On the Tragic Constitutional Price of Doing Nothing

How Judge Anna Korwin-Piotrowska Exposed the Formalistic Helplessness and Changed the Narrative

Tomasz Tadeusz Koncewicz

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Before we rush to pass honest judgments on the actions taken by Judge Anna Korwin-Piotrowska (analyzed in detail here and here) aimed at saving whatever still remains of the authority of the Constitution (the Constitutional Court as we used to know it ceased to exist long ago), we need to be honest about the starting point of our discussion and embrace its broader constitutional context. While the critique they offer along the lines of correct-incorrect dichotomy might be appropriate for our good faith disagreements in normal times, it is plainly insufficient in extraordinary times we find ourselves in today. When two of your top courts have been captured and staffed with the usurpers that have been poisoning with total impunity the legal system for years now, one must change course substantially and think out of the conceptual fitted-for-good-times toolbox.

Judge Korwin-Piotrowska have suspended an individual who was never truly the President of the Constitutional Tribunal and has blatantly usurped this public function (a crime under Polish law). In my view: she had to. In November 2026, we reached a critical juncture where there has been no other option left – and very soon, there will be no time left at all. And yet, many – devoted only to legal texts and formalities – have embarked on yet another round of legal disputes, a futile, ritualistic kabuki dance around the paragraphs. They continue fiddle while Rome had been already burnt and they never came up with anything else than a litany of reasons why nothing could have been done since early 2024 without allegedly infringing the legality. I find it infuriating, as it exposes their in-built unwillingness to critically rethink what is legally and factually possible in these extraordinary times: to adapt, revisit and contextualize their recipes for rebuilding the rule of law. As Judge Korwin-Piotrowska has demonstrated, we must chart our course with fidelity to the Constitution and its values and finally make them integral part of the constitutional, not merely statutory, legality.

Understanding the Context and Game of Appearances

Between 2015 and 2023, the constitutional profile of the Polish state has been altered. We did not have a mere crisis of the rule of law but rather a ruthless war against the Constitution. This occurred with unconstitutional resolutions of the Sejm, unconstitutionally hostile "rulings" issued by the usurpers masquerading as constitutional judges and, most often, by *de facto* actions based on sheer and blunt unconstrained force. Together, they turned out to be lethal to the institutions (as it turned out, extremely fragile and weak) and the culture of the rule of law on the ground. Therefore, when we talk about the rebuild, our restorative measures must not be merely technical and normative in nature. Rather, any solution adopted must pursue the primary goal of restoring meaning to the key elements of our legal and civic vocabulary. This vocabulary was stripped of any relevance and manipulated in the service of the ruthless majoritarian politics behind the constitutional capture.

We have now seen (again) the tragic consequences of living side by side with constitutional lawlessness. On 30 October 2026, in front of what used to be the Constitutional Court in Warsaw, we realised how much the constitutional profile of the state had been distorted.

With the starting point clearly identified, we must then look at the process of restoring the rule of law from a situational perspective. Given the scale of

unconstitutional destruction in the 2015- 2023, the rebuilding must be about *optimal* and *always perfectible,* rather than, perfect solutions. Hence, we must embrace what is possible from a legal and factual perspective within the framework set out by the Constitution, its principles and values, and the binding judgments of supranational and international courts. Optimal and never perfect is at the heart of my argument. For the choice of strategies and methods must be always determined by the distribution of constitutional values in each case, the consequences of maintaining a situation inconsistent with the constitutional document for the entire legal order, and, last but not least, by keeping fresh the memories of the unprecedented ruthlessness with which the system was destroyed *per fas et nefas*. These emotions and memories have nothing to do with revanchism, which I reject, but rather should be considered as part of the good-faith calculation of how to act and what solutions to choose to restore the Constitution to its rightful place as the highest law of the land. It must be clear that those who leave with bad faith and arrogance in their hearts and a clear "track record" of the destruction of the rule of law cannot continue to have an advantage over those who want to restore the integrity of the Constitution. Unfortunately, they continue to enjoy it since we have accepted with legalistic helplessness the many booby traps and poison, they have left behind them. Their impudence has been on full display on 30 October 2026.

Finally, our methods must be proportionate to the extent of the lawlessness on the ground and the consequences of maintaining the illegal *status quo*. Our legal imagination might fuel change, but only when followed by a willingness to act and counteract outside the box. Thinking outside the box is only possible if we have the courage to critically reevaluate our existing language and tools. Restoring the rule of law is a process that will be a combination of actions of different nature and intensity. Some of them will be the realization of legalism, understood as compliance with the letter of the law, and some will require something more to protect constitutional values.

