Whose Coup?

Restoring the Legality of Poland's Constitutional Tribunal

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The temporary suspension on 30 October 2026 of the two judges who had usurped the leadership of Poland's unlawfully composed Constitutional Tribunal produced startling images of a police cordon around the court and a chaotic confrontation with the president of the Republic. Radical-right political movements in Poland and abroad quickly portrayed the intervention as a coup d'état. Legally, however, the intervention marked an important – and necessary – step towards restoring the rule of law.

For more than a decade, since the radical-right Law and Justice party – known by its Polish acronym PiS – began capturing the Tribunal in manifest and repeated breaches of Polish and European law, we have defended a simple proposition: European rule-of-law standards require Poland to respect the Tribunal's independence and to constitute and operate it in accordance with the Polish Constitution. That principle remains our starting point. The events of last Friday should be assessed against that constitutional standard. Doing so requires specifying the new leadership's legal authority, assessing the limited measures they adopted and explaining the political confrontation that followed.

How the Tribunal was captured

Understanding this conflict requires going back to 2015, when PiS won both the national presidential election and majorities in both houses of parliament. Before the parliamentary handover, the outgoing liberal majority elected five judges to the Tribunal. Three of those judges were elected lawfully. The other two improperly anticipated vacancies that belonged to the incoming parliament – a distinction the Tribunal itself confirmed in its judgment of 3 December 2015, which upheld the statutory basis for the first three elections and found the basis for the other two unconstitutional.

Article 194 of the Constitution assigns the election of the Tribunal's judges exclusively to the Sejm, parliament's main chamber. This contrasts with the appointment of judges to other courts, which the national president makes on the nomination of the National Council of the Judiciary. Ordinary legislation nevertheless requires elected Tribunal judges to take an oath before the president, but receiving that oath cannot confer an additional appointment (or veto) power on the president that the Constitution deliberately withholds.

Nevertheless, then-President Andrzej Duda, closely aligned with PiS, refused in 2015 to receive the oaths of the three lawfully elected judges. The incoming PiS majority then elected replacements to seats that were already occupied. These unlawfully seated individuals became known in Poland as "duplicate judges". In its 2021 judgment in *Xero Flor v Poland*, the European Court of Human Rights held that the participation of any one of these usurpers in any case violates the right of the parties to a tribunal established by law. In *M.L. v Poland*, decided on 14 December 2023, the ECtHR held that participation was "by itself capable of vitiating the legal force" to be attached to any "judgment" issued by the Tribunal with their participation. In November 2022, Poland's own Supreme Administrative Court held that the unconstitutionally composed Tribunal had been "infected with illegality" to become a body that had "lost, in a material sense, its ability to adjudicate in accordance with the law".

Two of the original three unlawful appointees died in 2017. PiS irregularly replaced them with further appointees whose seating was likewise unlawful: the

deaths of people occupying seats without legal entitlement did not create vacancies in seats belonging to the judges elected in October 2015.

PiS nevertheless treated the replacements as entitled to fresh nine-year terms, prolonging the consequences of the original violations. The surviving original duplicate judge left the Tribunal in December 2024. One replacement's purported term ended on 18 September 2026; the other's is scheduled to end on 30 January 2027.

The influence of the original and unconstitutional duplicate judges not only extended beyond the panels on which they sat: they participated in choosing the Tribunal's leadership. Under the Constitution, the national president appoints the Tribunal's president and vice-president from candidates presented by the General Assembly (that is, plenary meeting) of all its judges. The duplicate judges voted on those candidates.

On 18 December 2025, in *Commission v Poland*, the European Union's Court of Justice held that the Tribunal ceased to constitute a lawful court on account of the serious irregularities vitiating the appointment of three of its "judges" in December 2015 and of its "president" in 2016. On the latter issue, the Court identified two defects: votes cast by unlawfully appointed participants could not supply the required support, and a candidate backed only by a minority could not be treated as the nominee of the General Assembly.

Parliament had meanwhile changed hands in late 2023. The new democratic coalition government subsequently withheld publication of the Tribunal's "rulings" on the ground that its unlawful composition prevented it from performing its constitutional functions, a logical response to the Tribunal ceasing to be a court meeting the requirements of an independent and impartial tribunal established by law.

The democratic coalition initially refrained from filling new vacancies on the Tribunal, arguing that doing so would legitimize the body masquerading as Poland's constitutional court. But the expiry of existing terms, together with the early retirement of a PiS-appointed judge in December 2025, opened the prospect of filling a majority of the Tribunal's seats during 2026. The Sejm elected six judges in March, a seventh in June and an eighth in September.

The president's manufactured veto

The presidential election of June 2025 had ensured that restoring the Tribunal would remain politically difficult. After electing a democratic coalition parliamentary majority in 2023, Polish voters narrowly chose the PiS-backed Karol Nawrocki as president, preserving cohabitation between opposed political camps.

