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## Transatlantic Foundation

## Poland's Rule- of-Law Repair

*Trapped in Institutional Paralysis?*

Anna Wójcik  
ReThink.Democracy

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## Summary

Two years since taking office in Poland, the governing coalition led by Prime Minister Donald Tusk has made limited progress in repairing the rule of law following the backsliding under the previous government led by the Law and Justice (PiS) party. The change of government in December 2023 raised hopes of democratic repair but legislative reforms remain at an early stage. This reflects not only the depth of institutional damage done by PiS but also political constraints.

The Tusk government has been operating under the conditions of cohabitation with PiS-backed presidents, first with Andrzej Duda and since August with Karol Nawrocki. The constitutional framework grants significant powers to the president, including the authority to veto statutes and to refer them for constitutional review. Cohabitation has drastically curtailed the ability to pursue rule-of-law reforms, particularly in judicial governance. Moreover, the preparation of draft legislation in several key fields has proceeded more slowly than expected.

In 2024, the parliament passed three acts aimed at restoring constitutional standards: two concerning the Constitutional Tribunal and one reforming the National Council of the Judiciary, but none has entered into force. Duda referred the three acts to the Constitutional Tribunal, which remains an illiberal enclave aligned with PiS, and in the course of this year it has invalidated all three. Consequently, legislative change regarding the institutions central to judicial independence is effectively paralyzed.

The government also pledged to separate the offices of minister of justice and prosecutor general, a reform long demanded by European monitoring bodies. Despite repeated commitments, this change has not yet been implemented.

The most sensitive challenge for repairing the rule of law concerns judges appointed through a politicized procedure introduced under PiS. Addressing their status is necessary to restore judicial independence and to protect legal certainty. However, it involves difficult decisions affecting accountability, individual rights, and systemic stability. Although a legislative proposal is now ready, Nawrocki has indicated that he will veto any major judicial reform. He has also announced the creation of a new advisory body under the presidency to draft proposals for reforming the justice system, a move widely seen as an attempt to stymie the government's initiatives.

Overall, the effort to repair the rule of law in Poland is constrained by polarization, institutional stalemate, and a political context that is increasingly dominated by the approach of the parliamentary elections scheduled for 2027. While the government remains committed to reform, presidential obstruction and the continued role of the Constitutional Tribunal as a veto player limit progress. Poland therefore finds itself in a prolonged phase of limited rule-of-law repair.

# Introduction

Between 2015 and 2023, the government led by the Law and Justice (PiS) party took several measures that led to the deterioration of the rule of law and to systemic democratic backsliding in Poland. The damage included:

- The flawed composition and functioning of the Constitutional Tribunal.
- The appointment process of the National Council of the Judiciary (NCJ), a crucial body responsible for judicial appointments.
- The status of the approximately 2,700 judges (or one-third of the judiciary), including on the Supreme Court and the Supreme Administrative Court, appointed through a defective process involving the politicized NCJ.
- The structure of the Supreme Court, notably the Chamber of Extraordinary Control and Public Affairs added in 2018.
- The politicization of the prosecution office.
- Abuses of power and high-level corruption.<sup>1</sup>

The coalition government led by Prime Minister Donald Tusk—composed of his center-right liberal Civic Platform, the centrist Polska2050, the conservative Polish People's Party, and the Left—that was formed following the October 2023 parliamentary elections, promised to repair the rule of law. However, it has been constrained by an institutional landscape dominated by entrenched PiS loyalists in “illiberal enclaves”, especially in the Constitutional Tribunal, the Supreme Court, and the NCJ. During its first 18 months in power, the government was also constrained by the cohabitation with PiS-backed President Andrzej Duda. He blocked key judicial reforms by referring the new laws adopted by the parliament concerning the Constitutional Tribunal and the NCJ to the Constitutional Tribunal, which continues to operate in line with the PiS agenda.

### **Żurek's appointment signaled the government's intention to carry out judicial reform more decisively.**

Following the victory of the PiS-endorsed Karol Nawrocki in the presidential election in June, the government survived a motion of no confidence in parliament, which was accompanied by a cabinet reshuffle in July. Adam Bodnar, a law professor and former commissioner for human rights, was succeeded as minister of justice and prosecutor general by former judge Waldemar Żurek, who was one of the leading figures defending the rule of law during the PiS government, for which he faced legal and political persecution. In February 2024, Bodnar had presented an Action Plan to Restore the Rule of Law,<sup>2</sup> which included a commitment to pass several key bills. However, his time in office showed the difficulties of repairing state institutions after years of deliberate dismantling of democratic standards, given the constraints of liberal democracy. Żurek's appointment signaled the government's intention to carry out judicial reform more decisively, despite the challenges of what will be a more contentious phase of cohabitation with Nawrocki in the coming years.

