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Threats related to violations of the rule of law in the context of the activities of the prosecutor's office

Zagrożenia związane z naruszeniami praworządności w kontekście działalności prokuratury

Abstract

This publication aims to highlight issues related to the crisis of the rule of law in Poland and is the result of an international conference held at the Constitutional Tribunal on December 2025 as part of the View of Young Researchers conference series. The theme of this year's conference was: "Accountability of Constitutional State Organs in the Context of a Rule of Law Crisis." The crisis of the rule of law that we are witnessing has affected, among others, the institution of the Public Prosecutor's Office, which is so important from the point of view of ensuring the safety of citizens. According to Article 2 of the Act on the Public Prosecutor's Office (hereinafter referred to as P.o.p.), the tasks of this institution include prosecuting crimes and upholding the rule of law. The article is divided into several main sections, which concern, among other things, constitutional issues and statistics in this context. However, the main part focuses on issues related to the legal analysis of the takeover of the Public Prosecutor's Office by the newly appointed Minister of Justice – Prosecutor General, which took place on January 12, 2024. The legal assessment covers both the provisions of the Act on the Prosecution Service and national case law, including judgments of the Supreme Court and the Constitutional Tribunal, which were exceptionally critical in their rulings on the actions taken by the former Minister of Justice. The publication concludes with final conclusions and proposals *de lege futura*.

Keywords: Prosecutor's office, rule of law, "neo-judges," takeover of the prosecutor's office, procedural guarantees, principle of legal certainty.

Streszczenie

Niniejsza publikacja ma na celu zasygnalizowanie problematyki dotyczącej kryzysu praworządności w Polsce i jest pokłosiem międzynarodowej konferencji, która odbyła się w Trybunale Konstytucyjnym w dniu grudnia 2025 r. w ramach cyklu konferencji View of Young Researchers. Tematem tegorocznej konferencji było: "Accountability Constitutional State Organs in the Context of a Rule of Law Crisis". Kryzys praworządności, którego jesteśmy świadkami dotknął między innymi instytucję Prokuratury, tak ważnej z punktu widzenia zapewnienia bezpieczeństwa obywatelom. Do zadań tej instytucji należy bowiem zgodnie z artykułem 2 ustawy prawo o prokuraturze (dalej P.o.p.) ściganie przestępstw oraz stanie na straży praworządności. Artykuł podzielony został na kilka zasadniczych części, które dotyczą między innymi zagadnień ustrojowych oraz statystyki w tym kontekście. Zasadnicza część ogniskuje się jednak na kwestiach dotyczących analizy prawnej przejęcia prokuratury przez nowo powołanego Ministra Sprawiedliwości -Prokuratora Generalnego, która miała miejsce w dniu 12 stycznia 2024 r. Ocenie prawnej poddano zarówno zapisy ustawowe ustawy p.o.p. jak również orzecznictwo krajowe w tym wyroki Sądu Najwyższego oraz Trybunału Konstytucyjnego, które to instytucje wyjątkowo krytycznie w swoich orzeczeniach ustosunkowały się do działań podjętych przez byłego już Ministra Sprawiedliwości. Publikacja zakończona została wnioskami końcowymi oraz postulatami *de lege futura*.

Słowa kluczowe: Prokuratura, praworządność, „neo sędziowie”, przejęcie prokuratury, gwarancje procesowe, zasada pewności prawa.

Introduction

At present, the Polish justice system is in a state of deep crisis and an unprecedented and deepening "legal collapse." Both the prosecution and the judiciary have been locked in a legal standoff since the current ruling coalition took power. It is impossible not to get the impression that this

situation suits certain social groups, and perhaps in particular those who break the law. In addition, some professional groups, including some lawyers, cynically exploit the legal chaos to discredit decisions made by legally appointed judges, often referred to pejoratively as “neo-judges.” In this context, it is necessary to highlight issues concerning primarily the institution of the prosecutor’s office, which, according to some prosecutors and judges, as confirmed by relevant rulings of both the Supreme Court and the Constitutional Tribunal, has been appropriated in a manner that is unlawful and contrary to the applicable provisions of the Act on the Public Prosecutor’s Office.

Prosecutor’s Office. Constitutional issues

The latest Act on the Public Prosecutor’s Office was introduced into the national legal system by virtue of the Act of January 28, 2016,¹ and was related to a constitutional change consisting in the restoration of the function of the Minister of Justice as the Prosecutor General. The Act consists of nine sections devoted to, among other things:

- general provisions, including the tasks of the prosecutor’s office, activities that must be performed by prosecutors, the independence of prosecutors, as well as the powers of superior prosecutors to change or revoke the decisions of subordinate prosecutors;
- the organization of the prosecutor’s office;
- the activities of the prosecutor’s office in preparatory proceedings, court proceedings, and others;
- prosecutors, including: the appointment and dismissal of prosecutors, their basic duties;
- the criminal, disciplinary, and professional liability of prosecutors;
- assessors, trainees, and assistant prosecutors;
- complaints and motions;
- officials and employees;
- the processing of personal data.