Nawrocki continued his predecessor's unlawful practice of turning the receipt of a ceremonial oath into a substantive veto. Of the eight judges elected by the current Sejm, he received the oaths of only three. The other five refused to accept that presidential inaction could nullify their election. Four publicly read and signed their oaths on 9 April and delivered notarized copies addressed to the president to his office. The fifth followed the same route in October.

The Venice Commission expressly supported this procedure in its October 2026 opinion. Where the president unjustifiably refuses to receive the oath, it explained, the requirement can be fulfilled without his physical participation through a duly verified document formally submitted to him. The judge should then be able to assume judicial duties. (One may regret that this route was not taken in 2015. Had the three lawfully elected judges then been enabled to take their seats despite Duda's refusal, much of the subsequent damage might have been prevented.)

In 2026, however, the five judges who took this route were still not admitted to the court. This violates, among other things, the interim measures ordered by the European Court of Human Rights in response to applications submitted by four of the five new judges when their admission to the Tribunal was refused. On 5 May, the Strasbourg Court required Poland to "ensure that its competent authorities refrain from hindering the taking up and exercise of judicial duties" by the newly elected judges until any further decision from the Court. Their continued exclusion defies that court order.

The key actor violating Polish and European law is Bogdan Święczkowski, a former National Prosecutor and deputy to PiS justice minister and prosecutor general Zbigniew Ziobro (now in the United States, having obtained a visa with assistance from senior Trump administration officials to escape charges including abuse of office and misappropriation of public funds). Święczkowski was elected to the Tribunal in 2022 and (irregularly) appointed its purported president in 2024, following a nomination process involving two second-generation duplicate judges. Most recently, Święczkowski's obstruction has taken a physical form. Earlier in October, one of the newly elected judges reported that Święczkowski – a particularly imposing man – had pushed him out of a corridor and blocked his passage inside the Tribunal. He filed a criminal complaint concerning the incident.

The events of 30 October

One of the excluded judges became a focal actor in this drama. Anna Korwin-Piotrowska is an experienced judge, a former president of the Regional Court in Opole and a leader of Themis, a judicial association active in defending the rule of law. Rules enacted under the PiS government itself make this background relevant.

The 2016 Act on the Organisation and Procedure of the Constitutional Tribunal identifies which judge should direct the institution when its presidency is vacant and designates the same judge as the substitute when the president cannot authorise the vice-president or another judge to exercise the relevant functions. Under that law, the judge who has the longest combined service on the Tribunal, as a judicial trainee, assessor or judge in the common courts, and in central state administration should preside. Korwin-Piotrowska has the longest qualifying service across the Tribunal as a whole, including its PiS-era members, since she began her judicial traineeship in 1995.

Acting as the statutory substitute for the Tribunal's president, she issued two orders temporarily interrupting the judicial duties of Święczkowski and his purported deputy Bartłomiej Sochański – both of whom were nominated in the same flawed procedure. Her orders concerned their duties as judges, including their exercise of the functions of president and vice-president. The stated grounds included the exclusion of lawfully elected judges, manipulation of adjudicating panels and obstruction of the General Assembly meeting needed to adopt the Tribunal's proposed budget. The power to suspend her colleagues, she argued, comes from the law governing common courts, which the PiS-enacted legislation governing Tribunal judges incorporates through statutory cross-references. The rule permits immediate intervention where a judge's conduct makes removal from duties necessary to protect the court's standing or essential interests of the judicial service. The interruption is subject to mandatory review by a disciplinary court composed of Tribunal judges selected by lot. The immediate interruption can last no longer than one month; any further suspension requires a decision of that court.

Korwin-Piotrowska's orders rested on this statutory framework. Separately, on the same day, the Prosecutor General submitted five applications for consent to criminal prosecution: four concerning Święczkowski and one concerning Sochański. Criminal prosecution requires the consent of the Tribunal's General Assembly – and that is what was sought with these applications. The applications did not themselves suspend either judge. Korwin-Piotrowska expressly stated that she had not reviewed them when issuing her orders, which rested on other grounds. Disciplinary proceedings are separate and do not require the lifting of criminal immunity. Removal from judicial office is among the sanctions expressly authorized by the legislation governing Tribunal judges. Friday's orders predetermined neither the criminal nor the disciplinary outcome.

It is important to distinguish Korwin-Piotrowska's authority to direct the Tribunal from her orders temporarily interrupting Święczkowski's and Sochański's judicial duties. Our position is that neither man was lawfully appointed to his leadership office, because the assemblies nominating them included people who were not judges. On that view, the statutory vacancy rule already authorized Korwin-

Piotrowska to exercise the president's functions; no finding of specific misconduct was needed to establish that authority.