This paper summarizes what the government achieved from December 2023 to November 2025 and examines the opportunities and challenges facing it under the new political circumstances. It first examines the situation regarding the Constitutional Tribunal, including its composition and functioning, as well as systemic issues related

to judicial independence in the common courts, particularly the Supreme Court. The paper then addresses the condition of the Prosecution Service. In addition, it discusses the European dimension of repairing the rule of law in Poland. Finally, it analyzes the role of the president in Poland's political system and the impact of Duda and Nawrocki on the rule-of-law repair process.

## The Constitutional Tribunal

Since PiS came to office in 2015, the Constitutional Tribunal has been at the center of a constitutional crisis related to the unlawful appointment of some of its members. The PiS government appointed individuals to seats on the tribunal that were legally reserved for judges elected by the previous government. These individuals were labelled "duplicate judges". In 2021, the European Court of Human Rights (ECtHR) ruled that rulings by Constitutional Tribunal panels with "duplicate judges" violated the right to a fair trial under Article 6 of the European Convention on Human Rights. Moreover, in 2023, the ECtHR found that the Constitutional Tribunal's ruling in a 2020 case concerning the restrictive abortion law had been handed by such a "defective" panel in breach of the rule of law. Poland is legally obliged to implement the judgments of the ECtHR and to reform the Constitutional Tribunal. Moreover, the Court of Justice of the European Union (CJEU) is considering a case brought by the European Commission against Poland regarding the composition and functioning of the Constitutional Tribunal.

In December 2016, Julia Przyłębska, a PiS loyalist, was appointed for a six-year term as president of the Constitutional Tribunal. The same year, the PiS government also amended the Constitutional Tribunal Act to grant its president broad powers, including control over the allocation of cases to judicial panels. The tribunal ceased to function as an independent body conducting centralized constitutional review and became an enabler of PiS's agenda. When Przyłębska's term ended in December 2024, Bogdan Świączkowski, a close associate of the PiS-era minister of justice and prosecutor general Zbigniew Ziobro who had been deputy minister of justice and national prosecutor was appointed as the tribunal's president. Świączkowski's six-year appointment guaranteed PiS will continue to control the allocation of cases within the Constitutional Tribunal until 2030. He is publicly active, through official statements and press conferences; and he has promoted the conspiracy theory alleging that the Tusk-led government is carrying out a coup with its attempted reforms and filed a related formal criminal complaint with the Prosecution Service. After Nawrocki was elected president, Świączkowski congratulated him and expressed satisfaction with the outcome.

After coming to power in December 2023, the governing coalition adopted a strategy of marginalizing the Constitutional Tribunal. In March 2024, the lower house of parliament (Sejm) adopted a resolution addressing the consequences of the constitutional crisis of 2015–2023 concerning the tribunal's activities.<sup>3</sup> Since then, the government has refrained from publishing the tribunal's rulings, including those issued by legally composed panels without "duplicate judges", a practice criticized by the Council of Europe's Venice Commission.<sup>4</sup> The governing coalition also has not nominated candidates to vacant tribunal seats. However, following Nawrocki's election, it plans to appoint new judges of the Constitutional Tribunal.

The Constitutional Tribunal's judges are elected for a nine-year term by a simple majority vote in the Sejm. At the time of writing, 11 out of its 15 seats were filled, including two "duplicate judges". In December, judge Krystyna Pawłowicz (a former PiS member of parliament) will retire due to health reasons and the term of another judge will end, to be followed by another in June 2026. Moreover, the term of one "duplicate judge" will end in September 2026. Thus, up to September 2026, the government will have the opportunity to appoint judges to eight of the 15 seats on the Constitutional Tribunal. However, this does not guarantee a change in the tribunal's approach in politically sensitive cases. Due to his powers, Świączkowski can assign politically significant cases, such as those concerning the constitutionality of statutes or international agreements to five-judge panels, which he could select exclusively from those who were appointed by the earlier PiS governing majority.