All this does not mean, however, which is crucial for proper understanding of the actions of Judge Korwin-Piotrowska, that what goes beyond the textual letter of the law must be automatically categorized as unlawful (which is the empty mantra that drives the actions and arguments of formalist and literalist lawyers) just as not every interpretation that goes beyond the wording of a legal provision must be unlawful in a situation where our literal interpretation would lead to an absurd or obviously unjust result(s). Just as we accept that we can overcome a linguistic interpretation to exclude absurdity or injustice, the same must go for the choice of methods to restore the rule of law. Sometimes relying only on the letter of the law will lead to absurd and self-destructive consequences, although in the name of formal legalism. For example, it is naïve to wait until the compromised judges of the fake constitutional court are gone or believe that they will convert and suddenly become loyal servants of the constitutional document.

This naivety was again on full display on 30 October 2026 in front of the old and gone Constitutional Court and later painfully corroborated by how stubborn and happy-go-lucky lawyers responded.

Polish Trojan Horse

Following dramatic events that unfolded both outside and inside the building on Szucha Street in Warsaw, Prime Minister Donald Tusk, in a televised address, finally spoke of the necessity for the state to defend itself against those who undermine its constitutional order and principles. In essence, this statement alluded to the concept of "militant democracy" – an approach aimed at protecting a democratic system from enemies who attack it from within by exploiting democratic tools.

In Poland, it was always easy to discern which actors on the political stage remained within the bounds of acceptable criticism of the state and its institutions and thus deserved to enjoy the privileges afforded by a democratic system. There is no doubt that Law and Justice (PiS) has always been a classic example of a disloyal opposition. The party was built upon a consistent rejection of the legal system in force

in Poland, as well as the 1997 Constitution – a document it never accepted as its own. Consequently, by definition, it positioned itself in opposition to the values and principles enshrined in that Constitution. Its politicians spoke contemptuously of the changes that followed 1989, dismissing them as the result of a "rotten compromise" reached at the 1989 Round Table. While the success of Poland's peaceful political transition served as a model for others, for PiS, it represented an act of capitulation to foreign interests – specifically Western ones, and above all, German ones. To them, the democratic republic of Poland was an alien entity – a mere phantasm – that had to be destroyed, along with its institutions, to make way for something new and "better". PiS tolerated fascist-leaning militant groups, sowed hatred, and encouraged aggressive behavior during the so-called "Independence Marches". It excluded people from the national community, stigmatized them, and fueled antagonism. Terms such as "we shall reclaim", "we shall conquer" and "we shall end this period of enslavement" were introduced into the language of public discourse. Antagonism, hatred, and a lack of acceptance for others – simply because they are "different" – became the hallmarks of a narrative that dominated the years 2015-2023, a dark period for the rule of law. This went well beyond the kind of criticism of a political opponent that is acceptable in any democratic system – a system that permits, and even embraces, political dispute, provided it remains within the bounds of the law and the constitutional order. Instead, the objective was the rejection and delegitimization of an "enemy" deemed to have no right to even exist, let alone compete for a democratic mandate.

And yet, despite all these warning signs, the democratic system in place in Poland looked the other way, effectively accepting a Trojan horse that grazed in the pastures of the Polish Republic's liberal democracy, all the while despising that very system and viewing it as a mortal enemy. Thus, when PiS has finally seized power, it carried out an unconstitutional *coup d'état* which has been predicated on the long-standing and well-known political agenda. Once this "horse" was finally allowed into the city, it has done exactly what it had set out to do: it has fundamentally altered the city's constitutional profile. To this day, no one has been held accountable for it.

On 30 October 2026, however, the Trojan horse powerfully reared its ugly head on Szucha Street in a manner as chilling as it was ominous.

Why Not Earlier?

Why were preemptive defensive measures not taken sooner? And why, after 2023, discussion regarding the rebuild of the rule of law did not unfold hand in hand with the equally fundamental question of how to protect democracy and the rule of law? A pernicious logic always prevailed: political calculation took (and takes) precedence over fidelity to the Constitution. And yet, a well-governed and well-organized state should be capable of identifying threats and holding those responsible to account – all within the framework of the existing legal system, and by utilizing the institutions and procedures of the rule of law. By the time liberal Poland finally begins to grasp its obligation to take defensive action, it may unfortunately be too late – and the current approach creates the impression that it is acting blindly, lacking a coherent plan.

In November 2026, these lessons not learnt and missed opportunities came back to haunt us. The counterattack launched by an unconstitutional body – backed by usurpers within other co-opted institutions (the so-called Supreme Court and its fake President) – must serve as definitive proof that the time for deliberation and splitting hairs has long passed. We have endured not only eight long years of the dismantling of the rule of law, but also three additional years following the elections of October 2023 of endless and fruitless discussions. There was ample time to determine the necessary steps to restore the respect for the Constitution and basic decency in public life. Three long years of procrastinations only fortified the usurpers in their impunity. If today we continue to delay a systemic halt to the unlawful operations of the usurpers, they will persist in poisoning the legal system. They will exploit the authority of a court – an authority never rightfully theirs – to shield themselves

and grow ever more emboldened. This is painful for any decent citizen who still believes in the rule of law. For me personally, it is a source of deep frustration and regret that three years have not been enough for every reasonable democrat to grasp who the true enemy of Polish democracy is and plan his actions accordingly.

