Chapter 4

The Reversed Rule of Law in the Executive: Legitimacy via 'Restoring Lawfulness'

Karol Dobrzeniecki

Abstract

This Chapter examines the extent to which the assumptions underlying the of restoration of the rule of law have been realised by the executive branch. To this end, it will first present the constitutional model governing the operation of the Council of Ministers and the government administration. It will then highlight selected examples of the practical implementation of the postulate of restoring the rule of law and assess the compliance of these measures with constitutional standards. The analysis focuses in particular on the practices of specific administrative departments of government, including justice, science, higher education and culture. Furthermore, it will explore how the implementation of the political programme of 'restoring the rule of law' affects relations between the executive and legislative powers and other constitutional bodies, such as the President of the Republic of Poland, the Constitutional Tribunal and the Supreme Court. Drawing on one year of experience with the functioning of the new government (December 2023–December 2024), the Chapter will evaluate the extent to which the government has operated in accordance with the constitutional model of being bound by law and the standards expected in a democratic state governed by the rule of law.

Keywords: rule of law, the executive branch of government, militant democracy, legal nihilism, instrumentalisation of law

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1. Introduction

The political forces forming the Polish government after the 2023 elections came to power under the slogan of restoring the rule of law. They alleged that in recent years the legislative and executive authorities had departed from the constitutional standards of a democratic state governed by the rule of law, particularly the principles of legality and the separation and balance of powers. It was claimed, for example, that the Constitutional Tribunal (CT) had become an institution openly supporting government policy, rendering the system of constitutional review in Poland dysfunctional. In response to these accusations, a number of measures were announced to restore compliance with the Polish Constitution while mitigating adverse social consequences.

The purpose of this Chapter is to assess the extent to which the political mission of restoring the rule of law has been realised, by comparing the declared objectives with the actions of the executive branch. To this end, the constitutional model for the operation of the Council of Ministers and the government administration will be presented. It will then highlight examples of the practical implementation of the postulate of restoring the rule of law and evaluate the compliance of these measures with constitutional standards.

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2. A Constitutional Model of Executive Power

Chapter Six of the Constitution is dedicated to the Council of Ministers. The Council directs the government administration and coordinates and supervises the work of government administration bodies.[1] The Prime Minister ensures the implementation of the Council's policies, determines the methods of their execution, and

1 Art. 146 of the Constitution of the Republic of Poland: (1) The Council of Ministers shall conduct the internal affairs and foreign policy of the Republic of Poland. (2) The Council of Ministers shall conduct the affairs of State not reserved to other State organs or local government. (3) The Council of Ministers shall manage the government administration. (4) To the extent and in accordance with the principles specified by the Constitution and statutes, the Council of Ministers, in particular, shall: (1) ensure the implementation of statutes; (2) issue regulations; (3) coordinate and supervise the work of organs of State administration; (4) protect the interests of the State Treasury; (5) adopt a draft State Budget; (6) supervise the implementation of the State Budget and pass a resolution on the closing of the State's accounts and report on the implementation of the Budget; (7) ensure the internal security of the State and public order; (8) ensure the external security of the State; (9) exercise general control in the field of relations with other States and international organisations; (10) conclude international agreements requiring ratification as well as accept and renounce other international agreements; (11) exercise general control in the field of national defence and annually specify the number of citizens who are required to perform active military service; (12) determine the organisation and the manner of its own work.

coordinates and supervises the work of the Council's members. Ministers are responsible for directing specific departments of government administration.[2]

At present, the prosecution service is not defined at the constitutional level within the Polish legal system. Its tasks, including prosecuting crimes and safeguarding the rule of law, are set out in legislation. Under the current legal framework, its place within the state system is derived from the provisions of the Law on the Prosecution,[3] which assigns the office of Prosecutor General to the Minister of Justice. As a result of this merger, the prosecution service is part of the executive branch.[4]

In performing their constitutional tasks and competences, the President of the Republic of Poland, the Council of Ministers and the Prime Minister are guided by the principle of cooperation between the authorities of the Republic of Poland. This principle requires mutual respect for each body's constitutional tasks and competences, respect for the dignity of offices, mutual loyalty, good faith, timely communication of initiatives, willingness to cooperate and reach agreements, and diligent performance of agreed actions.[5]

The convergence of goals as an expression of the principle of cooperation, derives from the fundamental constitutional principle enshrined in Art. 1 of the Constitution: 'the Republic of Poland is the common good of all citizens'. Constitutional organs of the state are therefore obliged to act in a manner that realises this directive.

Art. 10(2) of the Polish Constitution establishes the principle of dualism within the executive branch. The President and the Council of Ministers function as structurally, competently and functionally distinct bodies. The President performs the functions and tasks assigned by law independently of the Council and bears full responsibility for them. The President's functional independence is constitutionally limited in the issuance of official acts: some acts are performed independently as prerogatives, while others require the countersignature of the Prime Minister, which entails the Prime Minister assuming political responsibility for their issuance and content before the Sejm.

Under the Constitution, the President is largely excluded from the day-to-day management of the state and the shaping of its internal policy. Consequently, the Council of Ministers is the principal body of the dualistic executive.

The President nevertheless retains instruments of influence over government decisions. According to the Constitution, the President appoints the Prime Minister and other members of the Council and administers their oaths of office. The oath-taking ceremony has moral, symbolic and legal significance, representing a solemn commitment to uphold the constitutional values expressed in its wording. It also constitutes a legal guarantee of adherence to the Constitution. Taking the oath is an indispensable prerequisite for assuming office. Each member of

2 Bałaban, 2002; Grzybowski, 2012; Patyra, 2002; Stembrowicz, 1982; Zieliński, 2001.

3 The Act of 28 January 2016, on the Prosecutor's Office (consolidated text: Journal of Laws of 2024, item 390).

4 Stanek, 2021.

5 See Opaliński, 2012.

the Council of Ministers recites the full text of the oath individually and orally, as prescribed in Art. 151 of the Constitution.

This Chapter will therefore analyse the activities of the Council, its members and the subordinate government administration as entities with a decisive influence on shaping the internal policy of the state, whose primary programme after 2023 was the 'restoration of the rule of law'.

The Constitution obliges public administration to act diligently. Diligence entails 'the assessment of actions in terms of both due diligence in conducting activities and the substantive tasks being carried out', as well as 'adhering to existing standards, rules, and parameters in a given activity'.

The essence of Art. 7 of the Constitution ('The organs of public authority shall function on the basis of, and within the limits of, the law') is that public authorities, including the Council of Ministers and the government administration, must act within legal limits, which define both the basis and the boundaries of their actions. The legalism of public administration requires, *inter alia*, that decisions be issued in the form prescribed by law, on an appropriate legal basis, and in accordance with the relevant substantive provisions.

Legalism also entails a strict interpretation of competence-related provisions, rejecting the principle that 'what is not prohibited is permitted' in the case of public authorities.[6] Any action taken by state authorities in breach of the obligation to act within the law ceases to have legal character, and this rule admits no exceptions. Public authorities may not arrogate to themselves powers constitutionally reserved to other bodies; they must adhere fully to all regulations defining their powers and duties. The addressees of the principle of legality include all state bodies, whether legislative, executive or judicial, and they must operate on the basis of the opposite principle: 'what is not permitted is prohibited'.

The Constitution of the Republic of Poland provides that the statute is the fundamental normative act on which public authorities must base their activities. This principle serves, on the one hand, to legitimise the actions of public authorities and, on the other, to define the limits of their interference with human rights. It also underpins the prohibition against public authorities presuming competences. Deriving from the constitutional principle of legality, public authorities may not act without a legal basis or evade exercising their competences when binding legal norms impose specific obligations upon them. The Constitutional Tribunal expressed the view that

> the principle of the rule of law is an instrumental principle with respect to the principle of legal certainty and the citizen's trust in the state, in the sense that acting on the basis of and within the limits of the law is a necessary condition for the realisation of the principles of certainty and trust.[7]

6 The judgments of CT of 27 May 2002, K 20/01, 12 May 2015, P 46/13.
7 The judgments of CT of 12 May 2015, P 46/13.

As a rule, action based on and within the law's limits is institutionally implemented so that the law defines the competences, legal forms of action and substantive grounds for decisions taken by public authorities. The issuance of a decision in accordance with the law is safeguarded by appropriate procedures, including the right to appeal and judicial review. These safeguards ensure the durability of decisions, which are presumed to be lawful. Durability, or legitimacy, thus reinforces the principle of the rule of law.