The governing coalition has tried to reform the Constitutional Tribunal through two acts adopted by the Sejm in 2024. The Constitutional Tribunal Act required that its judges be elected by the Sejm with a three-fifths majority, rather than a simple majority as under the current law.<sup>5</sup> The Act Introducing the Provisions of the Act on the Constitutional Tribunal stipulated that the "duplicate judges" are not judges of the tribunal, but "persons unauthorized to adjudicate".<sup>6</sup> It proposed to deprive of legal effect all rulings issued by improperly constituted panels involving "duplicate judges". Duda referred both bills to the Constitutional Tribunal, which in July ruled that they were unconstitutional. Consequently, he did not sign them into law.

Additionally, the Senate, where the governing coalition holds a majority, presented draft constitutional amendments concerning the Constitutional Tribunal in 2024. These envisage the expiration of the term of all its current judges and the election of 15 new ones, which would effectively amount to a full "reset" of the tribunal. However, the governing coalition does not have the three-fifths majority in the Sejm required to pass constitutional amendments. Even with the support of the far-right Konfederacja party, some of whose members have floated the idea of a "constitutional reset", the amendments cannot be adopted without PiS votes. As a result, the adoption of the amendments or similar ones in the current Sejm is politically impossible.

## The National Council of Judiciary

The National Council of the Judiciary plays a crucial role in the judicial appointments process. It recommends candidates for judicial office to the president, who swears in the judges of the Supreme Court, the Supreme Administrative Court, and common courts of lower instances. The NCJ consists of 25 members: the first president of the Supreme Court, the president of the Supreme Administrative Court, the minister of justice, one individual appointed by the president, four members of parliament elected by the Sejm, two senators elected by the Senate, and 15 judges.

Until 2017, the 15 judges on the NCJ were elected by their peers for a four-year term. That year, the PiS government changed the process so that they are appointed by the Sejm by a simple majority vote. As its current term runs till May 2026, the NCJ is thus another "illiberal enclave". Its chairperson, Judge Dagmara



Pawełczyk-Woicka, is a staunch supporter of PiS's changes in the courts and a critic of the government attempted rule-of-law repair.

The Supreme Court, the Court of Justice of the European Union, and the ECtHR have ruled that the changes in the selection of NCJ judges led to the politicization of appointments to the Supreme Court. Consequently, judges appointed in the intervening years do not meet criteria of independence under the constitution, EU law, and the European Convention on Human Rights.

Since 2018, approximately 2,700 judges (or one-third of all judges) have been appointed or promoted through this defective procedure to common courts, including the Supreme Court. They are commonly referred to as "neo-judges", though PiS and Nawrocki dispute this term.

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As President Duda continued to swear in judges recommended by the politicized NCJ after the new government took office in December 2023, Minister of Justice Bodnar halted the announcement of new judicial competitions. However, the NCJ continued to process competitions that had been announced earlier, and Duda continued to swear in judges through the defective procedure (as Nawrocki has also done recently).

Also in December 2023, the Sejm adopted a resolution on "addressing the consequences of the constitutional crisis in the context of the institutional role and functions" of the NCJ.<sup>7</sup> It stated that the NCJ was structured in a manner inconsistent with the constitution, EU law, and the European Convention on Human Rights. According to it, the NCJ consequently lost the capacity to perform its constitutional functions, in particular safeguarding the independence of the courts and the impartiality of judges.

In July 2024, the Sejm adopted a bill reforming the NCJ, which would return the appointment of its 15 judges to their peers.<sup>8</sup> Before the end of his presidency, Duda referred the bill to the Constitutional Tribunal, which has ruled it unconstitutional in November.

On November 6, Minister of Justice Żurek, presented a new draft law that would also return the appointment of the 15 judges on the NCJ to their peers. It is intended as a compromise that would potentially be acceptable to Nawrocki as it would allow "neo-judges" to stand as candidates and to vote in the NCJ elections. Judges with at least ten years of judicial experience, including five years in their current post, would be eligible to run. The reformed NCJ would include one Supreme Court judge, two appellate court judges, three regional court judges, six district court judges, one military judge, one of the Supreme Administrative Court judge, and one judge of a voivodship (provincial) administrative court. This distribution of seats is designed to reflect the structure of the judicial community and to answer to long-standing demands by experts.



Should Nawrocki be opposed to this draft law, another option currently under discussion is a workaround in which the judiciary would effectively select the 15 judges on the NCJ, with the Sejm rubber-stamping their appointments under the PiS-era legislation.

On November 18, Nawrocki announced that he would submit his own draft bill on the NCJ in January 2026. He envisages that the judges on the NCJ would be selected by the Sejm, reversing the mechanisms introduced under PiS.