Embrace the Constitution or Perish

The "constitutional fidelity" (see also here) serves as the ultimate guide for a properly understood legalism – one rooted in constitutional values rather than just the narrow, literalistic adherence to individual taken-out-of-context paragraphs so beloved in Poland. It invites us to make the Constitution and its values integral part of our understanding of constitutional legality. It was precisely this kind of fidelity and animus that guided Judge Anna Korwin-Piotrowska. Acting in good faith and with integrity, she finally provided a much-needed counternarrative to the madness and relativism that have come to dominate our daily lives, causing us to lose sight of what matters most. She chose appropriate method to restore the integrity of the institution. Her choice was driven by the following three elements: the scale of destruction on the ground; the consequences of allowing the blatant unconstitutionality to persist; and the price we are prepared to pay for its continued existence under the guise of a helpless legalism. By acting in this manner, she remained faithful to the Constitution.

Changing Course

The arrogance and insolence of this lawlessness and of the people behind the constitutional destruction have been fueled by our own impotence, a lack of legal imagination, and three years of "coalition political manoeuvring" fixated on the next poll. Their strength comes directly from our weakness, indecision and naivety. The most tragic consequence of all this is a loss of public confidence in the law and the institutions. Today citizens no longer believe that our democracy can be defended and that the Trojan horse(s) will be ever brought to account within the framework of the Constitution, not in defiance of it. Our never-ending formalistic disputes about "the paragraphs" nurtured this feeling of civic helplessness and dismay.

In Poland quietly, almost imperceptibly, yet steadily, the illegality has become part of our daily life. Having no independent Constitutional Court and Supreme Court has become internalized (for my earlier warnings see here). We have seen the tragic consequences of living side by side for years with constitutional lawlessness. On 30 October 2026, in front of what used to be the Constitutional Court in Warsaw, we have realized how much the constitutional profile of the state has been distorted. If we yield now and fail to regain the initiative and allow the unconstitutional narrative of the opposing side to continue shaping public discourse, the restoration of the rule of law and decency in Polish public life will be impossible.

Unfortunately, in November 2026, time is not on our side.

All this provides the necessary context in which to judge the actions of Anna Korwin-Piotrowska: her decisive "No" to helplessness. She refused to bow down to the usurpers. She acted with courage and determination, in good faith and in total submission to the (directly applicable, by the way!) constitutional document, which has been torn to shreds for years. She searched for the optimal solutions that would at least try to get us out of this unthinkable unconstitutional anarchy and relativism. She tried to bring a modicum of normalcy and decency to our public life. Her actions screamed "No more business as usual".

While battle(s) for the rule of law was lost in 2023-2026, the ultimate fight for what is left of the Constitutional Court only began on 30 October 2026. The Polish rule of law will have no third chance. Act now or never.

"*Tread softly, because you tread on my dreams.*"
W. B. Yeats, *He Wishes for the Cloths of Heaven*

ABOUT THE AUTHOR

Tomasz Tadeusz Koncewicz

Tomasz Tadeusz Koncewicz is a Professor of Law and Director of the Department of European and Comparative Law at the Faculty of Law and Administration, University of Gdańsk. He is a member of the Editorial Board of the Oxford Encyclopedia of EU Law, elected member of the Council of the Jean Monnet Fondation pour l'Europe in Lausanne and the attorney specializing in strategic litigation before supranational, international, and highest domestic courts. He is the Principal Investigator in Horizon Europe Project Justice-in-context: social practices, local realities, and the everyday work of judicial independence in Europe (JUST-IN). More recently he served as the Distinguished Visiting Professor at Europa-Kolleg, Hamburg.Tomasz Tadeusz Koncewicz is a Professor of Law and Director of the Department of European and Comparative Law at the Faculty of Law and Administration, University of Gdańsk. He is a member of the Editorial Board of the Oxford Encyclopedia of EU Law, elected member of the Council of the Jean Monnet Fondation pour l'Europe in Lausanne and the attorney specializing in strategic litigation before supranational, international, and highest domestic courts. He is the Principal Investigator in Horizon Europe Project Justice-in-context: social practices, local realities, and the everyday work of judicial independence in Europe (JUST-IN). More recently he served as the Distinguished Visiting Professor at Europa-Kolleg, Hamburg.

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