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# The Limits of Democratic Correction

*Poland's Struggle to Rebuild  
the Rule of Law 2023–2025*



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# The Limits of Democratic Correction: Poland's Struggle to Rebuild the Rule of Law 2023–2025

**Poland's 2023 election was hailed across Europe as a democratic breakthrough – the first major reversal of illiberal governance within the EU and a potential test case for rebuilding the rule of law after years of institutional capture. The new government entered office with a strong societal mandate and an ambitious programme to restore judicial independence, repair constitutional institutions and re-anchor the country in the European legal order. Yet two years later, the core elements of this agenda remain unimplemented. Structural reform has been blocked not by a lack of political will but by the constitutional power of the presidency: first under Andrzej Duda and, since mid-2025, under the even more confrontational Karol Nawrocki. Caught between a head of state acting in opposition to constitutional constraints, high public expectations, and the EU's conditional demands, the government has been forced to pursue a substitute strategy of administrative stabilisation and accountability measures that aims to improve everyday legality but cannot reconstruct the system. Poland now stands as both a symptom and a warning – a democracy with a clear mandate for renewal, but without the constitutional means to fulfil it, revealing the deeper challenge facing European states confronting democratic backsliding.**

## 1. A political change watched across Europe

The political transformation that took place in Poland in 2023 was not merely a domestic electoral correction. Across Europe, the result was viewed as a historic moment in the broader struggle against democratic backsliding. For nearly a decade, Poland had been grouped with Hungary as part of a Central European pattern of dismantling constitutional safeguards, weakening judicial independence, capturing public institutions and reshaping the state around an illiberal political project, progressively restructured through legal and political tools designed to weaken checks and balances.

When Polish voters voted the illiberal government out of office in October 2023, the event reverberated far beyond Warsaw. Many European observers saw the shift not just as a victory of democratic mobilisation, but as the first real test of whether an EU member state could reverse a decade of institutional erosion and rebuild the rule of law from within. In Brussels, Berlin and other capitals, the expectation was visible: if Poland could repair its institutions

through democratic means, then perhaps the EU still possessed the resilience to withstand illiberal movements at home and abroad.

This hope was magnified by developments across the continent. Populist and anti-institutional parties have been gaining momentum in Western Europe, echoing the language, agenda and legal strategies that first appeared in Hungary and later in Poland. Germany, the Netherlands, Austria, France and Italy all have been witnessing the rise of groups that challenged constitutional norms, questioned judicial independence and proposed “illiberal democracy” as a legitimate model. For many policymakers, Poland's transition was therefore not just a national episode, but an early glimpse of problems Western democracies might soon face themselves.

*Poland became, almost by default, a laboratory of constitutional resilience*

In this context, the Polish election of 2023 was interpreted as an opportunity to demonstrate that democratic institutions could regenerate even after years of illiberal pressure. Poland became, almost by default, a laboratory of constitutional resilience. The new government carried not only a national mandate but a European expectation: that it would restore judicial independence, rebuild constitutional institutions and reconnect Poland with the European legal order. It was a very difficult task, but it began with optimism.

## 2. High expectations, limited tools

The new government entered office with a clear and explicit commitment: restoring the rule of law was the core promise of its electoral programme. Throughout the campaign, the parties that would later form the coalition made the reconstruction of judicial independence and constitutional order the central pillar of their political offer, presenting it as a necessary and urgent corrective to the previous eight years. Voters responded to this pledge directly. Public polling consistently showed that citizens expected a rapid and concrete rebuilding of the justice system and constitutional framework as soon as the government changed.