## Defective Judicial Appointments

Poland is under an obligation, pursuant to the European Court of Human Rights' judgement in *Wałęsa v. Poland* of December 2023, to regulate the status of judges appointed or promoted through a defective procedure, as well as to establish whether their rulings have legal effect. The Committee of Ministers of the Council of Europe, which supervises the implementation of ECtHR judgments, has extended Poland's deadline to implement the judgment until November 2026.

The authorities have leeway in how to implement the judgment. Developing a mechanism to do so that would satisfy judicial associations, experts from civil society and academia, and the Venice Commission proved to be a major challenge for the Ministry of Justice under Bodnar's leadership.

Before the 2023 elections, the judicial association *Iustitia* proposed a draft framework for regulating the status of defectively appointed judges. In April 2024, Bodnar appointed the head of *Iustitia*, Krystian Markiewicz, a judge and law professor, as chair of the Codification Commission on the Judicial and Prosecutorial System, an expert advisory body tasked with preparing legislative proposals. The commission developed a draft bill addressing the status of judges appointed through defective procedures. This was subject to broader consultations through meetings of the Rule of Law Repair Working Group, which have brought together legal academics, representatives of other legal professions, and civil society experts. The group has been a forum for consulting ideas and drafts prepared by the commission and the Ministry of Justice.

Bodnar also sought the opinion of the Council of Europe's Venice Commission on the compatibility of discussed solutions with European law standards. The core question was whether the issue could be addressed by means of a bill (as initially proposed by *Iustitia* and the Codification Commission) or whether the status of "neo-judges" should be assessed individually by a body independent of government (as advocated by the Helsinki Foundation for Human Rights and recommended by the Venice Commission). Following the publication of the Venice Commission's opinion in October 2024,<sup>9</sup> the Codification Commission presented two draft bills presenting these two options for the government to choose from.

In April, the Ministry of Justice unveiled its own draft bill, which argued that defectively appointed judges are not a homogenous group and proposed various ways of regulating their status collectively through legislation. One

of the first decisions Żurek took when he became justice minister was to request that the Venice Commission refrain from assessing it. In October, he presented a slightly modified version of the draft bill. This version also differentiates between various categories of “neo-judges”.

The “young judges”, approximately 1,000 individuals, are former trainee judges, judicial assistants, court clerks, and graduates of the National School of Judiciary and Public Prosecution whose promotions to judgeships were only formally confirmed by the politicized NCJ. Żurek’s draft law provides that they would remain in their posts, subject to their appointments being approved by a future NCJ selected under the reformed rules.

The largest subgroup among the “neo-judges” consists of about 1,200 individuals who were judges before the changes in the NCJ but were promoted through decisions of the politicized NCJ. The draft law envisages that they would return to their previous positions but would be able to reapply for promotion before the reformed NCJ.

A further group of about 400 individuals appointed without prior judicial experience (former prosecutors, attorneys, or legal advisers) would be able to return to their earlier profession—subject to the consent of the bar councils and legal-adviser councils—or take up posts as court clerks. They, too, would be able to apply for judicial positions in the future.

The draft law also stipulates that all the “neo-judges” on Supreme Court judges (currently 55 individuals) appointed through the defective procedure would lose their positions.

## The Supreme Court

The majority of Supreme Court judges in all chambers were defectively appointed through the politicized procedure, including its president, Małgorzata Manowska, in 2020. The Supreme Court currently comprises 94 judges, including 55 “neo-judges”.

In 2018, to create new judicial posts and gain control over the composition of the Supreme Court, the PiS government established two new chambers within it: the Disciplinary Chamber and the Chamber of Extraordinary Control and Public Affairs. Both were composed exclusively of judges appointed through the defective procedure.

In 2022, amid the dispute with the EU over the rule-of-law violations, the PiS government created the Chamber of Professional Responsibility to replace the contentious Disciplinary Chamber. The EU institutions have required Poland to ensure that disciplinary cases concerning judges are heard by a court that meets the standards of independence under EU law. However, judges and “neo-judges” from other chambers of the Supreme Court continue to be appointed to the Chamber of Professional Responsibility, which means that the systemic problem of the lack of independence of its adjudicating panels persists.

The Chamber of Extraordinary Control and Public Affairs continues to operate. In December 2023, the CJEU ruled that it would no longer accept preliminary references from this chamber, as it did not meet the criteria of an independent court under EU law.

