



The difficulties of restoring democracy in Poland

by Zselyke Csaky, 17 December 2024

The restoration of democracy in Poland is a slow-moving process, but it offers valuable lessons to other member-states.

Poland's return to liberal democracy, after a period of severe backsliding under the previous government led by the Law and Justice (PiS) party, has been challenging. The new government, led by Prime Minister Donald Tusk, has faced a daunting task: restoring democracy, while not undermining the rule of law any further in the process. One year since it came to power, the government has trodden carefully, undoing the state's capture of the public media, but failing to repair the political independence of the judiciary. And it has not yet responded to voter demands to bolster civil liberties and to amend Poland's near-total ban on abortion – a key demand of female voters and young supporters of the coalition.

Although Poland does not offer a straightforward success story, the EU and its member-states should pay close attention to what is happening there. Not only because it is a one-of-a-kind experience – no other country has tried to reverse a significant retreat from democracy while being an EU member – but also because it offers lessons for others at risk of democratic backsliding.

The problem: Rule of law and institutional capture

The Law and Justice government, in power between 2015 and 2023, [captured](#) Poland's [democratic institutions](#) and installed loyal allies in key positions, including in the judiciary, the prosecution services and public media. It accomplished much of this institutional capture through unlawful means, at times violating Poland's constitution. It also undermined civil liberties by restricting the rights of women, targeting LGBTQ+ people, and smearing civil society organisations and protesters. By the end of its second term, PiS had turned the country into a ['legal black hole'](#).

Among its first steps, PiS [took control](#) of Poland's Constitutional Tribunal (CT) in 2015 by challenging previous appointments. While there had been only two vacant positions on the court, PiS appointed five new judges, replacing three correctly appointed judges with the help of its political ally, President Andrzej Duda. It also passed a law increasing the number of judges required to hear a case and to hand

down decisions – therefore making it hard to reach judgements without the new appointees. The moves, which violated Poland’s constitution, as the court itself had [pointed out](#), paved the way for PiS to take full control of the CT and to appoint a close friend of PiS leader Jarosław Kaczyński as its president. As a result, the court was no longer an impartial and independent arbiter and, as a 2021 [judgment](#) of the European Court of Human Rights (ECtHR) determined, it was no longer a proper court or “tribunal established by law”. As of December 2024, all of the court’s 15 judges were appointed by PiS, including its [new president](#), a former prosecutor under PiS. Due to its illegitimate composition, the Tusk government has refused to recognise the rulings of the CT.

In 2017, PiS placed the National Council of the Judiciary (NCJ) – the body in charge of nominating Poland’s judges – under political control, in violation of the Polish constitution. Previously, the NCJ’s judicial members had been elected by judges, but the reform transferred this right to the parliament, where PiS held a majority at the time. The politicisation of the NCJ [meant](#) that the body no longer offered “sufficient guarantees of independence”. The capture has had serious downstream effects as it has also called into question the independence of each and every judge nominated between 2017 and 2023. These judges, labelled in Poland as ‘neo-judges’, make up around a quarter of the judiciary today.

PiS also attempted to silence the Supreme Court, Poland’s highest court for all matters except for compliance with the constitution, by lowering the retirement age of judges so that it could pack the court. It walked back on this proposal after the European Court of Justice (ECJ) [intervened](#) in 2018. Separately, PiS established a Disciplinary Chamber in the court and in 2019, it passed a so-called muzzle law, which allowed the minister of justice to launch [disciplinary proceedings](#) against judges that questioned or spoke out against the judicial reforms. Judges faced disciplinary proceedings for activities such as handing down unpopular [judgments](#) or referring cases to the ECJ, with punishments ranging from salary cuts to dismissal. In 2021, the ECJ ordered the suspension of the Disciplinary Chamber and fined Poland €1m a day until the government complied. The PiS government officially [closed](#) the chamber in 2022, but it established a new body with similar responsibilities in its place.