According to the explanatory memorandum to the Act, the model of operation of the public prosecutor’s office in force since April 1, 2010, has failed in the eyes of the public and in the opinion of some experts.

¹ Journal of Laws of 2022, item 1247, as amended.

One of the main reasons for this was the legal regulations that severely limited the position of the Prosecutor General, both internally and externally. The separation of the functions of the Prosecutor General from the Minister of Justice, firstly, did not bring the expected effect and, secondly, could have violated Article 146(4)(7) and (9) of the Constitution. As indicated in the explanatory memorandum to the draft law, “The return to the personal union of the Minister of Justice and the Prosecutor General will lead to the head of the prosecutor’s office regaining a strong position, both vis-à-vis subordinate prosecutors and external bodies, which is an essential element for the proper performance of the tasks imposed on this institution by the legislator. In addition, the term limits for managerial positions in the prosecutor’s office, introduced in accordance with the previously applicable Act on the Prosecutor’s Office, resulted in a violation of the principle of hierarchical subordination, which is so important from the point of view of the prosecutor’s office². At this point, it should be recalled that the prosecutor’s office is governed by basic principles concerning: the independence of prosecutors, hierarchical subordination, as well as uniformity and indivisibility. With regard to the aforementioned principle of hierarchical subordination, it can be derived from the system of norms of the Act on the Prosecutor’s Office. Articles 1§ 2 of the Act on the Public Prosecutor’s Office; Articles 7 § 2-5 of the Act on the Public Prosecutor’s Office; Articles 13 § 1 and 2 of the Act on the Public Prosecutor’s Office; Articles 8 and 9 of the Act on the Public Prosecutor’s Office. Pursuant to Article 1§ 2 of the Act on the Public Prosecutor’s Office, the Prosecutor General is the head of the public prosecutor’s office, i.e. the superior of all prosecutors (Article 13§ 1 and 2 of the Act on the Public Prosecutor’s Office). In addition, pursuant to Article 7 § 2 of the Act on the Public Prosecutor’s Office, a prosecutor is obliged to carry out the orders, guidelines, and instructions of his superior prosecutor. The further content of the above-mentioned provision specifies the official procedure to be followed in the event of a prosecutor’s disagreement with an official instruction issued to him concerning the content of a procedural action. Another provision that directly refers to the issue of hierarchy is Article 8 of the Act on the Prosecution Service, according to which a superior prosecutor

² Justification for the government’s draft bill amending the Act on the Public Prosecutor’s Office and certain other acts (Sejm document No. 162), <https://orka.sejm.gov.pl/Druki6ka.nsf/wgdruku/617>, (accessed on January 5, 2026).

is entitled to change or revoke a decision of a subordinate prosecutor. Any amendment or revocation of this decision must be made in writing and included in the case file. It should be noted that, with regard to the hierarchical structure of the public prosecutor's office and, consequently, the hierarchical system of prosecution, in which a superior may revoke a prosecutor's decision, thereby assuming full responsibility for it, this is in line with international standards. With regard to prosecutorial independence, guarantees in this area are of exceptional importance. They can be divided into several aspects, namely:

- guarantees concerning material and social aspects relating to remuneration or protection of the employment relationship;
- ethical and systemic guarantees related to the obligation to remain impartial and, above all, the prohibition on being guided by personal and political interests.

Compared to judicial independence, prosecutors are independent only within the limits of the law and hierarchical subordination, while judicial independence is complete and constitutional. An example of this is the issue of taking over cases, which happens in the prosecutor's office but is unacceptable in court. Similarly, within the court, it is not possible to interfere with the content of a ruling, which we see happening within the prosecutor's office. In summary, the guarantee of judicial independence is complete and constitutional in nature, while in the case of the public prosecutor's office, independence is solely statutory and limited. The explanatory memorandum to the draft law on the public prosecutor's office also points out that in other European countries, including France, Austria, Belgium, the Czech Republic, and the Netherlands, the public prosecutor's office is subordinate to the Minister of Justice. Importantly, the previous law on the public prosecutor's office eliminated issues such as early promotion and the awarding of cash or material rewards to outstanding prosecutors, which certainly did not encourage prosecutors to work dynamically and intensively. Currently, the Prosecutor General and the National Prosecutor will have the opportunity to reward outstanding investigative prosecutors, including with cash awards or early promotion. An important change has been made to the Military Prosecutor's Office, which has become part of the public prosecutor's office while retaining a certain degree of independence through the creation of the position of Deputy Prosecutor General for Military Affairs at the level of the National Prosecutor's Office Department for Military Affairs and at the level of district and regional

