, **the centralization of investigations** and their coordination at the national level were not expressly provided for in the Code of Criminal Procedure. Rather, these actions stemmed from the internal organization of the prosecutorial system, which operates on the principle of hierarchical subordination. A further important issue under the Code of Criminal Procedure was the observance of **evidentiary safeguards, particularly in relation to the handling of ballots**. Here, it should be emphasized that the prosecutors operated via judicial channels – for example, a prosecutor subordinate to the Prosecutor General participated in inspections conducted by district courts pursuant to Supreme Court orders. Such participation is procedurally correct: the court authorizes the opening of ballot packages and recounts, and the prosecutor may participate in the evidentiary process. Had the prosecutor's office attempted to inspect the ballot bags independently, without judicial authorization, this would have constituted a violation of evidentiary safeguards. According to public statements by the First President of the Supreme Court, **all requests made by prosecutors for access to election materials or protocols were granted by the court**, suggesting that the prosecutorial actions formally complied with the procedural framework of the Code of Criminal Procedure. Accordingly, no major procedural violations were identified from the standpoint of criminal procedure. The concern lay not in *how* the actions were taken, but in their *extent and aim* – which went beyond the standard investigative framework of prosecuting individual criminal offenses.

– **Act on the Public Prosecutor's Office** (**Journal of Laws 2016, item 177, as amended**)**:**
This act regulates, among other things, the tasks and guiding principles of the Public Prosecutor's Office. According to Article 2(1), "The Public Prosecutor's Office carries out tasks related to prosecuting crimes and safeguarding the rule of law." The actions undertaken by the prosecution service following the 2025 presidential elections were justified on the basis of both of these functions: prosecuting offenses (vote tampering in precinct commissions) and upholding the rule of law (ensuring that the final result reflects the will of the electorate). However, it may be asked whether the prosecution service **overstepped its mandate of prosecuting offenses** by assuming, *de facto*, a control function over the electoral process – one not envisioned in the law. Moreover, Article 3(1)(3) of the same act obliges the prosecutor to defend the rule of law by, among other means, supervising the prosecution of offenses – an admittedly broad and vague competence. Critics argued that Adam Bodnar interpreted this

provision too expansively, assuming the role of an "election auditor." Further allegations focused on a potential breach of Article 7(2) of the Act, which prohibits prosecutors from engaging in political activity and obliges them to remain impartial. Given that Adam Bodnar is an active government official, and that his actions aligned with the narrative of the losing side in the elections, opposition figures accused him of **politicizing the prosecution service**. Bodnar defended himself by arguing that his actions served the public interest, not partisan goals – pointing, for example, to the fact that he ultimately requested confirmation of the validity of the elections (thus not seeking to annul the result). Nevertheless, the situation underscored a systemic weakness: *the combination of the roles of Minister of Justice and Prosecutor General in a single person.* Bodnar himself appeared to acknowledge this issue, announcing his intent to initiate legal separation of the two functions. From a legal perspective, one could argue that the prosecution service's actions formally fell within the scope of its statutory responsibilities (i.e., prosecuting election-related crimes), but were **directed toward political ends**, contradicting the spirit of an apolitical and impartial prosecution service.

– **Penal Code** (**Journal of Laws 1997, No. 88, item 553, as amended**)**:** The principal criminal basis for the investigations was Article 248(2–4) of the Penal Code, which covers offenses against the proper conduct of elections. These provisions are designed to protect the integrity of the electoral process, criminalizing acts such as **electoral fraud during the vote-counting process** (Article 248(4)). The prosecution service has accused members of certain electoral commissions of precisely this offense. Examples from Jelenia Góra and Bielsko-Biała – where *ballots were reportedly swapped between candidates or falsified in official protocols* – appear to correspond directly to the elements of the offense outlined in Article 248(4). In this respect, the prosecution service's actions seem most clearly aligned with the aims of the Penal Code: namely, to punish those responsible for electoral crimes. However, some objections relate to a possible **abuse of power by public officials** – specifically under Article 231 of the Penal Code. If it were established that prosecutors had initiated proceedings without sufficient factual basis and for political purposes, liability under Article 231 could be considered.

To summarize the legal analysis: The entirety of the prosecution service's actions may be interpreted as infringing upon constitutional principles of the legal order – particularly the separation of powers, legalism, and legal certainty. While the measures undertaken were formally conducted within the framework of criminal procedure, their *real purpose* – to re-verify the results

of the election – was *extra-legal*, meaning it was not grounded in either electoral or criminal law. In this sense, what occurred could be characterized as a **"misuse of the prosecution service"**: not in the sense of blatant illegality (since the prosecutors cited formal legal grounds), but in terms of violating the *spirit of the law*, which assigns the resolution of electoral disputes exclusively to independent institutions such as the National Electoral Commission and the Supreme Court – not to the executive branch or its subordinate agencies. The situation thus underscored the need for clearer legal delineation of the limits of prosecutorial involvement in electoral matters, and the urgency of institutional reform to enhance the independence and impartiality of the prosecution service – so that, in future, no government may be suspected of instrumentalizing law enforcement to either contest or reinforce the outcome of democratic elections.

## 7. Conclusions

The involvement of the public prosecutor's office in the post-election process following the 2025 presidential election in Poland is unprecedented, marked by actions that extend beyond the standard legal framework. The prosecution service undertook large-scale operations to verify the accuracy of the election results – including recounts in numerous precinct electoral commissions and the initiation of numerous criminal investigations into alleged irregularities. The question remains whether such deployment of prosecutorial resources constitutes an extra-legal action and an abuse of power, particularly in light of the constitutional principle that the validity of the election of the President of the Republic is determined exclusively by the Supreme Court.

The analysis suggests that the prosecution service's post-election activities exceeded its legal competences and may have infringed upon the principles of the rule of law and the separation of powers. These actions – although officially justified as being aimed at protecting the integrity of the electoral process – lacked a clear legal basis in the Electoral Code and, as such, interfered with the prerogatives of the constitutionally designated authorities responsible for overseeing elections: namely, the National Electoral Commission and the Supreme Court. The extra-legal involvement of the prosecutor's office in the electoral process constitutes a dangerous precedent that undermines the fundamental principles of a democratic state governed by the rule of law. At the same time, the events highlight the pressing need to reinforce the guarantees of prosecutorial independence and to establish clear boundaries for the prosecution service's involvement in electoral matters. These findings carry significant implications for constitutional law – particularly in terms of safeguarding the democratic procedures governing the election of the highest state offices and upholding the constitutional division of powers – and for electoral law, in regard to ensuring both the integrity of elections and the legally appropriate response to electoral irregularities.


# 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/

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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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