Other Polish lawyers, including Włodzimierz Wróbel, defend her intervention on a narrower basis, assuming that the two leadership appointments were lawful. They interpret the statutory substitution mechanism in light of the principle that no one may decide their own case. A court president cannot make temporary intervention in response to his own conduct dependent on his consent or his willingness to authorize someone else to act. Where the conduct of both the president and vice-president is at issue, the statutory substitute must be able to intervene. This argument establishes Korwin-Piotrowska's authority to issue the orders even if one believes that the leadership positions were lawfully filled.

In practice, however, legal entitlement to direct the Tribunal was insufficient to end Święczkowski's de facto control of the institution. As described above, his obstruction of the newly elected judges had already become physical, and the Tribunal's own security staff had previously enforced his restrictions on their access. The suspension orders, subject to mandatory judicial review, provided a basis for excluding both judges from the building and preventing their continued obstruction. They were therefore a means of making lawful authority effective, rather than the source of Korwin-Piotrowska's authority to act.

Law and the images

The suspension of the Tribunal's leadership was a temporary measure taken under existing statutes and subject to eventual judicial review. The images told a much more dramatic story.

Korwin-Piotrowska requested police protection for judges and staff. The Prosecutor General also alerted the police to security risks. Officers secured the grounds and the surrounding street; the police expressly stated that they had not entered the Tribunal building. Nevertheless, their deployment after dark was readily portrayed as a nighttime seizure of the court.

The concern for safety was, however, well founded. Protesters and opposition politicians gathered outside. At Święczkowski's request, a supporter used a power tool to break a gate lock, allowing him onto the grounds, where he confronted a police cordon.

The most dramatic confrontation came around 1 a.m. on Saturday. President Nawrocki had interrupted a foreign trip to return to Warsaw. Korwin-Piotrowska had agreed to receive him alone for talks. Instead, he arrived with companions, including the President of the Supreme Court, Zbigniew Kapiński—himself an illegal Supreme Court "judge" having been appointed to that court through PiS's unlawfully reconstituted judicial council.

Footage showed Nawrocki, a former boxer with a history of football hooliganism, violently pushing past Korwin-Piotrowska at the entrance. Inside, he was filmed shouting at the newly elected judges. The head of Nawrocki's chancellery dismissed Korwin-Piotrowska's orders as ridiculous. One of the judges also reported that people identifying themselves as presidential staff tried to take possession of keys to the Tribunal's rooms.

Threats of retaliation accompanied the confrontation. PiS leader Jarosław Kaczyński raised the possible future application of the "Nuremberg principles". Other right-wing figures alleged a coup and invoked the prospect of life imprisonment for the judges attempting the return to a lawful bench.

These tactics had an audience beyond the radical right. Prominent liberal legal commentators also questioned the intervention's legality and warned that the scenes would destroy the Tribunal's credibility. The Helsinki Foundation for Human Rights, while recognising the new judges' right to take office and rejecting a presidential veto over their election, questioned Korwin-Piotrowska's authority to issue the orders. It presented a negotiated constitutional reset as the only solution. In our view, that position fails to give sufficient weight to the European judgments requiring the restoration of a lawfully constituted and independent Tribunal, something that would not be fulfilled by a political compromise.

Korwin-Piotrowska and her supporters may have made mistakes in communicating the legal basis for her actions which were not clear on Friday night. But the confrontation also shows where the modern New Right's cult of force leads. In Poland, that cult has taken literal form: the country's president and the Tribunal's purported president have physically assaulted and overpowered judges who stand in their way. When liberal democrats call on the police for protection, as Korwin-Piotrowska did, the resulting images can then be used to portray lawful enforcement as authoritarianism. The more brazen the obstruction, the more suspect the restoration appears.

Law is one of humanity's great achievements precisely because it denies overbearing men such as Nawrocki and Święczkowski the right to physically prevail over a diminutive woman such as Korwin-Piotrowska simply by overpowering her. The outcome must turn on the strength of the legal arguments, not the strength of the people advancing them.

When the rule of law is shattered by aspirational autocrats who capture the key institutions of state, restoring the independence of those institutions will not be easy. By refusing to relinquish power over the Constitutional Tribunal, Poland's aspirationally autocratic PiS party has created an unlawful situation that requires decisive action to recover the rule of law. The case law of the Court of Justice and the Court of Human Rights establishes why that situation must be remedied. Acting under Polish domestic law concerning lawful succession of the Constitutional Tribunal presidency and temporary interruption of judicial duties, Judge Korwin-Piotrowska has taken a lawful – even if poorly communicated – step, subject to judicial review, towards bringing the Constitutional Tribunal back toward compliance with the Polish Constitution and European law.

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