Besides capturing Poland’s judiciary, PiS took a series of steps to intimidate critics. Its politicians launched numerous lawsuits and smear campaigns, targeting [independent media](#) outlets and [civil society activists](#). At one point, *Gazeta Wyborcza*, a newspaper that criticised the previous government, was facing [90 lawsuits](#). Additionally, PiS’s capture of Poland’s public media meant that it [disseminated](#) “worse propaganda than under communism”, as an employee of the public broadcaster admitted.

These attacks led to a [serious deterioration](#) in Poland’s democracy. Cases lodged against Poland at European courts grew [significantly](#) between 2015 and 2023, and numerous judgments of the ECJ and the ECtHR confirmed that the PiS government had violated European laws and breached international standards on democracy.

Legal and political challenges ahead

Although PiS’s steps violated Poland’s constitution as well as EU and international norms, fixing the problem and undoing institutional capture has not been a simple process. One of the thorniest questions has been whether the new government can deliver on voter demands for a swift resolution and accountability for past abuses and, at the same time, repair judicial independence. There have been both legal and political obstacles in the way of such a resolution.

From a legal perspective, the new government has faced three key challenges: putting an end to the abuse of disciplinary proceedings; restoring the independence of the CT and the NCJ; and resolving the status of neo-judges.

Disciplinary sanctions were the easiest to fix of the three – the coalition government simply had to refrain from launching new proceedings against judges, which it [did](#) as soon as it came to power. It has also [replaced](#) more than 100 court presidents responsible for organising the work of the courts, and appointed ad-hoc disciplinary officers to oversee unfounded ongoing cases, essentially neutering the process going forward.

When it comes to the two captured judicial bodies, the CT and the NCJ, however, there is no quick legal solution. Tusk's government proposed laws on [reforming](#) both institutions but they were blocked by PiS ally President Duda. On the NCJ, the government wants to return to the previous appointment procedure, in line with Poland's constitution. On the CT, it has submitted a bill to replace the three judges who unlawfully occupy their seats and to declare rulings in which they participated null and void. It also plans to provide early retirement benefits to the remaining judges should they decide to resign. But if neither of those changes go through, the government will have to wait until 2026 to replace a majority of PiS-era judges through the regular appointment process. In December, two seats became vacant, which the governing majority [refused](#) to fill, to avoid legitimizing the Tribunal.

The most difficult problem is the status of neo-judges, and their integration into the judiciary in a manner that is consistent with the rule of law. These judges make up a significant portion of the judiciary – around 2,500 out of Poland's 10,000 judges – and some of them have been in their current positions for as many as six years, substantially impacting Poland's legal system. Two proposals have emerged for regularising their status. One, primarily promoted by the judicial association [Iustitia](#) and judges that refused to participate in competitions for judicial appointments during the PiS era, essentially argues that neo-judges are not judges because they have been appointed in a flawed procedure, and should therefore be removed from their positions. The second [calls](#) for a vetting process, investigating each judge separately. Both solutions have drawbacks. Judicial vetting is difficult to get right as it involves political decisions, opening up the judiciary to accusations of politicisation. A full removal is even riskier as it would put all decisions handed down by neo-judges into question. While Poland, unlike the UK, is not a common law country, and judgments do not set precedents, annulling more than a thousand decisions would still create tremendous legal uncertainty.

The Polish legal community has been divided on the right approach – some have argued for disbanding the CT and the NCJ altogether, claiming that they lack legitimacy. Others, including some in the government, would favour some kind of a verification process for neo-judges. The split in opinion reflects a broader division within Polish society between those wanting accountability and those advocating pragmatism. It is not just the Polish legal community that questions the status of neo-judges. The ECJ, for example, has [consistently](#) declined to consider questions posed by neo-judges sitting on Poland's Supreme Court. The Luxembourg court has found questions posed by them inadmissible, arguing that judicial panels involving these judges lack independence.