After the change of government in 2023, the functioning of the Chamber of Extraordinary Control and Public Affairs became highly problematic. First, it participated in approving financial reports and subsidies for political parties. Second, it validated the results of this year's presidential election and considered electoral complaints brought by citizens. Prior to the presidential election, the governing coalition passed a "incidental bill" that would have on a one-time basis appointed the most senior judges of the Supreme Court to adjudicate on the validity of the result. However, President Duda vetoed this law. Therefore, the result was validated by a body that a considerable portion of the electorate does not recognize as legitimate. After Civic Platform's Rafał Trzaskowski lost the election, some of the party's figures and supporters began promoting theories of electoral fraud, and they do not believe that the Chamber of Extraordinary Control and Public Affairs examine impartially the complaints. The Supreme Court does not recount votes; it simply confirms who won. Since Nawrocki's margin was 369,000 votes, the irregularities that occurred (such as wrongly attributed votes) were too limited to affect the overall outcome.

The draft bills presented by the Ministry of Justice in April and October envisaged abolishing the Chamber of Extraordinary Control and Public Affairs.

## Institutional Changes in the Judiciary

Under the PiS government, Minister of Justice Ziobro arbitrarily and without justification replaced hundreds of court presidents and vice-presidents. This allowed him to exert pressure on judges defending the rule of law and subjected them to various forms of harassment. Between the 2023 change of government and earlier this year, his successor Bodnar dismissed 96 court presidents and 129 vice-presidents across the country through a procedure that sought the consent of judges from the affected courts. Since become minister of justice in July, Żurek has suspended an additional 46 court presidents and vice-presidents who had been defectively appointed or who supported judges who were members of the politicized NCJ.

Bodnar also initiated personnel changes in the offices of disciplinary officers in the judiciary for common courts. However, some criticized him for waiting until this year to dismiss two key figures in the disciplinary system created under PiS: the chief disciplinary officer for common courts Piotr Schab and one of his deputies Przemysław Radzik. Immediately after taking office, Żurek dismissed the other deputy, Michał Lasota.

The new chief disciplinary officer for judges of common courts, Joanna Raczowska, has been appointed. However, Schab, Radzik and Lasota are challenging their removal, inciting judges to rebel against Raczowska and occupying the premises of the disciplinary officer's office located at the NCJ headquarters. Raczowska has exercised her statutory powers to dismiss local disciplinary officers who had abused their authority by pursuing judges for defending the rule of law during the PiS period.

## The Prosecution

When taking office in 2023, the government inherited the highly politicized and hierarchical prosecutorial system established under PiS. Among other things, the system grants the prosecutor general and the national public prosecutor sweeping powers to intervene in proceedings conducted by lower-ranking prosecutors.

One of the fundamental problems is the concentration of power in the combined roles of minister of justice and prosecutor general. In January 2024, Bodnar presented a proposal to separate these functions, which the Venice Commission evaluated positively. In December 2024, he presented a draft bill to this end. Żurek has promised to expedite the work on the bill, which is at the consultation stage in the government.

The current system, modified by PiS, gives the national public prosecutor extensive powers. Before the 2023 elections, then prosecutor general Ziobro appointed a close associate, Dariusz Barski, to the position in order to maintain control over the prosecutorial system in the long term. During Ziobro's tenure as prosecutor general, prosecutors who supported the PiS-led changes to the justice system were promoted, while those opposing them were harassed and demoted. In January 2024, Bodnar dismissed Barski on the grounds that the latter had retired and had not been reinstated to active duty when he was appointed. Neither PiS nor Nawrocki have accepted Barski's dismissal, regarding it as supporting the conspiracy theory of a coup by the government. Barski was first succeeded by Jacek Bilewicz, a member of the independent prosecutors' association Lex Super Omnia, which defended the rule of law during the PiS government. Following a competitive selection process, Dariusz Korneluk, was appointed as the national public prosecutor in March 2024. Meanwhile, the replacement of Ziobro's other close associates within the prosecutorial system is proceeding slowly.

In another important by step the government, in January 2024, Poland joined the European Public Prosecutor's Office (EPPO) system, which was created to investigate abuses related to EU funds and cross-border VAT fraud.

## Accountability

From the moment the new government took office after the 2023 elections, it was clear that the process of accountability for abuses of power and corruption under the PiS government would be constrained and prolonged by the standards and procedures of liberal democracy.