The CT has derived numerous specific principles from the concept of a democratic state governed by the rule of law, among which is the principle of legal certainty. This principle is closely linked to legal security and the protection of citizens' trust in the state and its legislation.[8] Legal certainty refers to a set of characteristics inherent in the law

> that ensure legal security for individuals, enabling them to decide on their actions based on full knowledge of the premises of state authorities' actions and the legal consequences their actions may entail. Individuals should be able to determine the consequences of specific behaviours and events under the current legal framework and expect that the legislature will not arbitrarily change them. The legal security of individuals associated with legal certainty thus allows for the predictability of state authorities' actions as well as the ability to forecast one's own actions.[9]

The CT has identified two aspects of legal certainty: (1) the relative stability of the legal order, linked to the principle of legality; and (2) the assurance that citizens can organise their lives in reliance on the applicable law.

In its jurisprudence, the Tribunal developed the view that the essence of citizens' trust in the state and its legislation lies in the creation and application of law in a way that does not entrap the addressees of legal norms. Citizens should be able to organise their affairs confident that they will not face unforeseen legal consequences for their decisions and that actions taken in accordance with the law will continue to be recognised by the legal order in the future.[10] The predictability of state authorities' actions ensures individuals' legal security, which is closely tied to legal certainty, and also allows them to plan their own actions accordingly.[11]

In conclusion, the position of the Council of Ministers, as derived from the constitutional model established in the 1997 Constitution of the Republic of Poland, is

8 Potrzeszcz, 2013, pp. 256–263.

9 The judgments of CT of 14 June 2000, P 3/00.

10 The judgments of CT of 21 December 1999, K 22/99; 16 June 2003, K 52/02; 30 May 2005, P 7/04; 27 January 2010, SK 41/07; 25 November 2010, K 27/09; 10 March 2015, K 29/13; 18 April 2018, K 52/16.

11 The judgments of CT of: 10 July 2000, SK 21/99; 25 April 2001, K 13/01; 27 February 2002, K 47/01; 25 June 2002, K 45/01; 16 Juny 2003, K 52/02; 4 May 2004, K 8/03; 21 December 2005, K 45/05; 21 March 2006, K 13/05; 12 March 2007, K 54/05; 19 March 2007, K 47/05; 2 April 2007, SK 19/06; 30 October 2007, P 28/06; 3 December 2007, SK 45/06; 16 January 2007, U 5/06.

as follows: (1) as the main organ of the executive power, it must operate on the basis of and within the limits of the law; (2) the Council and its members are politically accountable to the Sejm for their activities and also bear individual constitutional responsibility before the State Tribunal; (3) the Council is a collegial body, with most members functioning as distinct, single-person constitutional bodies with their own areas of competence; (4) the Council, as an executive organ, takes the most important decisions regarding the current conduct of state policy; (5) the Council manages the entire system of government administration; and (6) the system of government is based on the separation of, and balance between, the legislative, executive and judicial powers. Consequently, the executive power of the Council is limited by the legislature, the judiciary and the President of the Republic of Poland.

3. The Rule of Law in Practice: Case Studies of Administrative Government Departments

The following section identifies examples of political actions taken by the executive branch that have raised serious concerns among constitutional law scholars from the perspective of the principle of the rule of law.

3.1. Removal of the National Prosecutor from Office

The Minister of Justice – Prosecutor General and his subordinate units have been particularly active in implementing the postulate of 'restoring the rule of law'. His statutory powers include matters relating to the judiciary, the notary public, the legal profession and legal advisers, the execution of punishments, educational and correctional measures ordered by the courts, post-penitentiary assistance and sworn interpreters. The Minister of Justice is also responsible for preparing draft codifications of civil law (including family law) and criminal law.[12] By law, the Prosecutor General assumes office on the date of his appointment as Minister of Justice. The merger of these offices has made the prosecutor's office part of the executive authority. The Minister of Justice – Prosecutor General is a member of the Council of Ministers and simultaneously serves as the head of the prosecutor's office and the superior of all prosecutors.[13]

In January 2024, National Prosecutor Dariusz Barski received a letter from Public Prosecutor General Adam Bodnar stating that his reinstatement to active duty in 2022 by the former Prosecutor General had been carried out in violation of the

12 Art. 24(1), of the Act of September 4, 1997, on the Divisions of Government Administration (Journal of Laws of 2024, item 1370).

13 Stanek, 2021.

applicable legislation and had no legal effect because it relied on a repealed provision of the law. A new National Prosecutor was subsequently appointed. This decision was contested by part of the legal community, including prosecutors, and both the Supreme Court (SC) and the Constitutional Tribunal (CT) opposed it.

In a resolution adopted in September 2024, the SC held that the 2022 reinstatement of the dismissed prosecutor and his appointment as National Prosecutor had a binding legal basis and was effective.[14] In response, the new leadership of the National Prosecutor's Office declared that the resolution had no legal effect because it had been adopted by unauthorised persons. In November 2024, the CT ruled that the removal of the National Prosecutor from office was unconstitutional and infringed his right of access to public service.[15]

The Prosecutor General responded that the CT's examination of the dismissed prosecutor's constitutional complaint was inadmissible because the formal requirements for its submission had not been met. He also questioned the independence and impartiality of judges appointed with the participation of the National Council of the Judiciary (NCJ) constituted under the 2018 law. This reasoning was not based on formal legal grounds or sources of law but on the opinions of a few legal scholars and politicians. It is noteworthy that the Prosecutor General's interpretation of the law provoked opposition from prominent constitutionalists.[16]

3.2. Dismissal of Court Presidents

Changes to the positions of presidents of common courts after 2023 have raised significant legal concerns. Under the law, the court president heads the court, represents it externally and, in particular, directs its administrative activities. The procedure for appointing and dismissing court presidents is set out in the Law on the System of Common Courts.[17] The power to appoint and dismiss rests with the Minister of Justice, who may appoint the president of an appellate court from among judges of an appellate or circuit court, the president of a district court from among

14 Resolution of the SC of 27 September 2024, I KZP 3/24: 'The provisions of Art. 47(1) and (2) of the Law of 28 January 2016. The provisions introducing the Law – Law on the Public Prosecutor's Office (Journal of Laws of 2016, item 178, as amended) are not episodic in nature and do not contain a temporal limitation on their validity. These provisions are of a constitutional nature and continue to be in force, pending possible elimination in the manner prescribed by law'.

15 The judgment of CT of 22 November 2024, SK 13/24.

16 According to Professor Jacek Potulski of the University of Gdansk, 'the statement that Dariusz Barski did not take the National Prosecutor position has no legal basis'. In turn, Professor Ryszard Piotrowski believes that we are dealing with an attempt to circumvent the law. 'This is also how the appointment of an acting state prosecutor, that is, a body that the law does not provide for, should be treated. Public authorities act on the basis and within the limits of the law, which means that what is not allowed is forbidden. Therefore, one cannot create arbitrary constructions for oneself, because this is not how a democratic legal state functions'. See: Żółciak, 2024.