prosecutor's offices, respectively, departments and divisions for military affairs. Importantly, with regard to the rest of the publication, the National Prosecutor, as the First Deputy Prosecutor General, and other Deputy Prosecutors General are appointed from among the prosecutors of the National Prosecutor's Office and dismissed from these positions by the Prime Minister at the request of the Prosecutor General, after obtaining the opinion of the President of the Republic of Poland. The dismissal of the National Prosecutor and other deputies of the Prosecutor General requires the consent of the President of the Republic of Poland. According to the legislator, this solution is intended to ensure the stability of the functioning of the highest authorities of the prosecutor's office³. In addition, in a certain respect, it is also related to ensuring the independence of the National Prosecutor, who is the First Deputy Prosecutor General, and the other Deputy Prosecutors General. It should be added that the Office of the Prosecutor General was replaced by the National Prosecutor's Office, which was necessary, among other things, in connection with the expansion of the scope of tasks and the creation of, among others, the Department for Organized Crime and Corruption, together with its regional divisions, as well as the Internal Affairs Division, whose task is to conduct preparatory proceedings to prosecute crimes of a particularly high degree of social harm due to the subjective characteristics of the acts, i.e., due to the persons of the possible perpetrators, i.e., judges, prosecutors, and assessors. The Appellate Prosecutor's Offices were replaced by a total of eleven Regional Prosecutor's Offices.

Unfortunately, to date, unlike the courts, the institution of the Public Prosecutor's Office has not been enshrined in the Polish Constitution, despite a number of voices in favor of doing so⁴. Some representatives of this doctrine, including Andrzej Ważny, proposed amending the Constitution and introducing a new title in Chapter IX: "State Control and Law Enforcement Authorities" – which would concern the Public Prosecutor's Office of the Republic of Poland and contain provisions including:

- Art. 201a. The Public Prosecutor's Office shall safeguard the rule of law and oversee the prosecution of crimes.

³ Justification for the government's draft bill amending the Act on the Public Prosecutor's Office and certain other acts (Sejm document No. 162), <https://orka.sejm.gov.pl/Druki6ka.nsf/wgdruku/617> (accessed on January 8, 2026).

⁴ See, for example: S. Waltoś, *The Public Prosecutor's Office – its place among the authorities, structure and functions*, Państwo i Prawo 2002, vol. 4, p. 10; A. Herzog, *The independence of the public prosecutor's office – myth or hope?*, "Prokuratura i Prawo" 2009, no. 1, p. 111.

- Art. 201b. The Public Prosecutor's Office in the Republic of Poland shall consist of the Prosecutor General and the public and military prosecutors subordinate to him in the organizational units of the Public Prosecutor's Office. Prosecutors shall be independent in the exercise of their office.
- Art. 201c. 1. The scope, mode of operation, and organization of the public prosecutor's office shall be specified by statute⁵.

Table 1. Changes in the organizational structure of the Prosecutor's Office in 2010-2018

2010 r.	2016-2018 r.
Office of the Attorney General – no preliminary proceedings underway	National Prosecutor's Office – establishment of the Internal Affairs Department – establishment of 11 Regional Divisions of the Department for Organized Crime and Corruption
Appellate Prosecutor's Offices – 11 Departments for Organized Crime and Corruption – 3 Departments for Economic Crime	Regional Prosecutor's Offices – 11 Departments for Economic Crime. – 6 Departments for Financial and Fiscal Crime – 11 Coordinators for Combating Cybercrime – 5 Departments for Medical Errors
District Prosecutor's Office – 49 Investigative Departments – 19 Departments for Economic Crime	District Prosecutor's Office – 49 Investigative Departments – 39 Departments for Economic Crime – 13 Departments for Financial Crime – 21 Cells and 35 Coordinators for Combating Cybercrime

Source: Own calculations based on data from the prosecutor's office

One must fully agree with the rather sad but true observation made by the author of one of the commentaries on the law on the public prosecutor's office that “years of separation between the public prosecutor's office and the courts have led to significant differences in the status of judges and prosecutors, to the detriment of the latter.”⁶

⁵ A. Ważny, *Constitution without the Public Prosecutor's Office*, “Public Prosecutor's Office and Law” 2009, vol. 9, , pp. 114–116.

⁶ P. Turek, *Law on the Public Prosecutor's Office. Commentary*, Warsaw 2023, p. 21.

