DISCUSSION PAPER



Poland's Rule of Law Paradox

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"Injustice anywhere is a threat to justice every"

Martin Luther King Jr.

Introduction

The judicial crisis that erupted in Poland on the night of 30 October 2026, centred on the appointment of Constitutional Tribunal (*Trybunał Konstytucyjny*) judges and the attempted suspension of the court's leadership, was far more than an ordinary legal dispute. It was a political confrontation with potentially far-reaching consequences for both Poland's constitutional order and the European Union. Serious enough to prompt President Karol Nawrocki to cut short a foreign visit and return home, the crisis has generated sharply opposing interpretations. For some, the developments represented a legitimate attempt to restore justice and the *rule of law* to judicial institutions long subjected to political interference. For others, they amounted to a *coup d'état* against judicial independence and the constitutional order. These competing narratives reveal a deeper struggle over who can legitimately claim to defend the constitution and, more importantly, how.

Poland's Constitutional Crisis: A Struggle over Judicial Legitimacy

The constitutional crisis that unfolded in Poland on 30 October should not be regarded as an isolated incident that emerged overnight. Rather, it represents the culmination of more than a decade of political polarisation and competing attempts to exert influence over the country's judicial institutions. The latest developments reflect not merely a legal disagreement over the status of particular judges, but a new phase in the longstanding political and institutional struggle over judicial independence and constitutional legitimacy.

In Poland, parliament (Sejm) elects judges of the Constitutional Tribunal, placing the relationship between political authority and judicial appointments at the centre of the controversy. The roots of the present crisis can be traced particularly to the extensive judicial reforms introduced by the Law and Justice Party (PiS), which governed the country between 2015 and 2023. (Venice Commission, 2016) During this period, changes to the structure of judicial institutions, particularly the Constitutional Tribunal, and to judicial appointment procedures raised serious concerns about judicial independence, the legality of appointments, and the implementation of judicial decisions. (European Court of Human Rights, 2021) These developments also triggered a prolonged confrontation between Poland and European Union institutions over the *rule of law*. (Council of the European Union, 2024)

The arrival of the pro-EU coalition led by Donald Tusk in 2023 did not end this struggle. Instead, it transformed its nature. The new government made restoring the independence of judicial institutions, which it argued PiS had politicised, one of its principal priorities. However, the question of how to reverse controversial appointments and institutional arrangements inherited from the previous administration raised fresh concerns about the constitutional legitimacy of the methods Tusk's government used. Consequently, efforts presented as remedies for past legal irregularities became a source of new legal controversy.

These tensions intensified in 2026 during the appointment of new judges to the Constitutional Tribunal. In March, President Nawrocki accepted the oaths of only two of the



(Omar Marques - Anadolu Agency)

six judges elected by parliament, refusing to swear in the remaining four because their appointment procedures were legally questionable. In response, those judges took their oaths before parliament in April, without the President's participation. However, Bogdan Święczkowski, the President of the Constitutional Tribunal appointed during the PiS era, rejected the validity of this procedure and refused to allow them to assume their judicial duties. The subsequent swearing-in of another judge under similar circumstances in October further deepened the dispute.

The confrontation escalated into an open institutional crisis on 30 October when Anna Korwin-Piotrowska, one of the newly elected judges, announced the temporary suspension of Tribunal President Święczkowski and Vice-President Bartłomiej Sochański. (International Commission of Jurists, 2026) While Korwin-Piotrowska defended the decision as necessary to restore the court's proper functioning, the existing leadership rejected both her judicial status and her authority to take such action. Opposition politicians and demonstrators subsequently gathered outside the Tribunal, while police officers were deployed to its grounds for security. President Nawrocki, who cut short his visit to Senegal, returned to Poland and arrived at the court during the night, describing the developments as an attempt to seize control of a constitutional institution. (Polskie Radio, 2026) Prime Minister Tusk, by contrast, defended the government's approach as part of its broader effort to restore the *rule of law*.

