The Oath "Towards" the President and the Suspension of the Chief Justice

The President's Refusal to Receive the Oath of New Constitutional Tribunal Judges Escalates into the Suspension of Its President

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On Friday, 30 October, amid protests and riots in front of the Constitutional Tribunal, a group of judges elected to it this year by the centrist parliamentary majority entered its premises. One of these judges, Anna Korwin-Piotrowska, announced that the current leadership was incapable of acting properly. Invoking the rule that makes the judge with the longest judicial experience acting head of the Tribunal when its leader is incapacitated, she suspended the court's president and vice-president for 30 days for obstructing its work. The escalation follows months of conflict in which Polish President Karol Nawrocki refused to receive the oath of the duly elected new judges, a largely ceremonial act that completes their election. Indeed, in October 2026 the Venice Commission stated unequivocally that the President cannot obstruct the Sejm's election of judges by arbitrarily refusing to administer their oath. It added that if the President refuses to take part, the oath can be taken without his physical participation. None of this, however, has stopped President Nawrocki and the PiS-appointed President of the Constitutional Tribunal, Bogdan Święczkowski, from preventing the new judges from taking up their positions. This latest confrontation, which the opposition and its allies in the judiciary has called a coup d'état, marks a sharp escalation in the struggle between Nawrocki and Tusk's government over how to reverse the judicial changes introduced under the former nationalist Law and Justice (PiS) government.

Ceremonial Oaths at the Heart of the Polish Rule of Law Crisis

The Sejm, the lower house of the Polish parliament, elects the judges of the Polish Constitutional Tribunal individually for nine-year terms. Election requires an absolute majority of votes with at least half of all MPs present. After the election, the newly appointed judges swear an oath, as the law on the Tribunal explicitly provides, "towards the President of Poland". Semantics matter here, as much of the unfolding crisis rests on how "towards the President" (wobec Prezydenta) is interpreted and whether it is equivalent to swearing that oath in the President's physical presence. This element of the appointment procedure has been controversial on at least two occasions.

After the 2023 parliamentary elections, the parliament initially hesitated to fill an increasing number of vacant seats at the Tribunal. The Sejm reversed this policy in March 2026 elected six new judges: Krystian Markiewicz, Dariusz Szostek, Magdalena Bentkowska, Marcin Dziurda, Maciej Taborowski and Anna Korwin-Piotrkowska. President Nawrocki administered the oath to two of these judges (Szostek and Bentkowska) but refused to do so for the other four. Subsequently, the Sejm elected two more judges, Sławomir Patyra (in June 2026) and Maciej Berek (in September 2026); President Nawrocki administered the oath to Patyra but not to Berek. The head of the Constitutional Tribunal, Bogdan Święczkowski, a judge elected by a PiS majority in 2022 and later in 2024 appointed to lead the court, followed the lead of President Nawrocki. To the three judges, whose oaths have been

administered, he allowed to begin working at the Tribunal but refused their seats to the other five. Święczkowski claims that without the President of Poland administering the oath, such judges are not properly installed and may not begin participating in the Tribunal's work.

This modus operandi is not entirely unheard of. In 2006, the then-President of Poland, Lech Kaczyński, publicly hesitated over Lidia Bagińska, a judge elected by Sejm. The controversy concerned her alleged lack of experience. However, at the end, he chose to hear her oath, famously stating that, despite his misgivings, the law left him with no choice.

In 2015, the outgoing Sejm appointed five judges "in advance", three to seats that were to be made vacant during that Sejm's term, and two for seats that would be vacated during the term of the next Sejm. President Duda refused to hear the oath from these judges, barring them from taking their seats. The next Sejm then appointed different judges, whose oaths have been administered by President Duda and who took up their seats. The ECtHR, in *Xero Flor v. Poland*, and the CJEU, in Case C-448/23 *Commission v Poland*, ultimately found three of these judges elected to "overwrite" the previous Sejm's appointments as having been unlawfully appointed.

The Legal Nature of the Oath Before the President

President Nawrocki's explanation for refusing to administer the oaths has been scattered and incoherent, citing procedural errors in how these appointments were made and claiming he can administer the oath only to judges elected to seats made vacant during his term. None of these explanations reflects a factual or legal reality; in fact, all signs point to President Nawrocki escalating his political conflict with the ruling majority and Prime Minister Tusk by awarding himself the authority to decide who sits on the Tribunal and who does not.