The government has sought to pursue accountability through three parliamentary investigative commissions. One examined irregularities in the organization of the 2020 presidential election. The second focused on the illegal issuance of work visas to non-EU nationals under the PiS government. Both completed their work in 2024 and submitted notifications to the national public prosecutor's office regarding suspected criminal offenses committed by over 20 individuals, most of them senior PiS politicians. The third commission investigating the use of the Pegasus spyware against opposition politicians, prosecutors, and journalists under the PiS government is still active.

The Prosecution Service has also launched proceedings against PiS politicians and individuals who held top state positions in connection with their actions in office between 2015 and 2023. Their immunity was lifted by the Sejm or European Parliament and charges were brought against several PiS members of the Polish and European parliaments. Former prime minister Mateusz Morawiecki waived his immunity in relation to the charges against him in relation to organization and rescheduling of the 2020 presidential election at the peak of the COVID-19 pandemic. In November, the Sejm voted to strip former justice minister Ziobro of his parliamentary immunity and green-lighted his arrest. Prosecutors have leveled 26 charges against him, including that of leading an “organized crime group” in the Justice Ministry that embezzled some PLN 150 million (€35 million) from the Justice Fund. At the time of the vote on lifting his immunity, Ziobro was in Budapest, where he remains at the time of writing. He is not the first PiS politician to seek refuge in Hungary out of fear of being held to account. After being charged and the Sejm voted to lift his immunity, Ziobro’s former deputy, Marcin Romanowski, also fled to Hungary, which in January 2024 granted him political asylum.

Other high-profile figures charged and whose immunities have been waived include the former defense and interior minister Mariusz Błaszczak, former agriculture minister Jan Ordanowski, the former chief of chancellery of the prime minister, Michał Dworczyk, former deputy justice ministers Michał Woś and Romanowski, and the former chief executive officer of the state-controlled oil and gas company PKN Orlen, Daniel Obajtek. More investigations are ongoing and final court verdicts are expected to take years to reach.

The procedure is also underway to lift the immunity of several more individuals, including Supreme Court President Manowska, who enjoys additional immunity as a member of the State Tribunal.

The Prosecution Service has also opened investigations and brought charges relating to numerous corruption scandals under the PiS government, including the smear campaign against judges that was allegedly run from within the Ministry of Justice and the above-mentioned abuse of the Pegasus spyware against the opposition and civil society.

## The European Dimension

Since 2015, the institutions of the EU and the Council of Europe have undertaken various political and legal measures against Poland in response to its rule-of-law crisis. Notably, the EU in 2017 launched a political procedure under Article 7(1) of the Treaty on European Union concerning a serious risk of breach of the rule of law in the area of judicial independence. After the 2023 elections, the new government set itself the goal getting the EU to close the procedure and to unblock funds that it had been frozen as leverage to compel Poland to address rule-of-law violations. The EU closed the Article 7(1) procedure in May 2024, making Poland the first member state against which it has been launched and then closed.

Another major political success for the government was the EU unblocking in 2024 of Recovery and Resilience Facility funds that had been frozen due to unmet judicial-related milestones. The European Commission and

the other member states were persuaded by Minister of Justice Bodnar's Action Plan to Restore the Rule of Law. Poland joining the EPPO was another important factor in the decision. The EU unfroze the funds despite the fact that none of the bills mentioned in the plan had yet been signed into law.

The government sought guidance from the Council of Europe's Venice Commission and the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights regarding the planned, proposed, and adopted bills. During Bodnar's term as minister of justice, Poland revised its legal positions in rule-of-law cases pending before the CJEU. These cases had been initiated during the PiS government by the European Commission or by Polish judges submitting preliminary references to the CJEU. The new legal positions reflected the government's pro-EU orientation. Under PiS, a conflict had been fostered between the constitution and EU law and the European Convention on Human Rights. The government has returned to the established tradition of Polish constitutionalism, which does not recognize such a conflict. The European Commission took an optimistic view of the progress made in restoring the rule of law in Poland in its 2025 Rule of Law Report.<sup>10</sup>

In October 2024, Prime Minister Tusk stated that reform of the European Convention on Human Rights system was necessary and that he would understand why some states might consider denouncing the convention if that proved impossible.<sup>11</sup> The government's spokesperson subsequently clarified that the government had no intention of withdrawing from the convention.