Thus, while Tusk's government portrays its actions as legitimate measures to repair the constitutional order, President Nawrocki and the opposition PiS accuse it of attempting to take control of judicial institutions through unlawful means. (Reuters, 2026) Despite their opposing political positions, both sides invoke constitutional legality and *the rule of law* to justify their actions. The dispute has therefore evolved beyond judicial appointments or the leadership of a particular court into a deeper struggle over who possesses constitutional legitimacy and how the *rule of law* ought to be protected.

Fighting Illegality with Illegality? Warsaw's Legal Controversies and Brussels' Selective Approach

Poland's constitutional crisis raises a fundamental paradox familiar to legal theory and particularly relevant to restoring the *rule of law*: can past illegality legitimately be remedied through new acts of illegality?

This question extends well beyond Poland's immediate developments, reflecting the longstanding tension between formal legality and substantive justice. Where democratic institutions have been systematically politicised, strict adherence to existing legal mechanisms may perpetuate the consequences of previous constitutional violations. However, departing from those mechanisms risks reproducing, under different political leadership, the very arbitrariness that constitutional restoration is intended to eliminate. (Kristan, 2025)

This dilemma can be examined through the theoretical frameworks of *militant democracy*, *militant rule of law* and *constitutional necessity*. These approaches recognise that the relationship between defending the constitutional order and respecting established legal procedures is not always straightforward. The concept of a *militant rule of law*, for instance, suggests that constitutional democracy cannot remain entirely defenceless when its own legal mechanisms are exploited to undermine its foundations. Similarly, the doctrine of *constitutional necessity* acknowledges that exceptional circumstances may render ordinary legal procedures insufficient to preserve the functioning of constitutional institutions. Nevertheless, neither approach should be understood as granting political authorities an unrestricted licence to intervene in the name of constitutional protection. The legitimacy of such intervention must be assessed not merely by the desirability of its objectives, but also by the necessity, proportionality and legal accountability of the means employed. (Bernaciński, 2026)

The distinction between constitutional restoration and political intervention ultimately rests on the procedures and safeguards accompanying institutional reform. Measures intended to correct previous irregularities should satisfy three essential conditions: they must have a defensible legal basis, remain proportionate to the constitutional problem being addressed, and preserve meaningful opportunities for independent judicial scrutiny. Equally important is whether such measures establish general rules applicable beyond the government currently in office or merely shift institutional authority. (Koncewicz, 2023) These criteria provide a more reliable basis for assessing constitutional restoration than the political identity or declared intentions of those undertaking it.

The Tusk government's attempts to restructure judicial institutions allegedly politicised during the PiS administration illustrate precisely this theoretical tension. (Scheppele & Pech & Maciej Kisilowski, 2026) Findings by European judicial bodies that certain appointments made under the previous government were unlawful provide substantial legal grounds for demanding institutional reform.

However, past legal violations do not automatically render every subsequent government measure lawful. (Le Monde, 2026) The attempted suspension of the Constitutional Tribunal's leadership, disputes over the status of newly appointed judges and the police deployment at the court's premises all raise questions about the constitutional limits of measures undertaken in the name of restoring legality. (Jaraczewski, 2026) The central issue is therefore not whether previous irregularities should be addressed, but rather which institutions possess the authority to address them and through which legally prescribed procedures.

Another significant dimension concerns the response of European governments and the European Union itself. Having strongly criticised judicial reforms under PiS on the grounds of judicial independence and the *rule of law*, EU institutions have adopted a more supportive approach towards the Tusk government's efforts at constitutional restoration. This contrast raises questions about the political consistency with which these principles are applied. Supporting the correction of past constitutional violations is, of course, not equivalent to endorsing every method employed to achieve that objective. Nevertheless, the apparent reluctance of EU institutions to subject the current interventions to equally rigorous scrutiny risks reinforcing perceptions that the *rule of law* is defended with varying degrees of determination depending on political alignment. (Kirova & Gall, 2024)



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Assessing the consistency of the EU's approach requires distinguishing political support for constitutional reform from legal endorsement of the methods used to implement it. The Union may have legitimate grounds for treating measures intended to reverse previously identified judicial irregularities differently from reforms that originally produced those irregularities. Nevertheless, such distinctions must rest on transparent and consistently applied legal criteria. The more pertinent question is therefore whether comparable concerns about judicial independence, procedural legality and institutional autonomy attract equivalent scrutiny, irrespective of the government's political orientation. Without this distinction, accusations of selective enforcement risk becoming as politically driven as the practices they seek to criticise.