17 See: Arts. 23–27 of the Act of 27 July 2001, on the System of Common Courts (Journal of Laws of 2024, item 334, as amended).

judges of an appellate, circuit or district court, and the president of a district court from among judges of a circuit or district court. This discretionary power has been criticised by the Venice Commission, among others.[18]

Appointments are made for a fixed term. The presidents of appellate and district courts are appointed for six years and may not be reappointed as president or vice-president of the same court until six years have passed since the end of their term. The president of a district court is appointed for four years, for a maximum of two consecutive terms, and may not be reappointed as president or vice-president of a district court until four years have elapsed since the end of the term. The appointment of vice-presidents is similarly regulated, requiring a proposal from the court president.

The law stipulates that the term of office may be interrupted by revocation.[19] This may be effected by the Minister of Justice in the following circumstances: (1) gross or persistent failure to perform official duties; (2) continuation in office being otherwise incompatible with the good of the administration of justice; (3) particularly low efficiency in performing administrative supervision or organising work in the court or subordinate courts; (4) submission of a resignation from the position; or (5) gross failure to perform official duties in supervising judicial officers.

However, dismissal may only take place through a statutory procedure. This procedure requires consultation with the college of the competent court, following submission of the intention to dismiss together with a written justification.[20] A positive opinion of the college permits dismissal. The same consequence follows if the college fails to issue an opinion within thirty days of receiving the notification of the intention to dismiss. If the opinion is negative, the Minister of Justice may submit the intention to dismiss, with written reasons, to the NCJ. A negative opinion of the NCJ is binding if adopted by a two-thirds majority. Failure by the Council to issue an opinion within thirty days from the date of receiving the intention to dismiss does not preclude dismissal.

When requesting an opinion, the Minister of Justice may suspend the president or vice-president of the court concerned. The college issues its opinion after hearing the views of the president or vice-president of the court facing dismissal. During the United Right government (2015–2023), this procedure was criticised for undermining the 'independence' of the judge serving as president or vice-president. The case was even brought before the European Court of Human Rights, which, in its judgment of 29 June 2021 in Broda and Bojara v. Poland, held that the removal of

18 The Venice Commission, in its opinion on the amendment to the Law on the System of Common Courts, stated that the appointment should be made with the prior approval of the NCJ or the assembly of judges of a given court, and ideally the courts should present candidates to the minister. Opinion dated 11 December 2017, No. 904/2017.

19 The aforementioned recommendation of the Venice Commission also concerned the removal of presidents and vice-presidents with the participation of the NCJ and the assembly of judges of the relevant court. In this dimension, the procedure takes into account the recommendation.

20 Does not apply in the event of resignation.

presidents and vice-presidents of courts without providing the right to appeal to a court breached the Convention.[21]

After 2023, the new Minister of Justice began systematically changing the presidents and vice-presidents of common courts.[22] He commenced this process on 19 December 2023 by revoking the appointments of those who had not yet assumed their roles following the expiry of their predecessors' terms after that date.[23] These revocations were carried out without complying with statutory procedures, as it was claimed that such procedures could not apply to persons whose terms had not yet commenced. The first revocations involved the president and vice-presidents of the appellate court in Poznań, followed by the appellate court in Cracow, and subsequently the district court in Kielce.[24] A general practice was also to suspend those against whom dismissal proceedings had begun.

Some of the dismissed presidents and vice-presidents lodged constitutional complaints with the CT.[25] In some cases, the CT issued interim orders to the Minister of Justice, prohibiting further proceedings until the constitutional complaints were resolved.

In a judgment of 16 October 2024 (ref. K 2/24), the Tribunal held that provisions of the Law on the System of Common Courts were unconstitutional insofar as they deprived the NCJ of participation in the procedure for suspending or dismissing a president or vice-president of a court, and allowed dismissal even where the NCJ failed to issue an opinion within thirty days. The Minister of Justice refused to comply with the judgment.[26]

The Ministry justified the dismissals on several grounds: (1) failure to involve the judicial self-government of the relevant courts in the 'selection' of presidents and vice-presidents;[27] (2) appeals by judges, primarily those affiliated with the Iustitia and Themis associations, seeking to dismiss court leadership,[28] alleging disapproval of the appointees;[29] (3) the recalled presidents and vice-presidents signing lists supporting candidates for the NCJ, which the Ministry claimed was improperly constituted under the law of 8 December 2017;[30] and (4) recalled judges participating in competition procedures before the Council despite the fact that, following the CJEU ruling of 19 November 2019, it was widely known among judges since at least 19 November 2019, that the Council, shaped by the law of 8 December 2017, does not

21 Applications Nos. 26691/18 and 27367/18.
22 PAP, 17.07.2024, 18:33.
23 Adam Bodnar odwołuje prezesów sądów. Oto lista, 2024.
24 Jałoszewski, 2024a. Information about dismissals can be found on the Ministry of Justice website in the news tab.
25 Ref. No. K 2/24.
26 See: CT preliminary injunction of 1 February 2024, Ts 19/24 regarding the president of the Court of Appeal in Warsaw.
27 See e.g. Ministerstwo Sprawiedliwości, 2024.
28 Jałoszewski, 2024a.
29 See: Jałoszewski, 2024b.
30 See: Sądownictwo, prokuratura: odwołania, powołania (odc. 16–23), 2024.

meet the criteria for independence from the executive and legislative branches of government.[31]

Appeals were either initiated directly by the Minister of Justice or prompted by letters from groups of judges from the relevant courts. However, these groups were often unrepresentative. For instance, the request to dismiss the president of the Warsaw district court was signed by only 129 out of 377 judges (34%), while the motion to dismiss the president of the Warsaw Wola district court was supported by only 12 out of 70 adjudicators. In the Warsaw Mokotów district court, no such motion was submitted.

These figures demonstrate the political motivations behind the dismissals. The rationales cited by the Minister of Justice bore no relation to the statutory grounds for dismissal. In response to the widespread dismissals, the NCJ requested that the CT review the constitutionality of the entire dismissal mechanism for presidents and vice-presidents of common courts. The Council considered some of the dismissals a potential form of interference with the administration of justice.[32] The Ombudsman also criticised these[33] actions, some of which were denounced as blatant legal violations. These included allegations that the Minister of Justice, by instrumentally suspending most members of the relevant body, sought to manipulate the composition of the college to secure the negative opinion he desired.[34] Warsaw provides a particularly illustrative example. On 18 June 2024, the Minister of Justice emailed his intention to dismiss the leadership of the district and subordinate district courts, suspending the presidents and vice-presidents simultaneously. As this announcement contained no justification, the district court college issued a negative opinion. The Minister then reversed the suspension decision on 26 and 27 June. On 1 July, he emailed an identical announcement of his intention to dismiss the same individuals. When the college again rejected the proposal, the Minister ignored its opinion.

The acting judge appointed by the Minister convened the college on 15 July, when most resigned members and college members were on holiday or sick leave. The reconstituted college issued a third opinion, this time approving the Minister's action. On 16 July, the Minister dismissed the presidents and vice-presidents.[35]

The legal breaches included:[36] (1) resubmitting the same request for an opinion when the law required the Minister, after receiving a negative opinion from the college, to seek an opinion from the NCJ, rather than repeating the request; and (2)

31 PAP, 17.07.2024, 18:33.

32 See: The resolution of the National Council of the Judiciary No. 365/2024 of 19 June 2024, where the National Council of the Judiciary states, among other things, that the suspension of the management of the District Court in Warsaw from the performance of their official duties coincided with the submission to the District Court in Warsaw by the National Prosecutor's Office subordinate to the Minister of Justice – Prosecutor General of an application for the extension of temporary detention of persons deprived of liberty in a case of political interest to the Minister of Justice.

33 YGI, 2024.

34 Polish Press Agency, 17 July 2024, 18:33.

35 Unlawful Procedure for Removal of President and Vice-Presidents from Warsaw Courts, 2024.

36 Ibid.

failure by the district court college to hear the individuals concerned before issuing an opinion, despite their formal request for a postponement to allow them to be heard.

The Minister subsequently appointed activists from politicised judges' associations and individuals criticised for serious judicial errors to the vacant positions.