Statistics in the context of changes in the prosecution system

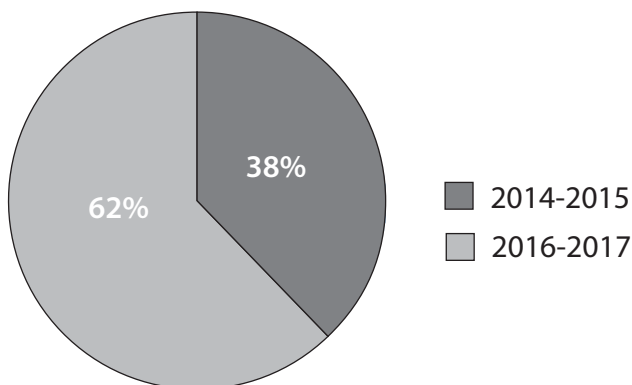
Perhaps critics of the introduction of the new law on the prosecutor's office, which fundamentally remodeled its structure, focusing as a result on the prosecution of the most serious crimes, including those of an organized nature and economic crime, will be convinced by statistics, which of course should not be overemphasized. However, without them, we would not be able to assess the functioning of individual divisions of the prosecutor's office and, consequently, the efficiency of their operation and the commitment of individual prosecutors. The chart below illustrates the number of financial and economic crime cases that were conducted in 2014-2015 and 2016-2017, respectively, i.e., immediately after the structural reorganization of the prosecutor's office.

As can be easily seen, in 2014-2015, approximately 50 percent fewer proceedings were conducted in the area of the most serious financial and economic crimes (7,847 cases) compared to the period 2016-2017 (12,542 cases). The following chart shows the value of property actually secured in 2015 and 2017.

The data presented shows that in 2017, compared to 2015, there was more than a twofold increase in real secured property. Without resorting to statistical data, the improvement in the work of the prosecutor's office took place in many areas, including an increase in the number of assistant positions from 302 in 2015 to 917 in 2018, and an increase in the number of organizational units dealing with economic and financial crime in district and regional prosecutor's offices from 22 in 2015 to 69 in 2018. Importantly, the number of people appointed to the positions of prosecutors in district prosecutor's offices increased by almost 100 percent, from 222 in 2014-2015 to 407 in 2016-2017⁷.

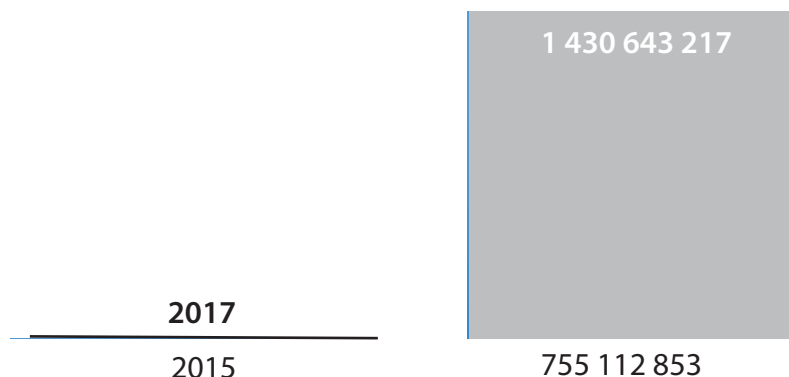
⁷ Information on the recognition of the reinstatement of prosecutor Dariusz Barski to active service as an act committed in violation of the law, <https://www.gov.pl/web/sprawiedliwosc/informacja-o-uznaniu-przywrocenia-prokuratora-dariusza-barskiego-do-sluzby-czynnej-za-akt-dokonany-z-naruszeniem-przepisow> (accessed on January 7, 2026).

Chart 1 Number of cases involving financial and economic crime investigated in 2014–2015 and 2016–2017, respectively



Source: Statistical data from the National Prosecutor's Office

Chart 2 Value of property actually secured in 2015 and 2017



Source: Statistical data from the National Prosecutor's Office

Takeover of the prosecutor's office. Legal analysis

Moving on to the fundamental issue, namely the takeover of the prosecutor's office, consisting in the dismissal of the First Deputy Prosecutor General – National Prosecutor Dariusz Barski from his previous position, which took place on January 12, 2024, it should be recognized in the light of the applicable regulations that such an action could have been

ineffective. Firstly, as mentioned at the beginning of this publication, the dismissal of the National Prosecutor and other deputies of the Prosecutor General requires the consent of the President of the Republic of Poland. Contrary to the statutory provision of Article 14 § 1 of the Act on the Public Prosecutor's Office, former Minister of Justice and Prosecutor General Adam Bodnar removed Dariusz Barski from his duties as National Prosecutor, citing the ineffectiveness of reinstating him to active service. In his decision, he ruled that the reinstatement of prosecutor Dariusz Barski on February 16, 2022 by the previous Prosecutor General was carried out in violation of the law, due to the application of a non-existent provision of an incidental nature, according to which he could effectively return from retirement to active service only for a period of two months from its entry into force, and not after six years⁸. Additionally, in a published statement issued by the Ministry of Justice, it was indicated that the decision was made based on an analysis of the factual and legal situation, as well as external legal opinions of recognized experts and authorities. At the same time, which may seem somewhat inconsistent, the Minister of Justice – the Prosecutor General indicated that “all authoritative decisions taken by Prosecutor Dariusz Barski from March 18, 2022, to January 11, 2024, remain in force to the extent that Prosecutor Dariusz Barski acted on the basis of authorization and on behalf of the Prosecutor General's Office. However, in the case of independent decisions taken by the National Prosecutor, all issues in this regard will be subject to detailed analysis and, depending on its results, further decisions will be taken.”⁹. In my opinion, a correct analysis of Article 47 of the provisions introducing the Act on the Public Prosecutor's Office (p.w.u.p.o.p.) does not contain any ambiguities in interpretation, hence the fact that the Minister of Justice needs to consult – the Prosecutor General to seek the opinion of “recognized experts and authorities” who have deduced from the content of this article the term for the possible return of a prosecutor from retirement. At this point, it is