Although the new coalition did not inherit a full legislative package that could be introduced on the first day in office, it entered government with a clear strategic commitment to restoring the rule of law and mobilised its political and expert resources to deliver on that pledge. Once the cabinet was formed, work on systemic reform intensified in a coordinated manner. Draft legislation was submitted for review to the Venice Commission, whose opinions offered important normative benchmarks but also set requirements that were difficult to reconcile in practice – urging the government to repair institutional damage swiftly while simultaneously insisting on exhaustive individual guarantees in all cases affected by defective appointments. Throughout 2024, the Ministry of Justice concentrated on core structural problems of the judicial system, preparing and submitting a comprehensive bill to restructure the National Council of the Judiciary (KRS), a reform regarded as essential for restoring judicial independence. The Sejm adopted the legislation, but it was subsequently blocked by the President of the Republic of Poland and referred to the Constitutional Tribunal. In parallel, civil society and expert organisations contributed actively to the broader reform agenda, preparing draft legislation and analytical frameworks aimed at restoring the proper functioning of the Constitutional Tribunal and supporting parliamentary debate.

However, even after submitting the draft legislation, the government was not able to finalise the legislative process. The Polish Constitution grants the President a decisive role in the legislative process. The veto power can only be overridden by a three-fifths parliamentary majority, which the governing coalition did not command. Moreover, the President may refer bills to the Constitutional Tribunal. Because the Tribunal remained paralysed, internally divided and widely considered illegitimate, referral became a tool for indefinite delay. In effect, the presidency controlled the gate through which all structural reforms had to pass, and the President chose to close that gate.

Therefore, in the first months after taking office, the government moved more rapidly in areas where action did not require legislation or presidential cooperation, signalling both domestically and to European partners that Poland was re-anchoring itself in the Union's legal order. One of the earliest and most visible decisions was to join the European Public Prosecutor's Office, reversing years of political resistance. At the same time, the government declared a full return to compliance with the jurisprudence of the Court of Justice of the European Union, abandoning the previous administration's practice of selective implementation. This shift was accompanied by an intensive dialogue between the Ministry of Justice and the European Commission, as well as other international actors concerned with judicial independence. A parallel strand of early action focused on the prosecution service, where the Ministry of Justice could act without presidential cooperation. The decision to remove the National Prosecutor – by finding the earlier reinstatement legally ineffective – was contested in parts of the legal community and later challenged before

the Constitutional Tribunal and ordinary courts. Yet despite these controversies, the move served a crucial purpose: it demonstrated that, even under institutional blockade from the President, the government retained some capacity to correct politicised practices and signal its commitment to restoring the rule of law within the limits of its existing legal authority.

In this first phase, the European Commission responded quickly and positively to the change of course in Warsaw. On the basis of the government's rule of law action plan, its early legislative and administrative steps, and a renewed commitment to the primacy of EU law and to implementing key CJEU judgments, the Commission moved to unblock access to previously frozen recovery and cohesion funds. It praised Poland's "ambitious action plan" and acknowledged that the most acute forms of pressure on judges had been rolled back, signalling that it now regarded the new authorities as credible partners in restoring the rule of law. The decision to close the Article 7 TEU procedure and to release substantial financial transfers was widely read as both a gesture of confidence and a political investment: a recognition that the Polish government was willing and able to move away from the illiberal model of the previous years, even if many of the deeper structural reforms still lay ahead.

### **3. The first blockage: presidential obstruction under Andrzej Duda**

Beginning in early 2024, the President used his constitutional powers in a way that effectively stalled the legislative dimension of the government's rule of law programme. Three core acts adopted by the Sejm with the aim of restoring judicial independence and rebalancing the institutional architecture – the July 2024 amendment of the law on the National Council of the Judiciary and two acts of September 2024 concerning the organisation of the Supreme Court and the re-establishment of judicial self-governance – were all subjected to pre-emptive constitutional review at the request of President Andrzej Duda.

Instead of signing or vetoing the statutes, the President referred them to the Constitutional Tribunal, a body whose composition and functioning had been heavily contested since earlier politicising reforms. In each case, the Tribunal subsequently struck down the legislation in its entirety, preventing the reforms from entering into force and underscoring the President's role as a decisive veto player capable of blocking systemic change without employing the formal veto. Other legislative initiatives, including drafts addressing the status of judges appointed on recommendations of the re-engineered National Council of the Judiciary, remained at the consultation stage and were never moved forward, in part because the government recognised that they would face the same institutional barrier.