## The President of the Republic

Although Poland has a parliamentary system of government, its presidents hold significant constitutional powers. They have the right to veto legislation, and a three-fifths majority in parliament is needed to override a veto (which the government coalition does not have). They can also refer laws to the Constitutional Tribunal for review before signing them or after they have taken effect. Additionally, they have the right to initiate legislation (which they can use to pressure the government). Altogether, effective governance requires a president who is cooperative with the government. Otherwise, in a situation of cohabitation under extreme political polarization, such as is now the case, the president may obstruct governmental action. Nawrocki can use all of these powers to stall the rule-of-law repair.

The governing coalition had based its medium-term rule-of-law repair strategy on winning the this year's presidential election. It had great hopes for Civic Platform's Trzaskowski, who led in the polls for months, until the PiS-backed Nawrocki secured an upset victory.

Nawrocki's taking office as president in August therefore marked the end of the first phase of the government's attempt to repair the rule of law. He is a conservative historian and former PiS-appointed chair of the Institute of National Remembrance. Nawrocki was elected thanks to votes from PiS supporters as well as those of the far-right Konfederacja party and the extreme-right first-round candidate Grzegorz Braun.

Nawrocki has been using his presidential powers and platform to advance PiS's agenda and to help it to return to power in the parliamentary elections due in 2027. Some of his actions show that he is also seeking to appeal to far-right voters by shaping his program and rhetoric accordingly. For example, in August, Nawrocki vetoed the bill on aid for Ukrainians, citing what he described as an excessively large volume of social benefits. In November, he signed a substantially more limited version of the bill. Moreover, the president took part in the controversial nationalist march in Warsaw on Independence Day in November, where he was warmly received by the participants. He is doing everything he can to position himself as the new leader of the right and far-right, and to help lay the groundwork for a future coalition government consisting of PiS, Konfederacja, and potentially other parties, such as Braun's Confederation of the Polish Crown.

During his time as president from 2015 to this year, Duda played an active role in Poland's democratic backsliding. And, following the change of government, he obstructed the efforts to repair the rule of law. Duda did not veto the bills aiming at reforming the Constitutional Tribunal and the NCJ adopted by the parliament in 2024. Instead, he referred them to the Constitutional Tribunal, which continues to advance the PiS agenda. In July, the Constitutional Tribunal ruled that the provisions of the two bills reforming the Constitutional Tribunal were unconstitutional. As a result, Duda did not sign them into law.

### **This signals that Nawrocki intends to take control of judicial reform away from the government.**

While he was president-elect, Nawrocki said that Tusk was "the worst Polish prime minister since 1989" but also that "a democratic system requires the president and prime minister to cooperate on matters that serve the public good".<sup>12</sup> He declared that he would not veto all legislation, but also that he would refuse to sign laws that, in his view, "alter the shape of national identity or surrender Polish sovereignty to bodies outside the Republic".<sup>13</sup>

In his inaugural speech as president, Nawrocki addressed constitutional issues and the rule of law. He announced the plan to create a Council for the Repair of the State System composed of academics under the Chancellery of the President. This body should draft by 2030 a new constitution, which would introduce a presidential system of government. In November, Nawrocki also announced that this council should prepare the presidential bill for reforming the NCJ and, potentially, additional draft legislation concerning the judiciary and the broader justice system. He pledged to establish the Council by the end of the year.

This signals that Nawrocki intends to take control of judicial reform away from the government. He is therefore unlikely to sign related government legislation adopted by the parliament and will instead put forward his own draft bills. The aim will be to demonstrate the effectiveness of his political camp in contrast to the government's lack of capacity to deliver.

Nawrocki has been supporting Constitutional Tribunal President Świączkowski, Supreme Court First President Manowska, and NCJ Chairperson Pawełczyk-Woicka, and consulting them about the state of judiciary and the rule of law, thereby legitimizing their actions and the PiS-era changes in judiciary.



In his first 100 days in office, the president vetoed 13 statutes, but no rule-of-law legislation adopted by the Sejm has yet reached his desk. Nawrocki has signed two bills prepared by the Ministry of Justice, though these concern issues such as family-court proceedings, the digitalization of civil proceedings, mediation, and reforms to the system of free legal aid rather than the rule-of-law agenda.

Nawrocki has repeated PiS's conspiracy theory, also supported by Świączkowski, that the government was carrying out a "coup". He has claimed that the national public prosecutor was acting "illegally" and that the previous one had been unlawfully dismissed by Bodnar in his capacity as prosecutor general.