⁸ Press release from the Public Prosecutor's Office. Information on the recognition of the reinstatement of prosecutor Dariusz Barski to active service as an act committed in violation of the law. <https://www.gov.pl/web/sprawiedliwosc/informacja-o-uznaniu-przywrocenia-prokuratora-dariusza-barskiego-do-sluzby-czynnej-za-akt-dokonany-z-naruszeniem-przepisow> (accessed on January 5, 2026).

⁹ Information on the recognition of the reinstatement of prosecutor Dariusz Barski to active service as an act committed in violation of the law, <https://www.gov.pl/web/sprawiedliwosc/informacja-o-uznaniu-przywrocenia-prokuratora-dariusza-barskiego-do-sluzby-czynnej-za-akt-dokonany-z-naruszeniem-przepisow> (accessed on January 7, 2026).

necessary to quote Article 47 of the p.w.u.p.o.p., according to which “A prosecutor who is retired on the date of entry into force of this Act may, at his or her request, return to his or her last position or an equivalent position. This entitlement does not apply to prosecutors who have retired for health reasons. Important provisions of Article 47 are also those contained in paragraphs 3 and 4, according to which: “A prosecutor reinstated to service at the request referred to in § 1 may, at any time, return to his or her previous retirement status at his or her request, with one month’s notice. In addition, the Prosecutor General may not refuse to grant the request referred to in § 3.” Certainly, as was also emphasized in the justification for the Supreme Court’s Resolution of September 27, 2024, ref. no. I KZP 3/24 Art. 47 § 1 and 2 of the p.w.p.p. is a constitutional provision, establishing in its content a special basis for the reinstatement of a prosecutor to active service, the binding force of which is not limited in time and which does not provide for any temporal framework for its application. As the Supreme Court accurately pointed out: the procedure specified in Article 47 of the Act on the Prosecution Service applies to all prosecutors who were retired on the date of entry into force of the Act introducing the Law on the Prosecution Service (with the exception of those who retired for health reasons), while the procedure provided for in Article 127 of the Act – Law on the Public Prosecutor’s Office covers only those prosecutors for whom the reasons for retirement have ceased to exist, which, according to the applicable Article 71 § 3 of the Act on the Public Prosecutor’s Office¹⁰. Z. Kapiński accurately stated that, assuming that the very location of Article 47 of the Act on the Protection of Competition could be treated as a legislative omission that could constitute a violation of legislative technique, this does not mean that the law can be misinterpreted in this regard¹¹. At this point, it is necessary to decode the concept of “application of law,” which is commonly understood as a situation in which an entity, on the basis of general and abstract norms, determines the legal consequences of a fact by issuing an individual decision in the case being adjudicated¹². In terms of the application of law, the first stage focuses on selecting the appropriate provision that forms the basis for a specific decision in a case, while

¹⁰ Supreme Court ruling of September 29, 2024, ref. no. I KZP 3/24.

¹¹ Z. Kapiński, *Legal consequences of public authorities applying legal opinions flawed in their interpretation of the law*, “Consilium Iuridicum” 2025, 3(15), p. 31.

¹² J. Nowacki, Z. Tobor, *Introduction to Jurisprudence. Second edition*, Katowice 1998, p. 271.