#### 4. A turning point that further deepened the crisis: President Karol Nawrocki

The spring 2025 Presidential election was widely seen as the moment that would determine the fate of Poland's rule of law reconstruction. A cooperative President could instantly reverse the deadlock; an oppositional President could entrench it. Many in the government, judiciary and civil society expected a political alignment favourable to reform. Instead, Poland elected a President whose institutional behaviour quickly revealed an approach far more confrontational than that of his predecessor.

Karol Nawrocki entered office in August 2025 acting not as a neutral arbiter but as an openly adversarial figure. His public statements, refusal to appoint judges, challenges to government-led judicial policies and strategic positioning of the presidency as a counter-governmental power centre reinforced a new phase of constitutional conflict.

If the years 2023–2025 under President Duda represented an institutional stalemate, the years following 2025 under President Nawrocki represent an escalation. The presidency has transformed from a passive blocker into an active opponent. Legislative referrals to the Constitutional Tribunal increased. Judicial appointments were refused. Public interventions made clear that the presidency sought to shape the constitutional narrative in direct confrontation with parliament and the government.

The result is a deepening of the structural deadlock. The government cannot legislate systemic reforms without presidential cooperation, and this cooperation is for the time being unattainable. Thus, the key pillars of constitutional reconstruction – the Tribunal, the KRS, judicial appointment processes, Supreme Court restructuring and the correction of defective judicial appointments – remain in suspension.

#### 5. When structural reform becomes impossible: the government's substitute strategy

Unable to change institutions through legislation, the government gradually shifted toward a strategy grounded in administrative action, internal enforcement and accountability. It became a process of restoration without systemic reconstruction.

*The government gradually shifted toward a strategy grounded in administrative action, internal enforcement and accountability*

After the presidential election and the subsequent cabinet reshuffle in July 2025, the government's approach to restoring the rule of law entered a new phase. With Waldemar Żurek replacing Adam Bodnar as Minister of Justice, the

emphasis shifted toward a more assertive agenda combining internal corrective measures with efforts to hold the previous leadership of the justice system accountable. Żurek prioritised addressing the legacy of questionable judicial appointments, focusing particularly on the status of judges nominated with the involvement of the politicised neo-KRS. He also intensified oversight over the prosecution service, encouraging prosecutors to challenge the participation of neo-judges in Supreme Court proceedings and initiating steps aimed at reviewing irregularities and possible abuses linked to decisions taken under the previous leadership. These interventions were presented as necessary attempts to confront structural distortions that could not be remedied through legislation due to ongoing presidential obstruction.

At the same time, some of the minister's interventions – particularly those concerning the internal organisation of courts and the allocation of cases – were met with criticism from parts of the legal community, including the Ombudsman and circles otherwise supportive of the broader rule of law agenda. This reflected a difficult reality of the cohabitation with openly adversarial President, therefore the government sought to demonstrate that it retained at least limited capacity to correct politicised practices. Yet the available tools were narrow, contested and inherently imperfect substitutes for comprehensive legislative change.

Accountability became the second major instrument of this substitute strategy. Investigations began into abuses of power, irregular promotions, politically influenced decisions and structural violations committed under the previous government. These actions served to re-establish minimal conditions of legality and professional responsibility. They also signalled to the public that misconduct would not be ignored – a crucial element given the strong societal expectation of justice.

The third component of this strategy was communication with the European Union. Because the Commission conditions major financial transfers on rule of law milestones, the government needed to demonstrate credible progress. Internal measures, transparency, reinstatement of suspended judges and prosecutorial reforms were presented as evidence that Poland remained committed to compliance, even if legislative reconstruction remained blocked.

European institutions responded with pragmatism. They acknowledged delays but recognised that the government's hands were tied by constitutional realities rather than political unwillingness. The Commission therefore maintained cooperation and continued disbursing funds, while stressing that structural issues remained unresolved.

#### 6. Government under multiple pressures

By late 2025, the Polish government is squeezed by four interconnected forces.