3.3. Removal of Judges from Lecturer Positions at the National School of the Judiciary and Public Prosecution

Legal concerns also arose regarding personnel changes made after 2023 at the National School of the Judiciary and Public Prosecution (NSSiP), the central institution responsible for initial and continuing training of judicial and prosecutorial personnel in Poland. The School's tasks include conducting judicial and prosecutorial apprenticeships to equip candidates with the necessary knowledge and practical preparation to serve as judges, court assessors, prosecutors and prosecutors' assistants as well as providing specialist and in-service training for those already holding these roles.

On 12 July 2024, the director of the NSSiP announced[37] the removal of two groups of judges from their teaching roles. These judges had been appointed at the request of the NCJ formed under the provisions of the Law of 8 December 2017 amending the Law on the NCJ and certain other laws.[38]

The Presidium of the NCJ criticised[39] the director's actions, arguing that they violated the established rules for recruiting lecturers, disregarded the binding position of the School's Programme Council set out in Resolution 17/2018 of 6 September 2018, and constituted discrimination on the basis of worldview under Art. 3(1) of the Act of 3 December 2010 on implementing certain provisions of European Union law on equal treatment (Journal of Laws 2023, item 970, as amended). It also called for the director's resignation. It is important to note that the director is one of two governing bodies of the NSSiP,[40] the other being the Programme Council who oversees the quality of the teaching staff and is tasked with issuing opinions on NSSiP lecturers and all other matters concerning the School.[41] The director, by acting unilaterally, therefore encroached upon the statutory competences of the Programme Council.

37 Krajowa Szkoła Sądownictwa i Prokuratury, 2024.

38 Journal of Laws of 2018, item 3.

39 The resolution of the Presidium of the National Council of the Judiciary of 17 July 2024, on the discrimination of judge-lecturers at the National School of the Judiciary and Public Prosecution.

40 See: Art. 5 of the Act of 23 January 2009, on the National School of the Judiciary and Public Prosecution (KSSiP) (Journal of Laws 2022 item 217 as amended)

41 Art 10(2)(13) of the Act on KSSiP.

3.4. Unlawful Dismissal and Termination of Mandates of National Council of Prosecutors Members

The decision of the Minister of Justice – Prosecutor General to dismiss five members of the National Council of Prosecutors (NCP) and appoint five replacements also caused controversy.[42] According to the Law on the Public Prosecutor's Office, the Council safeguards prosecutors' independence. It issues opinions on, *inter alia*, draft normative acts concerning the prosecutor's office, the development of prosecutorial staff and training, periodic evaluations of the performance of the prosecutor's office, and measures aimed at improving the professional qualifications of prosecutors.[43] By law, the NCP is a tenure body with a four-year term of office. Termination of a member's mandate may only occur in the instances explicitly set out in the law. In the absence of any justification for the Prosecutor General's decision enabling an assessment of its legitimacy, those affected questioned the decision's legal effect.

The Assembly of Prosecutors of the National Prosecutor's Office argued that the Prosecutor General was not authorised to act in this way because the statutory prerequisites for the expiry of the mandate had not been met. It stressed that the 'dismissals' therefore lacked legal effect, meaning that the former members of the NCP appointed by the Prosecutor General had not been lawfully removed from office.

In light of the principle of the rule of law, it must be concluded that dismissals require an unequivocal legal basis. It is impermissible, especially in the context of a public authority, to presume competences that would enable it unilaterally to determine the legal situation of another entity. It would therefore be inadmissible to assume that the Minister was exercising discretionary power to dismiss a member of the Council; in the circumstances, the action was not merely discretionary but entirely arbitrary. Moreover, considerations of expediency favour interpreting the regulations in a manner that guarantees the independence of Council members.

3.5. Compliance Challenges with International Law on Immunities

One of the campaign promises included in the programme entitled '100 Concretes' of the political bloc that came to power in 2023 was the pledge that 'violations of the Constitution and the rule of law will be swiftly accounted for and tried'.[44] Under media pressure to deliver on these commitments, the prosecutor's office initiated numerous criminal proceedings. This haste, however, resulted in certain fundamental aspects of the rule of law, including adherence to international law on immunity being overlooked in some cases.

Marcin Romanowski, a former Polish Deputy Justice Minister, was detained as part of an investigation into the misuse of public funds and was charged in relation

42 Łukaszewicz, 2024.
43 Art. 43 of the Act of 8 January 2016, on the Prosecutor's Office (Journal of Laws of 2024, item 390).
44 Rozliczymy rządy PiS, 2024.

to his supervision of the Justice Fund. Prosecutors sought to extend his detention beyond the usual time limit, citing the gravity of the alleged offences. Romanowski's lawyers appealed to the Council of Europe, noting that he had been a member of the Parliamentary Assembly of the Council of Europe (PACE) since January, and claimed that Polish authorities had failed to notify PACE of his arrest. The President of PACE, Theodoros Rousopoulos, wrote to the Speaker of the Sejm, Szymon Hołownia, stating that Romanowski enjoyed immunity as a PACE member and that judicial proceedings against him should be suspended. In July 2024, a Warsaw court ordered Romanowski's release on the basis of his PACE immunity.[45]

Prime Minister Donald Tusk reacted to the decision with the comment: 'Scenes like from a gangster movie. The suspect is released from custody thanks to legal loopholes, hiding behind questionable immunity'.[46]

In December 2024, Romanowski was granted political asylum in Hungary. Gergely Gulyás, Chief of the Hungarian Prime Minister's Office, asserted that Poland had been undergoing a crisis of the rule of law since Donald Tusk's government assumed office. As an example, he cited the failure to enforce the decisions of the Polish CT and the use of criminal law against political opponents, in disregard of immunity and presidential pardons.

Gulyás emphasised that Romanowski's arrest despite his PACE immunity, and his release only after PACE's formal intervention, demonstrated a lack of due process. He argued that Romanowski's case qualified for political asylum, which may be granted where there is no guarantee of an impartial, politically independent assessment in the applicant's home country. A political director in the Hungarian Prime Minister's Office also expressed concern about what he described as the Tusk government's 'lawfare' against its political opponents.[47]

Another potential violation of international law by the Polish executive authority arose during preparations for the 80th anniversary of the liberation of the Auschwitz camp in January 2025, particularly concerning the attendance of representatives of the State of Israel.

Poland ratified the Rome Statute of the International Criminal Court (ICC) in October 2021, following the Sejm's consent expressed through the Act of 5 July 2001.[48] The ICC is the first permanent international tribunal established to prosecute individuals accused of the most serious crimes, including genocide, crimes against humanity, war crimes, and aggression. Since ratifying the Statute, Poland has been legally obliged to comply with ICC decisions.

On 21 November 2024, the ICC issued arrest warrants for Benjamin Netanyahu (Prime Minister of Israel) and Yoav Gallant (Israeli Minister of Defence), for crimes

45 Reuters, 2024.
46 Gurgul, 2024.
47 Körömi, 2024.
48 Act of 5 July 2001, on the ratification of the Rome Statute of the International Criminal Court, Journal of Laws No. 98, item 1065.

against humanity and war crimes committed between at least 8 October 2023 and 20 May 2024. The Court found reasonable grounds to believe that international humanitarian law governing armed conflict between Israel and Palestine applied during that period because both states are High Contracting Parties to the 1949 Geneva Conventions and Israel occupies at least parts of Palestine. The ICC also concluded that Netanyahu and Gallant were responsible for inhumane acts causing great suffering to those in need of medical treatment. Doctors were allegedly forced to operate, including performing amputations on children, without anaesthetics or using unsafe sedation methods, thereby inflicting extreme pain and suffering. These acts constituted the crime against humanity of other inhumane acts.