The head of state administering the oath to constitutional court judges as a formal step in completing their appointment is not unique to Poland. Several other European countries, such as Croatia, Austria, and Latvia, include such a step in their judicial appointment procedures. This step, while ceremonial, is not without legal significance; for example, if the elected judge refuses to take the oath, the appointment would not be completed. However, the Sejm, not the President, ultimately decides on appointments to the Tribunal, unlike the President's explicit power to appoint judges to regular and administrative courts, including the Supreme Court and the Supreme Administrative Court. The President's role in appointing judges to the Constitutional Tribunal is intended to lend the Sejm's choice additional gravity. I disagree with the view, expressed by the sitting judge of the Constitutional Tribunal Prof. Jakub Stelina, that the President is competent to refuse to administer the oath if they establish that the person elected by the Sejm does not fulfil the formal criteria for a Constitutional Tribunal judge or the Sejm made a procedural error while electing the judge. It is not under the President's purview to verify whether a judge elected by Sejm can take up a seat at the Tribunal, as opposed to his explicit power to verify the appointment with regard to judges of regular courts.

Reaction by the ECtHR and the Venice Commission

Beyond a domestic legal and political firestorm, the standoff prompted reactions from regional courts and bodies. The four judges who were refused the oath and denied entry to the Tribunal lodged an application with the ECtHR, and in May 2026 the Strasbourg court issued an interim order requiring Polish authorities to remove obstacles preventing the judges from taking up their seats. President Nawrocki and the Constitutional Tribunal unsurprisingly ignored the order.

The next major response came from the Venice Commission, which in October 2026 issued a well-reasoned opinion that clarified the President of Poland's role in appointing the judges to the Tribunal and the legal nature of his competence to take the oath. The Commission clearly distinguished between the President's power to appoint judges to other Polish courts, where he has discretion and may refuse to appoint a judge, and the election of judges to the Constitutional Tribunal, where the law provides no explicit possibility of the President refusing to admin-

ister the oath. The Venice Commission went one step further, however, by suggesting an alternative course of action if the President refuses to cooperate: the oath could be fulfilled without the President's physical participation, provided that its essential elements are preserved, and it is addressed and transmitted to the President. In fact, the Sejm has already taken a similar course of action with judges swearing the oath on the Sejm floor or in the presence of the Marshall of the Sejm (speaker). Neither of these alternative means of administering the oath have been recognised by President Nawrocki or Święczkowski, however, as both maintain that such course of action is contrary to the Polish law.

A Powder Keg of Law and Politics

Several legal and political issues converge in this element of the Polish rule of law crisis. First, Polish constitutional law is deficient and does not clearly state what should happen if the President refuses to administer the oaths, including not providing a clear judicial recourse for a person whose oath has been denied. This deficiency stems from a clear source: the drafters' apparent assumption that the President would never refuse to administer an oath. As with many other institutions of Polish constitutional law, the drafters assumed that such a brazen refusal by the President to cooperate, and an attempt to expand the President's powers without a sound legal basis, would never occur because of the possible legal and political costs. Yet, as has been the case with many violations of the Polish Constitution and related laws since 2015, it is exactly what happened, and the polarised political landscape seems to encourage such behaviour.

Moreover, this refusal comes at a time when the Constitutional Tribunal is mired in a legal and political struggle between the ruling coalition and the opposition. In particular, the Sejm's recent election of Maciej Berek, a government minister and close ally of Prime Minister Donald Tusk, to the Tribunal triggered a reaction from PiS and its supporters, who have set up a camp outside the Constitutional Tribunal and vow to protect it from political influence, leading to clashes with law enforcement and visits from PiS politicians and President Nawrocki. Calls for broader political consensus on the need to enact a deep reform of the Constitutional Tribunal, as advocated by i.a. the Stefan Batory Foundation, are gaining traction among politicians but are unlikely to pass without PiS and the ruling coalition reaching a consensus, an elusive prospect given the highly charged polarisation.

Finally, the three new judges – who were able to give an oath and were let into the Tribunal – have refused to start with their work until the crisis is resolved. Accordingly, the "shrinking" court finds itself hard-pressed to carry out regular work and unable to call a general assembly of its judges, which leads to its inability to vote on its 2027 financial plan and pass it over to the government for inclusion in the general budget of the country. Accordingly, the Tribunal is shortly facing the problem with its own financing.

In addition, the judges denied entry are also being denied their salaries, leading to a rather awkward solution of the government paying these out from the budget of the Ministry of Foreign Affairs under the assumption that such action constitutes a partial implementation of the ECtHR interim order.

Concluding Remarks

No clear solution to the oath-taking issue seems to present itself. The oath crisis led directly to the recent ongoing standoff at the Tribunal, whose final result is at this point indecisive. With the European Commission having divested itself of the means to pressure Poland by releasing all funds held back over rule-of-law issues in 2024, and with no political appetite in the Berlaymont to pressure Poland's pro-European government, there is no external factor that could alter the current trajectory. A judgment of the ECtHR establishing whether the rights of elected judges have been breached will be most welcome, but it will likely take considerable time before such a judgment is issued – and Poland might be in an entirely different political situation after the parliamentary elections next year, were PiS and its allies to return to power.

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