The president has also attacked judges. He has signaled his opposition to any judicial involvement in drafting legislation aimed at repairing the judiciary, which indicates he is likely to veto or to refer bills concerned to the Constitutional Tribunal.

In November, Nawrocki declared that he would not administer the oath of office to "judges who undermine the constitutional legal order".<sup>14</sup> In November, he acted on this threat, asserting that the president has the right to refuse to accept the judicial oath and declined to do so for 46 individuals. This continued Duda's policy toward this group of judges. Nawrocki also announced that he would not promote judges who "question the constitutional order and listen to the misguided advice of the Minister of Justice, Waldemar Żurek".<sup>15</sup> The head of the Chancellery of the President, Zbigniew Bogucki, clarified that these judges will continue to adjudicate but will not be eligible for promotion.

Those affected are mainly judges of district courts, the lowest tier of the judiciary, most of whom earlier signed public letters concerning the rule-of-law crisis. Notably, 36 of the 46 signed the 2021 letter in which 4,000 judges urged the PiS government to comply with CJEU rulings challenging its judicial "reform". Some of those denied promotion are also "neo-judges" appointed or promoted on the basis of recommendations by the politicized NCJ.

**Presidents Duda and Nawrocki, supported by PiS politicians, have consistently advanced the notion of a presidential "super-prerogative" in judicial appointments.**

NCJ Chairperson Pawełczyk-Woicka has publicly endorsed Nawrocki's decision, expressing approval of the criteria he intends to apply when assessing future judicial candidates for promotion. This reflected her long-standing opposition to judges' use of the "independence" tests and motions to exclude from adjudicating panels individuals appointed or promoted through the politicized NCJ. In her view, Nawrocki's stance aims to counter such practices. The president has reiterated that he does not recognize any distinction between "neo-judges" and "full-fledged judges".

Presidents Duda and Nawrocki, supported by PiS politicians, have consistently advanced the notion of a presidential "super-prerogative" in judicial appointments. This argument is grounded in Article 180(1) of the constitution, which states that "judges shall be irremovable". However, this interpretation disregards the

established principle that the entire appointment process must comply with the law and respect the separation of powers. Since judges are appointed by the president upon a motion of the NCJ, the participation of the NCJ is therefore an indispensable component of the appointment mechanism. Therefore, its irregular composition and functioning affect the independence of judicial panels that include judges appointed or promoted on its recommendation.

Finally, Nawrocki has not yet had the opportunity to interfere in the accountability process concerning PiS politicians and their allies as no final convictions have been issued for which he could pardon them. However, the president's pardon powers may influence the accountability process in the medium term.

## Conclusion

The process of restoring the rule of law in Poland under the government that took office in 2023 is still in its early stages. This is due not only to the scale of the damage done by the PiS government during its eight years in office but also to entrenched PiS loyalists in "illiberal enclaves" such as the Constitutional Tribunal, the National Council of the Judiciary, and the Supreme Court, and to the government's cohabitation with President Duda and now President Nawrocki.

The government's gamble on winning the 2025 presidential election has backfired and the cohabitation with Nawrocki will pose a new set of challenges. All political forces are already looking to the next parliamentary elections.

The governing coalition and PiS alike claim they are defending democracy and the rule of law from attacks, but no false equivalence should be drawn between these claims. The process of rule-of-law repair is moving forward under the government, albeit slowly. Though no bills have been signed into law and one can argue that the process of drafting legislation is too slow, there have been meaningful changes: the disciplinary system in the judiciary is no longer used to suppress judges and reforms are underway within the Prosecution Service. The government will have to decide whether to continue marginalizing the Constitutional Tribunal or to begin appointing new judges to it.

Another challenge is to balance public expectations for accountability for actions during the PiS government with the constraints of liberal democracy. After the 2023 elections, a significant portion of the governing coalition's electorate had, perhaps excessively high, expectations of a spectacular and swift reckoning with the previous PiS government for abuse of power and corruption. The pace and extent of change since have disappointed many who expected swift accountability and a thorough cleansing of the state institutions from PiS-era appointees. All this will test the government's commitment to the rule of law. Under cohabitation with Nawrocki, a truly comprehensive reform of the judiciary and repair of the rule of law is unlikely, however.

## Endnotes

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**About the Author(s)**

Anna Wójcik specializes in the rule of law and human rights. She is a principal investigator at the Constitutional Law Division of Koźmiński University in Warsaw, Poland. She is a ReThink.CEE Fellow 2021 of the German Marshall Fund of the United States.

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