There were further grounds to believe that Netanyahu and Gallant, as civilian superiors, bore responsibility for the war crime of intentionally directing attacks against Gaza's civilian population. The ICC determined that, despite having the means to prevent or punish such crimes or refer them to competent authorities, they failed to act.[49]

When the ICC issues an arrest warrant, it simultaneously transmits a request to the state where the individual is believed to be located. Under Polish criminal procedure (Art. 611g Para. 1 of the Code of Criminal Procedure), the Minister of Justice must forward such a request to the appropriate regional court, which is then required to order pretrial detention (Art. 611j Para. 1).

Only if the arrest would be 'contrary to the principles of the legal order of the Republic of Poland' may the court decline to issue an order, in which case it must return the case files to the Minister of Justice for clarification with the ICC (Art. 611m). This authority rests solely with the judiciary, not with the Council of Ministers or the Prime Minister.

Despite this, the Polish Council of Ministers adopted a resolution guaranteeing free and safe access for Israel's highest state representatives to attend the 80th anniversary ceremony of Auschwitz's liberation on 27 January 2025.[50] Under Polish law, decisions on executing ICC arrest warrants are within the exclusive remit of the judiciary, not the executive branch. The ICC responded to the resolution by reminding Poland that states party to the Rome Statute are legally bound to enforce ICC decisions and cannot unilaterally reinterpret them.[51]

The Supreme Bar Council emphasised that, under applicable law, the enforcement of an arrest warrant issued by the ICC in The Hague lies exclusively with the judiciary, not the President, the Council of Ministers, the Prime Minister or the Minister of Justice. It further noted that judicial and international tribunal rulings must not be selectively observed. The Council stated that

49 International Criminal Court, 2024a; International Criminal Court, 2024b.

50 The resolution, RM-06111-2-25, No. 3 of the Council of Ministers dated 9 January 2025, addressed the commemoration of the liberation of the Auschwitz-Birkenau Nazi concentration and extermination camp.

51 Jest komentarz Międzynarodowego Trybunału Karnego odnośnie decyzji polskiego rządu. Chodzi o przedstawicieli władz Izraela, 2025.

> The resolution of the Council of Ministers and statements by senior representatives of the executive branch suggesting the possibility of Poland not adhering to its binding international agreements undermine citizens' trust in the rule of law in Poland and the commitment of Polish authorities to respect the law, including the Constitution of the Republic of Poland and the rulings of courts and tribunals. Such actions, especially during a period of rebuilding the rule of law in Poland, are extremely dangerous and harmful – even if they stem from concerns about Poland's external security or other non-legal motives.[52]

The Bar's critique underscores the imperative of strict compliance with international and constitutional obligations. It warned that any deviation from these principles risks eroding public confidence in the legal order and jeopardising efforts to restore the rule of law. This situation highlighted the tension between international obligations and domestic political calculations, raising concerns about compliance with international law and the separation of powers.

3.6. Science and Higher Education: Constitutional Issues in Ministerial Appointments

Questions of constitutionality also arise from certain actions of the Minister of Science, notably the premature termination of the statutory terms of bodies within the higher education system. The Law on the National Science Centre stipulates that 'in order to identify candidates for members of the Council, the Minister shall appoint a Council Member Identification Team for a period of four years'. This team prepares and submits to the Minister a list of at least twenty-four candidates drawn from nominations by the scientific community.

The Minister dismissed the team appointed by his predecessor and replaced it with new appointees. Like any public authority, however, he is bound by Art. 7 of the Constitution to act strictly on the basis of the law and within its limits. He was required to identify the specific provision authorising the dismissal of the Chairman of the Identification Team. A public authority cannot presume competences yet that is precisely what occurred in this instance.

3.7. Culture and Protection of National Heritage

In an effort to introduce changes in the public media, the new Minister of Culture and National Heritage replaced the management and supervisory boards of Polish Television, Polish Radio and the Polish Press Agency without legal basis, bypassing the National Media Council. The dismissal of the supervisory boards and the appointment of new ones was contrary to the statutes of the public media, which

52 This statement was formalized in Resolution 168/2025 of the Supreme Bar Council, dated 11 January 2025. See: Naczelna Rada Adwokacka, 2025.

clearly stipulate that their supervisory boards are appointed and dismissed by the National Media Council. In January 2024, the CT ruled that certain provisions of both the Broadcasting Act and the Commercial Companies Code were unconstitutional, rendering the minister's actions legally ineffective. The Ministry of Culture, however, argued that the CT judgment was delivered in an improper composition and therefore lacked any legal significance.

When asked about the legality of these actions, the Minister of Justice replied, 'We have a situation where we are restoring constitutionality and are looking for some legal basis to do so'.[53]

4. 'Restoring Rule of Law' by the Executive and the Constitutional Role of State Institutions

Following the 2023 elections, the new government had to govern alongside a President from the opposition camp. Many institutions, including the CT and the NCJ, remained composed of appointees chosen by the previous parliamentary majority or the President during the eight years of Law and Justice rule (2015–2023). The SC had also been reconstituted on the basis of laws adopted in the previous parliamentary term. The parliamentary majority after 2023 questioned the constitutionality of certain legal provisions underpinning the formation of these bodies, referring to the situation as a 'constitutional crisis'.[54] This narrative served as justification for various actions, including attempts by representatives of the executive branch to reinterpret or even undermine the powers and status of certain constitutional bodies.

4.1. The President of the Republic of Poland

In September 2024, the Prime Minister withdrew his countersignature from President Andrzej Duda's decision appointing the chairman of the SC Civil Chamber's assembly of judges, tasked with selecting candidates for the chamber's president. He justified this by noting that two SC judges had contested his countersignature and that administrative law permits a body to rescind its own decision under the doctrine of 'self-control'. The Prime Minister's decision to withdraw his countersignature from President Andrzej Duda's decision was unprecedented in Polish political history and provoked considerable controversy among lawyers. Constitutionalists argue a countersignature – being the Prime Minister's signature on presidential decision – cannot

53 Nizinkiewicz, 2023.
54 Matczak, 2018.

be withdrawn, as it gives rise to legal effects that cannot be unilaterally revoked. As constitutional law expert Prof. Ryszard Piotrowski explained:

There is no such concept or procedure, nor such a possibility, because a countersignature is a signature by the Prime Minister on the President's decision. Therefore, the President is the host of this act. After countersignature, there are effects that cannot be undone by the Prime Minister's unilateral action.[55]

4.2. Constitutional Tribunal

Another contentious element of the government's policy was the Government Legislation Centre's decision to cease publishing CT judgments in the Journal of Laws of the Republic of Poland after the Sejm adopted a resolution on 6 March 2024 aimed at removing the effects of the 2015–2023 constitutional crisis.[56]

The resolution stated that, although public authorities are obliged to respect the Constitution – particularly the principle of legalism under Art. 7 – the inclusion of CT rulings issued by a contested bench in the activities of public authorities would itself violate that principle.

A subsequent resolution of the Council of Ministers of 18 December 2024, aimed at counteracting the constitutional effects in the area of the judiciary,[57] further entrenched this position. Citing the Sejm's earlier resolution of 8 March 2024, the Council asserted that

> the Constitutional Tribunal in its current configuration is incapable of performing the functions set out in Art. 188 and Art. 189 of the Constitution of the Republic of Poland. The Council of Ministers is responsible for taking remedial actions to restore the implementation of the constitutional judiciary in accordance with the constitutional standard.

In addition,

> in accordance with the principle of legalism of public bodies based on and in the provisions of law, resulting from Art. 7 of the Constitution. This principle also applies to the publication of legal acts. For this reason, the notification of the CT's rulings in official journals may only apply to acts that have been approved by the competent body in the procedure of the applicable law. […] Explanation of the ruling, the Council of Ministers constitutes a position that includes the announcement in the journals of the

55 Sitnicka, 2024.

56 The resolution of the Sejm of the Republic of Poland of 6 March 2024, on the removal of the effects of the constitutional crisis of 2015–2023 in the context of the activities of the Constitutional Tribunal (M.P. item 198).