The Court of Justice of the European Union's judgment of 18 December 2025 is particularly relevant in this regard. The Court found that certain decisions of Poland's Constitutional Tribunal were incompatible with fundamental principles of EU law and that serious irregularities in the court's composition undermined its status as an independent and impartial tribunal established by law. Similarly, the Venice Commission's position on the judicial appointment dispute has broadly supported the legal arguments for enabling the newly elected judges to assume office. While these assessments provide an important legal foundation for addressing deficiencies inherited from the PiS era, they do not necessarily establish the legality of every measure subsequently adopted in pursuit of institutional reform.

Indeed, the EU's normative authority as a defender of the *rule of law* depends not only on its willingness to confront governments accused of undermining constitutional principles, but also on its readiness to subject politically aligned administrations to the same legal standards. Otherwise, the *rule of law* risks losing its character as a universally binding constitutional principle and becoming an instrument of political legitimacy invoked selectively in power struggles. Poland's crisis therefore tests not only the future of its constitutional order, but also the European Union's capacity to uphold its professed values independently of political preferences.

At this point, however, the EU's response cannot be assessed solely through the prism of legal principles. It is equally necessary to consider the extent to which its approach may be shaped by political relationships with member states and Europe's evolving geopolitical priorities. Poland's strategic position within the Union, together with the close relationship cultivated between the Tusk government and Brussels, provides an additional dimension through which the current crisis can be understood.

Conclusion: Poland's Place in the EU's Political Agenda

Any assessment of the European Union's response to Poland's constitutional crisis must also account for the country's growing strategic significance in European politics and security. Particularly since the outbreak of the Russia–Ukraine war, Poland has emerged as a crucial actor in safeguarding NATO's eastern flank, facilitating military and logistical assistance to Ukraine, and shaping Europe's broader response to Russia. Political developments in Warsaw therefore extend beyond domestic constitutional affairs and intersect with the Union's wider geopolitical and security priorities.

Poland's growing strategic importance may also influence the political environment in which EU institutions respond to constitutional disputes. As a central actor in European defence, support for Ukraine and security along NATO's eastern flank, Warsaw occupies a position that makes prolonged confrontation with Brussels potentially costly for both sides. This does not establish that geopolitical considerations determine the Union's legal assessments. It does, however, suggest that strategic interdependence may shape the political willingness to escalate disputes, the timing of institutional responses and the preference for negotiated solutions over confrontation. Distinguishing these political calculations from the independent application of legal standards is therefore essential to evaluating the EU's credibility as a defender of the rule of law.

Against this backdrop, the close relationship between Donald Tusk's government and EU institutions assumes particular importance. Whereas the previous PiS administration repeatedly clashed with Brussels over judicial independence, national sovereignty and the primacy of EU law, Tusk's return to power in 2023 marked a significant shift in Poland's relationship with European institutions. Yet this political rapprochement has also raised questions about the consistency of the EU's commitment to the *rule of law*. The contrast between the firm stance taken towards judicial interventions under PiS and the more accommodating response to the Tusk government's controversial restoration measures invites scrutiny of how independently legal principles are applied, apart from political considerations.

Attributing the EU's current approach directly to geopolitical calculations would require more concrete evidence. Nevertheless, the Polish case raises legitimate questions about the relationship between the Union's strategic interests and the normative values it claims to uphold. Restoring the *rule of law* should not mean reproducing past constitutional violations under a different political leadership. Equally, the EU's credibility as a guardian of constitutional principles depends on its willingness to defend them consistently, not only against governments with which it is politically at odds, but also when administrations more closely aligned with its priorities challenge those principles.

Ultimately, Poland's constitutional crisis tests more than the future of its judicial institutions. It raises a more fundamental question about the normative legitimacy of the European legal order itself. If the meaning and application of the *rule of law* become contingent upon the political identity of those claiming to defend it, the principle risks losing its standing as a common and binding constitutional standard. The central lesson from Poland, therefore, is that the *rule of law* must be judged not by who holds power, but by how that power is exercised.

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