the second stage involves interpreting the selected provision. However, it should be emphasized that when applying the law, provisions are subject to interpretation only if they are vague, ambiguous, or unclear, and in this respect, a correct interpretation is necessary¹³. In the case described, in terms of legal interpretation, we are certainly dealing with the possibility of applying a first-degree interpretative directive, which involves linguistic interpretation, consisting in determining the meaning and scope of individual expressions in a particular provision on the basis of the language of that provision¹⁴, which, in relation to the provision in question, does not raise any doubts, especially of an interpretative nature. There is no need to define the mutual relations between colloquial language and legal language within the framework of linguistic interpretation. Therefore, there was no need to resort to another first-degree interpretative directive, i.e., extra-linguistic interpretation, and within its framework, purposive or functional interpretation, let alone second-degree interpretation. It should be added that, with regard to the situation described, the thesis presented by some representatives of the doctrine seems to be correct, namely that (...) “interpretations used in legal opinions cannot lead to the creation of new legal regulations or to the modification of existing ones, but should aim to determine the content of legal norms. In a situation where a public authority acts on the basis of legal opinions that do not interpret the law but actually constitute the law, it assumes the role of a legislator, i.e., it violates a fundamental principle of the Polish constitutional system, namely the principle of balance and separation of powers between the legislative, executive, and judicial branches. This creates the danger of legal chaos in all aspects of the state’s activities (...)”¹⁵. The Constitutional Tribunal expressed a similar opinion in its ruling of June 28, 2000, ref. no. K 25/99, according to which it ruled that, first and foremost, the linguistic meaning of a legal text should be taken into account. Only when the linguistic meaning is unclear should other non-linguistic methods of interpretation be used¹⁶. The Supreme Court has also expressed a similar opinion in its rulings. An example of this is the Supreme Court ruling of May 8, 1998, ref. no. CKN 664/97, according to which “The principle of the primacy of

¹³ J. Woleński, *Logical Problems of Legal Interpretation*, Krakow 1972, p. 74 et seq.

¹⁴ K. Opalek, J. Wróblewski, *Issues in Legal Theory*, Warsaw 1969, p. 246.

¹⁵ Z. Kapiński, *Effects...*, p. 24.

¹⁶ Constitutional Tribunal ruling of June 28, 2000, ref. no. K 25/99.

linguistic interpretation, although it does not establish an absolute order of preference, allows for deviations from the result of its application only when that result leads either to absurdity or to grossly unfair or irrational consequences. Therefore, it is not always necessary to use all types of interpretation in sequence; in particular, there is no need to resort to purposive directives when, after applying linguistic or linguistic and systemic directives, it is possible to obtain the correct result of interpretation, i.e., to determine the meaning of the interpreted norm without any absurdity¹⁷. A similar interpretation was presented in the resolution of the Full Bench of the Civil Chamber of the Supreme Court of October 14, 2004, ref. no. IIICZP 37/04, according to which “a deviation from the clear and obvious meaning of a provision determined by its unambiguous wording can only be justified by particularly important and significant legal, social, economic, or moral reasons; if such reasons do not exist, the linguistic interpretation should be relied upon”¹⁸. In summary, it seems fair to conclude that the use of an interpretation in which the interpreter departs from the linguistic meaning of a provision can only be justified in exceptional circumstances, because the addressees of legal norms have the right to rely on what the legislator actually expressed in the provision, and not on what he wanted to do or would have done if he had known new or different circumstances¹⁹. It should be noted that on the same day that the National Prosecutor was dismissed, the Prosecutor General-Minister of Justice expressed his expectation that he would submit a motion to appoint Jacek Bilewicz to the position of prosecutor of the national prosecutor's office, who was then appointed to the position of acting National Prosecutor, which is unknown to the “Law on the Prosecutor's Office.” At this point, a rhetorical question must be asked: given the legal opinion and assessment of the provisions concerning the ineffectiveness of reinstating National Prosecutor D. Barski, did a kind of legal dualism creep into the actions of the Minister of Justice – Prosecutor General? And was this action not caused by the need to take over the prosecutor's office at all costs? Ultimately, the Prime Minister appointed D. Korneluk to the position of National Prosecutor, contrary to the

¹⁷ Supreme Court ruling of May 8, 1998, ref. no. CKN 664/97, OSNC 1999, no. 1, item 7.

¹⁸ Resolution of the Full Bench of the Civil Chamber of the Supreme Court of October 14, 2004, ref. no. IIICZP 37/04, OSNC 2005, no. 3, item 42.

¹⁹ Resolution of seven judges of March 1, 2007, III CZP 94/06, <https://www.sn.pl/sites/orzecznictwo/orzeczenia1/iii%20czp%2094-06.pdf> (accessed on January 7, 2026).