57 Resolution No. 162 of the Council of Ministers, dated 18 December 2024, M.P. Item 1068.

> final decisions of the constitutional decisions, which constitute the consolidation of the definition of the rule of law. Therefore, the Council of Ministers, which is not the disclosure of documents that have been published by an unauthorised body.[58]

Thus, the Council of Ministers decided that the CT was not an authorised body to assess the constitutionality of law. Its rulings would not be published, effectively abolishing constitutional oversight for many months, and possibly years.

4.3. The Supreme Court and the National Council of the Judiciary

In the same resolution of 18 December 2024, the Council of Ministers found that

> the National Council of the Judiciary, established under the Act of 8 December 2017 amending the Act on the National Council of the Judiciary and certain other acts, is not a body that guarantees independence from the legislative and executive authorities. […] The Supreme Court, adjudicating in panels in which a person appointed to the office of a judge by the President of the Republic of Poland at the request of the National Council of the Judiciary, established in the manner specified in the provisions of the Act of 8 December 2017 amending the Act on the National Council of the Judiciary and certain other acts, does not meet the requirements of independence and impartiality.

As a result, the texts of acts issued by the NCJ and by benches of the SC deemed by the Council of Ministers not to meet these criteria were to be published in official journals with a note that the NCJ did not guarantee independence from the legislative and executive authorities, and that irregularities in the appointment process prevented the SC from being recognised as a court established by law.

A notable example of state bodies acting on the reasoning contained in this resolution was the procedure concerning the financial report of the PiS electoral committee for the 2023 parliamentary elections. The matter falls within the competence of the National Electoral Commission, the highest electoral authority in Poland, responsible for conducting elections and referenda. The Commission, dominated by members nominated by the current parliamentary majority, rejected the committee's report in August 2024, citing violations of the Electoral Code. This decision required the return of the disputed funds to the State Treasury and a reduction in the party subsidy, leaving a shortfall of several dozen million zlotys.

In accordance with the Code, the PiS Committee appealed the decision to the SC. On 11 December 2024, the SC upheld the committee's complaint, which should have led to the immediate adoption of its financial report by the National Electoral Commission. However, on 16 December 2024, the Commission deferred its decision,

58 Ibid.

refusing to recognise the SC ruling on the grounds that the bench which issued it lacked the attributes of an independent court. This arrangement effectively constrained the opposition party's ability to function, including the conduct of a full-scale campaign in the 2025 presidential elections.[59]

4.4. Common Courts

According to Art. 173 of the Constitution 'The courts and tribunals shall constitute a separate power and shall be independent of other branches of power'. Art. 178 Para. 1 adds: 'Judges, within the exercise of their office, shall be independent and subject only to the Constitution and statutes'.

On 6 February 2024, the Minister of Justice issued a regulation amending the *Rules of Office of Common Courts* (Journal of Laws item 149). The regulation stipulated that cases concerning the exclusion of a judge, where the grounds were the circumstances of their appointment, could not be assigned to judges appointed with the participation of the NCJ constituted following the 2018 Act. The current ruling camp contests the status of these judges. The regulation was published on 7 February 2024 and entered into force the following day.

In its judgment of 16 May 2024 (reference number U 1/24), the CT found this regulation unconstitutional. It held that the Minister of Justice had unlawfully supplemented, through sub-statutory regulation, the provisions of the Code of Criminal Procedure of 6 June 1997 and the Code of Civil Procedure of 17 November 1964. This action directly interfered with the institution of exclusion of a judge by operation of law (*iudex inhabilis*). The Tribunal ruled that including such provisions in an act of sub-statutory rank breached Art. 176 Sec. 2 of the Constitution. Furthermore, Art. 1 of the amending regulation violated Art. 45 Sec. 1 of the Constitution by undermining the independence of the courts and the impartiality of judges.

5. Conclusions

On 10 September 2024, the Polish Prime Minister stated:

> If we want to restore constitutional order and the foundations of liberal democracy, we must act in terms of militant democracy. This means that we will probably, more than once, make mistakes or take actions that, according to some legal authorities, may not be in accordance with the letter of the law, but nothing relieves us of our duty to act.

59 PAP, 23.12.2024, 14:38.

The political project of 'restoring the rule of law' has been imbued with warlike and revolutionary rhetoric. According to some academics, restoring the rule of law resembles the 'action of a sapper' who may deviate from legalism in the belief that doing so will ultimately preserve the rule of law.[60]

A defining feature of liberal legal culture is the law's relative autonomy from politics. Under normal circumstances, politics does not dominate law but coexists with it in a mutually competitive relationship, where the outcome is not always predetermined in favour of political rationale. Scholarship often distinguishes between 'legal policy' and 'political policy' to describe this balance. The transition from a normal to an extraordinary situation raises questions about both the meaning and the feasibility of maintaining the relative autonomy of law. The actions of the Polish executive after 2023 suggest that the ruling authorities perceive the situation as extraordinary. This assessment appears to underpin measures such as the instrumentalisation of law, presented as indispensable for achieving political objectives, particularly safeguarding public security. In such a context, the usual balancing of reasons and principles central to the rule of law tends to be replaced by a more radical reordering of legal values.

The autonomy of law diminishes as political actions increasingly respond to immediate needs. Legal constraints on the arbitrariness of political acts are perceived by a state perceiving itself as existentially threatened as an unnecessary obstacle to the execution of essential defensive measures. At the same time, judicial oversight of administrative actions is treated as a risk that the state finds increasingly difficult to tolerate under such conditions.

The new government's unorthodox approach to the 'letter of the law' was already evident during its appointment and swearing-in by the President on 13 December 2023. Two appointees altered the constitutionally mandated wording of the oath, and one swore to assume a different office from that specified in the appointment decree.[61] Regardless of whether this affects the validity of the government's acts *in gremio* (as the Council of Ministers) or whether it will ever be reviewed by courts or a tribunal, this incident signalled a new approach to the Constitution.

In mature democracies, the oaths of senior officials are treated with full seriousness as a pledge to respect the law. For instance, US President Barack Obama retook the oath of office in 2009 after a minor error in its wording.[62]

Short-cutting or disregarding the letter of the law is a double-edged sword. Social processes have their own momentum, and escalation can have lasting consequences. It is impossible to know whether an act presented as exceptional will remain so or develop into a systemic practice eroding the last constitutional barriers. This approach closely aligns with the doctrine of decisionism. The essence of this school of political thought, epitomised by Carl Schmitt, is the view that a decision possesses

60 Zajadło and Koncewicz, 2024.
61 Donald Tusk – kanał oficjalny, 2023.
62 Siddique, 2009.

intrinsic value independent of the legal system. Between the extremes of Exception (*Ausnahmefall*) and Normalcy (*Normalfall*) lies a continuum of situations in which the 'moment of decision' coexists alongside the 'moment of norm'. Each has distinct significance within the legal framework. A decision retains relative autonomy from the legal norms it references; it is more than a derivative of law. Decisionists view the interdependence between norms and decisions as fundamental to the legal order. Legal rules gain meaning when a recognised authority – whether a judge or a holder of power – issues a ruling and invests it with personal judgment. In so doing, the authority provides concrete validation of a resolution. This perspective underscores the dynamic interplay between abstract legal norms and the context-specific decisions of those tasked with their interpretation and enforcement. Decisionism thus highlights the centrality of human agency in shaping the practical application of legal principles.

Another model that illustrates the transformation of the rule of law principle in Poland after 2023 is the concept developed by Clinton L. Rossiter, an American political scientist and historian. After World War II, Rossiter formulated a doctrine advocating the adaptation of institutions and methods typically associated with dictatorial regimes to the constitutional needs of democratic states facing extraordinary threats. He referred to this doctrine as 'constitutional dictatorship'. It promotes the use of measures deemed absolutely necessary to safeguard the constitutional order, provided such measures are temporary and directed at restoring the previous political framework. Extraordinary powers delegated to a specific authority should serve to re-establish the prior legal order concerning individual rights, legal processes, and normal social life, rather than introducing permanent systemic changes.