From a political perspective, one of the greatest challenges to restoring democracy has been opposition by President Duda, whose term will end next summer. As president, Duda has [vetoed](#) bills that he sees as threatening his legacy. He has sent the draft laws on both the NCJ and the CT to the captured CT for

constitutional review. This step blocks the reforms' progress but saves Duda the political cost of vetoing them outright. Given that presidential vetoes can only be overturned by a three-fifths majority in the parliament, which the government lacks, most reform proposals are deadlocked. Presidential elections will take place next spring, however, and the centrist Civic Coalition (KO) candidate, Rafał Trzaskowski, is currently [leading](#) in the polls.

Politically, the government has also been grappling with the question of accountability for past abuses. Dozens of investigations have been launched, including into allegations of [misuse](#) of state funds for political goals, the deployment of [spyware](#) against political opponents, and violations of campaign finance regulations. The latter may lead to a [cut](#) in state subsidies to PiS. The party, together with its supporters among media outlets and [NGOs](#), has portrayed the investigations as a political witch hunt and claimed that the government's reforms, aimed at fixing the rule of law, actually violate it.

There is one area where the Tusk government has achieved some success since coming to power a year ago: media independence. The government moved swiftly to undo the capture of public media and to increase pluralism – though the methods it used were [questionable](#). In late 2023, it bypassed the regular appointment process and replaced senior management at the public television, radio and Poland's news agency. When President Duda tried to block the changes by vetoing the budget, the government put the outlets into liquidation. This legal status meant that the government could nominate a liquidator to take charge of the entities and has allowed it to continue funding them since.

The changes have led to the dismissal or resignation of journalists repeating outright propaganda, a drop in vexatious lawsuits against journalists, and an overall improvement in the quality of reporting. But political bias remains – the public broadcaster now favours Tusk's government over PiS, although to a much smaller extent than before – and the legal situation of the public media is still [unclear](#) as liquidation is just a temporary solution.

What role for the EU?

The EU played a role in constraining Poland's slide into autocracy. Besides referring the country to the ECJ, the Commission withheld a [total of €137 billion](#) in cohesion and Recovery and Resilience Facility (RRF) funds, equalling roughly 17 per cent of Poland's GDP, due to violations of the rule of law. It also suspended funding to regions that declared themselves 'LGBT-free zones', demonstrating the EU's leverage. These steps allowed Tusk and the rest of the opposition to credibly claim that continued PiS governance was causing significant financial and economic harm to Poland.

The EU's role is much less-clear cut in the restoration process, especially after the Commission released all suspended funds in February 2024. Legal experts criticised the decision, arguing that the Commission had acted on a promise of reform and not on actual progress.

Moving ahead, the EU could still play a more assertive role. It could provide expertise, if needed, and monitor progress on implementing reforms, making sure that things are on the right track and that bills come into effect. While this may not seem strictly necessary given the constructive, pro-EU approach of Poland's new government, establishing a track record in helping countries rebuild their democracies would set a precedent for any future case of restoration. Hungary, for example, will need to go through some of the same steps should it ever try to return to the democratic fold.

At the same time, it is good to approach the changes with patience and, as the EU has done so far, continue to leave the government enough room for manoeuvre. On the one hand, the solutions will have to be found on the ground anyway and the EU cannot do much but monitor them and trust that they will work out. And on the other, PiS and its supporters are not going anywhere – and there is even a chance of them returning to power. This should not lead to a lack of reforms or accountability, but should dissuade politicians from resorting to short-term solutions.

Conclusion

The restoration of liberal democracy in Poland involves not only legal reforms but also the rebuilding of trust in democratic institutions. Some progress has been made – particularly on media pluralism – but the road ahead remains bumpy. If the current government wins in the next presidential election, it will be able to make headway on legal reforms. But if it fails, further reforms may have to be put on ice for years.

To create sustainable change, the new government, and Polish society at large, will need to instil new norms rather than just pass new laws. These include the norm of [mutual toleration](#): an acceptance of all sides' right to exist and a collective willingness to disagree on issues.

Ultimately, however, the biggest takeaway from Warsaw is that democratic restoration is a long, difficult and messy process. It is much better to prevent backsliding in the first place than to have to clean up the mess afterwards.

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