procedure described in Article 14 § 1 of the Act on the Prosecution Service, according to which the National Prosecutor is the first deputy to the Prosecutor General and the other deputies are appointed by the Minister of Justice. Korneluk as National Prosecutor, contrary to the procedure described in Article 14 § 1 of the Act on the Prosecution Service, according to which the National Prosecutor, as the first deputy to the Prosecutor General, and other deputies to the Prosecutor General are appointed from among the prosecutors of the National Prosecutor's Office and dismissed from these functions by the Prime Minister at the request of the Prosecutor General. The National Prosecutor and other deputies of the Prosecutor General are appointed after obtaining the opinion of the President of the Republic of Poland and dismissed with his consent²⁰. In the opinion of the Deputy Prosecutors General, the actions of the Prosecutor General constituted an attempt to circumvent the law, and therefore they filed a report of a crime and submitted a relevant motion to the Constitutional Tribunal. On November 22, 2024 the Constitutional Tribunal examined a constitutional complaint concerning the grounds for dismissing National Prosecutor Dariusz Barski from his position. As a result, in its ruling ref. SK 13/24, the Tribunal found that Article 47 § 1 and 2 of the Act of January 28, 2016 – Provisions introducing the Act – Law on the Public Prosecutor's Office in conjunction with Article 19(3) of the Act of October 9, 2009, amending the Act on the Public Prosecutor's Office and certain other acts (Journal of Laws No. 178, item 1375), understood to mean that a prosecutor who was retired on the date of entry into force of the Act of January 28, 2016, may, at his or her request, return to service in his or her last position or an equivalent position only within two months from the date of entry into force of that Act, i.e., between March 4, 2016, to May 4, 2016, is inconsistent with Article 60 in conjunction with Article 31(3) of the Constitution of the Republic of Poland²¹. At the same time, in its ruling of September 29, 2024, ref. no. KZP 3/24, following consideration of a legal question referred by the District Court for Gdańsk – Południe in Gdańsk, ruled that the reinstatement of Dariusz Barski from retirement and his appointment to the position of National Prosecutor had a binding legal basis and was effective. In its ruling, it was unequivocally accepted that "The provisions

²⁰ Article 14 u.p.o.p.

²¹ Judgment of the Constitutional Tribunal of November 22, 2024, ref. no. SK 13/24.

of Article 47 § 1 and 2 of the Act of January 28, 2016 Introductory Provisions to the Act – 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 any temporal restrictions on their validity. These provisions are of a constitutional nature and remain in force until they are eliminated in the manner provided for by law. This means that a prosecutor who is retired on the date of entry into force of the above-mentioned Act may, at his or her request, return to his or her last position or an equivalent position. This right does not apply to prosecutors who retired for health reasons. A prosecutor who has exercised this right is a prosecutor remaining in active service. Decisions taken by the Prosecutor General on this legal basis cannot be considered defective, invalid, or without legal effect. Consequently, since the relevant decision to reinstate the retired prosecutor to active service was made pursuant to Article 47 § 1 and 2 of the Act of January 28, 2016, Provisions introducing the Act – Law on the Public Prosecutor's Office (Journal of Laws of 2016, item 178, as amended), and then his appointment by the Prime Minister, at the request of the Prosecutor General, to the position of First Deputy Prosecutor General – National Prosecutor, had a binding legal basis, it was a legally effective appointment. In the justification for its ruling, the Supreme Court conducted a detailed subsumption of the collected material based, among other things, on doctrinal views and case law. It mentioned that in the Polish constitutional order, no court has the constitutional power to review the constitutional position of a judge or, more broadly, to interfere with it in any way, except for the special procedure provided for in the Constitution. Unfortunately, despite the rulings issued by both the Supreme Court and the Constitutional Tribunal, the legal situation with regard to the prosecutor's office has not changed. The direct consequences of the unlawful dismissal of the National Prosecutor, D. Barski, from his position were not long in coming. In its ruling of December 17, 2025, the Regional Court referred to the appointment of one of the deputies of the District Prosecutor in Krakow, namely Krakow Prądnik-Biały – prosecutor M. Pleszka. Judge J. Dessoulavy-Śliwiński pointed out that “Prosecutor M. Pleszka, who presents himself as the ‘Deputy District Prosecutor of Kraków-Prądnik Biały in Kraków,’ is not authorized to act as a representative of that prosecutor's office. He was appointed to this position by an unauthorized entity, i.e., by a person who claims to be the National Prosecutor, but who herself was not

appointed to this office through a legal procedure.” At the same time, it was pointed out that the personnel appointments made by both J. Bilewicz and D. Korneluk are legally flawed, which stems from an unlawful decision issued by the former Minister of Justice – Prosecutor General – A. Bodnar. The judge pointed to a circumstance that had already been mentioned earlier, namely that “Jacek Bilewicz became a prosecutor of the National Prosecutor’s Office by virtue of a personnel decision taken by National Prosecutor Dariusz Barski. If Dariusz Barski could not be effectively appointed to the office of National Prosecutor because he was not properly reinstated from retirement, then he could not promote prosecutor Jacek Bilewicz.” In addition, the court is of the opinion that the successors to the National Prosecutor – D. D. Barski cannot be considered to have been properly appointed because they either duplicate the office of the legal National Prosecutor or derive their powers from a person who was improperly appointed because he should have remained in retirement. At the same time, in his ruling, the judge writes that the actions of the current person claiming to be the deputy District Prosecutor may be beneficial to him, but in the future, his actions should result in at least disciplinary responsibility as described in Article 137 u.p.o.p. due to the lack of independence in his actions and, in fact, the implementation of a political project, which consists in attempting to unlawfully remove some judges from adjudicating²².