The foundation of Rossiter's theory was the assumption that 'no form of government can survive if it excludes dictatorship when the survival of the nation is at stake'. Rossiter sought to provide a positive answer to the question: 'Can a democratic country wage a successful total war and remain democratic after its conclusion?' He argued that the term 'constitutional dictatorship' is only seemingly an oxymoron, as democracy may in extreme cases need to temporarily sacrifice itself to ensure its survival.

Rossiter maintained that short-term dictatorial governance, when indispensable to counter an existential threat, could remain constitutional. He explicitly referenced the ancient Roman institution of dictatorship, describing the dictator as someone legally empowered to restore normal conditions and governance, subsequently relinquishing power once the circumstances necessitating the dictatorship ceased to exist. According to Rossiter, transitional dictatorial governance might be necessary to protect national independence, preserve the constitutional order, or defend individuals' political and social freedoms. He viewed constitutional dictatorship as a regrettable yet integral phenomenon that has historically accompanied constitutional governance. Rossiter developed several guidelines intended to preserve democracy in such circumstances. The legitimacy of constitutional dictatorship is supported by three primary arguments: democratic systems – designed for normal, peaceful

conditions – lack the capacity to act effectively during a major national crisis; constitutional dictatorship allows a temporary restructuring of governance proportionate to the severity and duration of the crisis; and a strong executive authority – sometimes taking the form of outright dictatorship – is necessary to safeguard the state's independence, uphold constitutional order, and protect political and social freedoms. The government receives powers in proportion to the crisis's severity and duration, with the aim of resolving the crisis. Any changes introduced during such a dictatorship must be reversible once the crisis has passed. Its goal must always be the complete restoration of the *status quo ante bellum*.

Rossiter's normative theory of constitutional emergency powers specifies conditions for introducing, maintaining, and terminating a constitutional dictatorship: (1) Necessity: it must only be invoked when essential to preserve the state and its constitutional order; (2) Control: decisions to continue or end the dictatorship must not rest with the authority exercising dictatorial powers; (3) Duration: it must not outlast the crisis it was established to address; and (4) Restoration: the political order must be restored to a condition as close as possible to that which existed beforehand.

Rossiter's theory emphasises the need to balance state preservation with the protection of liberal democracy, establishing a framework for extraordinary measures that does not compromise the long-term integrity of democratic governance.[63]

The actions of the executive branch after 2023, even when viewed through Rossiter's concept of constitutional dictatorship, lack legitimacy due to several critical shortcomings:

(1) Absence of an objective threat: there is no clear evidence of an extraordinary danger warranting actions inconsistent with the rule of law. For Rossiter, constitutional dictatorship is permissible only when required to address a crisis threatening the state's survival or its constitutional order. Without such a crisis, invoking extraordinary measures undermines the theoretical foundation of this concept.

(2) Lack of demonstrated necessity: the government has offered no compelling argument that these measures are indispensable for preserving the state or its constitutional framework. Nor is it evident which specific social or political rights require protection through actions contravening existing laws.

(3) Deviation from restoring the rule of law: rather than seeking to restore the status quo ante bellum – a cornerstone of Rossiter's theory – these actions appear aimed at consolidating power and circumventing constitutional constraints. This shift runs counter to the principle that extraordinary measures must be temporary and directed at re-instating normal democratic governance as soon as the crisis subsides.

(4) Misuse of crisis justifications: by framing these actions as necessary to 'restore the rule of law', the government not only distorts the intent of constitutional dictatorship but also erodes the distinction between emergency powers and

63 Rossiter, 1948, pp. 5–7.

> authoritarian practices. The apparent goal of strengthening executive authority and circumventing legal checks conflicts with Rossiter's insistence that such measures must prioritise the eventual restoration of constitutional norms.

In sum, these actions do not meet Rossiter's normative criteria for constitutional emergency powers. Instead, they reflect a pattern of instrumentalising the notion of crisis to justify political objectives that undermine the rule of law, rather than reinforcing it.

The preamble to the Constitution of the Republic of Poland obliges state authorities to cooperate, a directive that remains essential for resolving serious antagonisms and political tensions. Departing from the letter of the Constitution is not only dangerous but also, as the experience of the past year in Poland demonstrates, counterproductive. Legal nihilism and attempts to bypass constitutional standards can only be effectively countered by a stance known as constitutional absolutism. This stance asserts that the Constitution applies equally in times of war and in periods of peace and must be strictly enforced because its principles remain unchanged, even if their application during emergencies produces different effects from those expected in normal circumstances. However, rulers do not possess any extraordinary authority to counteract danger during a crisis unless the constitution explicitly grants such powers. This view reflects faith in the constitutional perfection, completeness, and resilience, assuming that its drafters anticipated future threats and entrusted the necessary powers to the appropriate authorities. A constitution that can withstand any danger should never be suspended, even in the face of emergencies, constitutional crises, or other exceptional circumstances.[64]

64 Dobrzeniecki, 2018, p. 188.

References

Adam Bodnar odwołuje prezesów sądów. Oto lista (2024) *GazetaPrawna*, 19 July 2024 [Online]. Available at: https://serwisy.gazetaprawna.pl/orzeczenia/artykuly/9385237,adam-bodnar-odwoluje-prezesow-sadow-oto-lista.html#_blank (Accessed: 21 December 2024).

Bałaban, A. (ed.) (2002) *Rada Ministrów. Organizacja i funkcjonowanie.* Kraków: Wydawnictwo ZAKAMYCZE.

Dobrzeniecki, K. (2018) *Prawo wobec sytuacji nadzwyczajnej.* Toruń: TNOiK.

Donald Tusk – kanał oficjalny (2023) 'Zaprzysiężenie Rady Ministrów Donalda Tuska, 13.12.2023', *Youtube.com*, 13 December 2023 [Online]. Available at: https://www.youtube.com/watch?v=YNrkuSxcgGk (Accessed: 21 December 2024).

Grzybowski, M. (2012) 'Rada Ministrów i administracja rządowa' in Wyrzykowski, M. (ed.) *System prawa administracyjnego.* Warszawa: Wydawnictwo C.H. Beck.

Gurgul, K. (2024) 'Tusk zabrał głos. Jest komentarz do wyjścia Romanowskiego na wolność', *WP Wiadomosci*, 19 July 2024 [Online]. Available at: https://wiadomosci.wp.pl/tusk-o-zatrzymaniu-romanowskiego-sceny-jak-z-gangsterskiego-filmu-7050097668606496a (Accessed: 22 December 2024).

International Criminal Court (2024a) 'Decision on Israel's request for an order to the Prosecution to give an Article 18(1) notice', *International Criminal Court Pre-Trial Chamber I*, 21 November 2024 [Online]. Available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180a0ebd9.pdf (Accessed: 31 December 2024).

International Criminal Court (2024b) 'International Criminal Court issues arrest warrants: Pre-Trial Chamber I rejects Israel's challenges to jurisdiction and issues warrants of arrest for Benjamin Netanyahu and Yoav Gallant (Non-UN Document)', *International Criminal Court, Pre-Trial Chamber I*, 21 November 2024 [Online]. Available at: https://www.un.org/unispal/document/icc-arrest-warrant-netanyahu-21nov24/ (Accessed: 31 December 2024).

Jałoszewski, M. (2024a) 'Sukces Bodnara. Odwołanie prezesa Sądu Okręgowego w Kielcach, nominata władzy PiS', *Archiwum Osiatyńskiego*, 8 February 2024 [Online]. Available at: https://archiwumosiatynskiego.pl/wpis-w-debacie/sukces-bodnara-odwolanie-prezesa-sadu-okregowego-w-kielcach-nominata-wladzy-pis/#_blank (Accessed: 19 July 2024).