The first is the constitutional structure itself. The President possesses blocking powers that can stall reforms even when those reforms have democratic legitimacy and European support. Without constitutional amendment – impossible under present political conditions – these powers cannot be curtailed.

The second pressure is the President's active hostility toward the government's rule of law agenda. President Nawrocki does not merely exercise constitutional vetoes; he frames reform efforts as illegitimate and positions himself as a rival power centre.

The third pressure comes from the electorate, whose expectations remain high. Voters who supported the government did so largely because they expected rapid and visible institutional change. But such change cannot occur while the President blocks nearly all relevant legislation.

The fourth pressure is the European Union. The Commission expects progress not only in procedural compliance but in structural reconstruction. The government wants to satisfy these expectations but lacks constitutional tools to do so fully. As a result, Poland's position in EU dialogue is characterised by good faith effort constrained by domestic institutional conflict.

### *Democratically authorised reform project trapped within a constitutional design that prevents its execution*

These pressures together form the central tension defining Poland's constitutional moment: a democratically authorised reform project trapped within a constitutional design that prevents its execution.

## **7. The fundamental question: can the rule of law be restored through imperfect means?**

A structural dilemma increasingly defines expert assessments of Poland's attempts to restore the rule of law: to what extent can a constitutional order be rebuilt through measures that are somewhat partial, compensatory, and implemented within a framework that itself remains defective? Administrative and organisational interventions taken within existing executive competences may enhance day-to-day legality, yet they do not alter the underlying institutional architecture. Similarly, accountability efforts – although essential for re-establishing professional standards and confronting past abuses – cannot substitute for the systemic changes required to restore the constitutional order in a formal sense. As long as Presidential obstruction prevents legislative correction of structural defects, the core components of the justice system remain not fully aligned with European and constitutional standards.

This leads to an unavoidable question in contemporary rule of law discussions: does incremental, non-systemic restoration meaningfully advance the reconstruction of a legal order, or does it risk normalising a “second-best” constitutional framework whose defects become more durable precisely because they are managed rather than resolved? Also, when legal frameworks have been reshaped to consolidate political control, relying solely on strict legalism to reverse that process may prove ineffective. The very rules and institutions that were instrumentalised during the period of democratic backsliding can later impede restoration, even when used in good faith.

Poland exemplifies this tension. Although the government has committed itself to full constitutional compliance, the institutional configuration inherited from earlier reforms – combined with the President's use of constitutional powers – limits what can be achieved through ordinary legal mechanisms. The challenge, therefore, is not a lack of political will but the structural reality that legalist tools alone are limited in undoing systemic distortions created by several years of autocratic distortions.

## **8. Conclusion: democratic mandate blocked by constitutional design**

By the end of 2025, the government continues to express a clear and consistent commitment to restoring the rule of law, yet its ability to advance this agenda remains structurally constrained. With the legislative route effectively blocked by a President who has repeatedly used his constitutional powers to halt systemic reforms, and with only a narrow set of executive and internal administrative instruments available, the government can make progress only at the margins of the justice system. These measures, while meaningful, cannot deliver the comprehensive institutional reconstruction that the electorate endorsed and that the government itself regards as necessary.

Still, the situation is far from settled. Recent polling indicates that the leading governing party retains stable – and in some surveys increasing – public support, while main opposition party faces stagnation or decline. At the same time, the President's continued reliance on blocking mechanisms may carry political costs, as public frustration with institutional paralysis becomes more visible. The coming months will therefore be decisive in determining whether some form of accommodation between the government and the presidency emerges, or whether the present stalemate persists. Either outcome will shape not only the trajectory of rule of law restoration, but also Poland's role as a central actor in Central Europe and its credibility as a partner within the European Union. The struggle over the rule of law thus remains unresolved, but its outcome will have implications well beyond Poland's borders.

## About the author



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Two years later, the core elements of this agenda remain unimplemented. Structural reform has been blocked not by a lack of political will but by the constitutional power of the presidency: first under Andrzej Duda and, since mid-2025, under the even more confrontational Karol Nawrocki.



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Further information on this topic can be found here:

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