Summary

The legal chaos we are witnessing certainly has a destructive impact, primarily on citizens who, contrary to the fundamental principle of legal certainty, are not guaranteed security and, above all, stability in adjudication. The principle of trust in the state and its institutions, such as the courts and the public prosecutor’s office, should unconditionally ensure security in matters of correct and lawful adjudication. Citizens not only can, but above all should demand that constitutional bodies such as the

²² See: Justification for the order of the Regional Court in Krakow of December 17, 2025, in case no. IV Ka 1322/25, <https://www.gov.pl/web/po-krakow/oswiadczenie-rzekomego-podszycia-sie-pod-zastepce-prokuratora-rejonowego> (accessed on January 8, 2026); J. Pilarek, Krakow judge brought down the alleged deputy district prosecutor, <https://wnet.fm/2025/12/30/krakowski-sedzia-sprawdzil-do-parteru-rzekomego-zastepce-prokuratora-rejonowego/> (accessed on January 8, 2026).

Sejm or Senate guarantee them, regardless of the political situation, the stability of legal guarantees, inter alia in the context of their consistency and clarity. Article 2 of the Constitution of the Republic of Poland, with regard to the principle of citizens' trust in the state, states that the Republic of Poland is a democratic state based on the rule of law, implementing the principles of social justice. The characteristic features of legal certainty are its stability, clarity, predictability, enforceability, consistency, and universal accessibility. Citizens should not be surprised by a lack of transparency in the law or by reliance on private opinions that are adjusted according to political needs and concern, among other things, the interpretation of regulations. The Constitutional Tribunal has repeatedly commented on the stability of the law and respect for the principle of protecting citizens from the state and its institutions. An example of this is the ruling of December 20, 1999, ref. no. K 4/99. According to the above-mentioned ruling, "Violation of the principle of protection of trust in the state and the law and the principle of protection of acquired rights means that the legislator has unconstitutionally deprived a specific provision of its binding force by repealing it in its entirety or replacing it with a new provision. Regardless of the assessment of whether the previously applicable solutions were constitutional and remained so at the time of the Constitutional Tribunal's ruling, it cannot be ruled out a priori that the Tribunal's ruling will result in their regaining their binding force. The unconditional acceptance of a different assumption would lead to a reduction in the effectiveness of the review of the constitutionality of laws and, in fact, to the deprivation of the effectiveness of some of the rulings of the Constitutional Tribunal²³. Another example of a ruling by the Constitutional Tribunal is the judgment of September 16, 1990, ref. no. K7/90, concerning the assurance of legal certainty and stability. In addition, the judges ruled that positive law should be based on values such as human dignity²⁴. There is no doubt that over the last few years, certainty regarding the law, its validity, enactment, and application has been significantly weakened. This has led to a typical legal relativism, in which it is difficult to find objective standards and regulations are interpreted according to the point of view of the interpreter, rather than in accordance with the principles of correct interpretation and exegesis.

²³ Judgment of the Constitutional Tribunal of December 20, 1999, ref. no. K 4/99.

²⁴ Judgment of the Constitutional Tribunal of September 16, 1990, ref. no. K 7/90.

The Constitutional Tribunal commented on proper legislation in its judgments of January 12, 2000, ref. no. P 11/98²⁵, October 30, 2001, ref. no. K 33/00²⁶, and November 10, 2004, ref. no. Kp 1/04²⁷. Each of its rulings emphasized that the key issue in terms of legal stability is the requirement to comply with correct legislation. In summary, it should be assumed that ensuring legal stability in the current situation may end the crisis of the rule of law that we are witnessing. The position of the National Council of the Judiciary on conflict resolution to ensure the standard of impartiality of the court seems particularly apt, according to which judges adjudicating legal issues should remain, in the eyes of the public, completely detached from the political dispute related to specific legal issues presented, because only then will their legal interpretation be perceived as objective and beyond doubt²⁸. Of course, these comments also apply to the institution of the public prosecutor's office.

²⁵ Constitutional Tribunal judgment of January 12, 2000, ref. no. P 11/98.

²⁶ Constitutional Tribunal judgment of October 30, 2001, ref. no. K 33/00.

²⁷ Constitutional Tribunal judgment of November 10, 2004, ref. no. Kp1/04.

²⁸ Position of the National Council of the Judiciary on conflict resolution to ensure the standard of impartiality of the court, <https://krs.pl/pl/aktualnosci/2692-stanowisko-krajowej-rady-sadownictwa-w-sprawie-rozwiazywania-konfliktu-interesow-dla-zapewnienia-realizacji-standardu-bezstronnosci-sadu.html> (accessed on January 20, 2026)

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