Jałoszewski, M. (2024b) 'Bodnar odwołuje 11 prezesów sądów z Krakowa. To największa akcja dymisjonowania nominatów Ziobry', *OKO.press*, 4 March 2024 [Online]. Available at: https://oko.press/bodnar-odwoluje-11-prezesow-sadow-z-krakowa-to-najwieksza-akcja-dymisjonowania-nominatow-ziobry#_blank (Accessed: 19 July 2024).

Jest komentarz Międzynarodowego Trybunału Karnego odnośnie decyzji polskiego rządu. Chodzi o przedstawicieli władz Izraela (2025) *Polska Agencja Prasowa*, 11 January 2025 [Online]. Available at: https://www.pap.pl/aktualnosci/jest-komentarz-miedzynarodowego-trybunalu-karnego-odnosnie-decyzji-polskiego-rzadu (Accessed: 31 January 2025).

Körömi, Cs. (2024) 'Orbán infuriates Warsaw by granting political asylum to former Polish minister', *POLITICO*, 20 December 2024 [Online]. Available at: https://www.politico.eu/article/viktor-orban-infuriate-warsaw-poland-marcin-romanowski-asylum/ (Accessed: 22 December 2024).

Krajowa Szkoła Sądownictwa i Prokuratury (2024) 'Informacja w zakresie wyznaczania osób do prowadzenia zajęć w KSSiP', *kssip.gov.pl*, 12 July 2024 [Online]. Available at: https://www.kssip.gov.pl/node/9523#_blank (Accessed: 20 July 2024).

Krajowa Rada Sądownictwa (2024) 'Uchwała Prezydium Krajowej Rady Sądownictwa z dnia 17 lipca 2024 r. w sprawie dyskryminacji sędziów-wykładowców Krajowej Szkoły Sądownictwa i Prokuratury', *krs.pl*, 17 July 2024 [Online]. Available at: https://krs.pl/pl/aktualnosci/2565-uchwala-prezydium-krajowej-rady-sadownictwa-z-dnia-17-lipca-2024-r-w-sprawie-dyskryminacji-sedziow-wykladowcow-krajowej-szkoly-sadownictwa-i-prokuratury.html#_blank (Accessed: 19 July 2024).

Łukaszewicz, A. (2024) 'Odwołani prokuratorzy nie uznają decyzji ministra Bodnara', *Rzeczpospolita*, 18 December 2023 [Online]. Available at: https://www.rp.pl/prawnicy/art39589131-odwolani-prokuratorzy-nie-uznaja-decyzji-ministra-bodnara (Accessed: 22 December 2024).

Matczak, M. (2018) 'Poland's Constitutional Crisis: Facts and interpretations, The Foundation for Law, Justice and Society', *Contemporary Issues* [Online]. Available at: https://monitorkonstytucyjny.eu/wp-content/uploads/2018/07/Matczak_Polands-Constitutional-Crisis-Facts-and-interpretations_0.pdf (Accessed: 21 December 2024).

Ministerstwo Sprawiedliwości (2024) 'Wszczęcie procedury odwołania', *gov.pl*, 19 July 2024 [Online]. Available at: https://www.gov.pl/web/sprawiedliwosc/wszczecie-procedury-odwolania#_blank (Accessed: 19 July 2024).

Naczelna Rada Adwokacka (2025) 'Uckwala nr 168/2025', 11 January 2025 [Online]. Available at: https://www.adwokatura.pl/admin/wgrane_pliki/big_file-uchwala-nra-z-11012025-42101.jpeg (Accessed: 31 January 2025).

Nizinkiewicz, J (2023) 'Przejęcie TVP. Adam Bodnar: Przywracamy konstytucyjność i szukamy jakiejś podstawy prawnej', *Rzeczpospolita*, 29 December 2023 [Online]. Available at: https://www.rp.pl/polityka/art39633681-przejecie-tvp-adam-bodnar-przywracamy-konstytucyjnosc-i-szukamy-jakiejs-podstawy-prawnej (Accessed: 21 December 2024).

Opaliński, B. (2012) *Rozdzielenie kompetencji władzy wykonawczej między Prezydenta RP oraz Radę Ministrów.* Warszawa: Wolters Kluwer Polska.

Patyra, S. (2002) *Prawnoustrojowy status Prezesa Rady Ministrów w świetle Konstytucji z 2 kwietnia 1997 r.* Warszawa: Wydawnictwo Sejmowe.

Potrzeszcz, J. (2013) *Bezpieczeństwo prawne z perspektywy filozofii prawa.* Lublin: Wydawnictwo Kul.

Reuters (2024) 'Former Polish deputy minister released after immunity dispute' [Online]. Available at: https://www.reuters.com/world/europe/former-polish-deputy-minister-released-after-immunity-dispute-2024-07-17/ (Accessed: 22 December 2024).

Rozliczymy rządy PiS (2024) *Koalicja Obiwatelska* [Online]. Available at: https://100konkretow.pl/rozliczenie-rzadow-pis/ (Accessed: 22 December 2024).

Rossiter, C.L. (1948) *Constitutional dictatorship. Crisis government in the modern democracies.* Princeton: Routledge.

Sądownictwo, prokuratura: odwołania, powołania (odc. 16–23) (2024) *Monitor Konstytucyjny*, 24 May 2024 [Online]. Available at: https://monitorkonstytucyjny.eu/archiwa/28836#_blank (Accessed: 19 July 2024).

Siddique, H. (2009) 'Obama retakes oath of office after inauguration stumble', *The Guardian*, 22 January 2009 [Online]. Available at: https://www.theguardian.com/world/2009/jan/23/barack-obama-oath-inauguration (Accessed: 21 December 2024).

Sitnicka, D. (2024) 'Prof. Piotrowski: Cofnięcie kontrasygnaty to ewidentne naruszenie litery prawa', *OKO-press*, 12 September 2024 [Online]. Available at: https://oko.press/prof-piotrowski-cofniecie-kontrasygnaty (Accessed: 21 December 2023).

Stanek, G. (2021) 'Art. 1' in Drembkowski, P. (ed.) *Prawo o prokuraturze. Regulamin wewnętrznego urzędowania powszechnych jednostek organizacyjnych prokuratury. Komentarz*. Warszawa: Wydawnictwo C.H. Beck, pp. 3–11.

Stembrowicz, J. (1982) *Rząd w systemie parlamentarnym*. Warszawa: PWN.

Unlawful Procedure for Removal of President and Vice-Presidents from Warsaw Courts (2024) *Eesti Eest!*, 19 July 2024 [Online]. Available at: https://eestieest.com/unlawful-procedure-for-removal-of-president-and-vice-presidents-from-warsaw-courts/#_blank (Accessed: 20 July 2024).

YGI (2024) 'Odwoływanie prezesów sądów przez Bodnara nielegalne? RPO ma wątpliwości', *Business Insider Polska*, 18 June 2024 [Online]. Available at: https://businessinsider.com.pl/wiadomosci/odwolywanie-prezesow-sadow-przez-bodnara-nielegalne-rpo-ma-watpliwosci/vggqjge#_blank (Accessed: 01 August 2024).

Zieliński, E. (2001) *Administracja rządowa w Polsce*. Warszawa: Elipsa.

Zajadło, J., Koncewicz, T.T. (2024) ''Sąd Przyłębskiej' należy wyzerować i powołać TK na nowo', *Rzeczpospolita*, 15 February 2024 [Online]. Available at: https://www.rp.pl/opinie-prawne/art39842461-koncewicz-zajadlo-sad-przylebskiej-nalezy-wyzerowac-i-powolac-tk-na-nowo (Accessed: 21 December 2024).

Żółciak, T. (2024) 'Prokuratorska wojna rozpisana na miesiące', *Dziennik Gazeta Prawna*, 15 January 2024 [Online]. Available at: https://www.gazetaprawna.pl/wiadomosci/kraj/artykuly/9403934,prokuratorska-wojna-rozpisana-na-miesiace.html (Accessed: 21 December 2024).