

Research Paper:

Restoring Justice: Poland's Path to Reclaiming Judicial Independence and Democratic Integrity

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Comparative Politics

4 November 2024

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I. Introduction to Poland

Poland, situated at the crossroads of Central Europe, is a country that embodies a rich tapestry of history and culture. According to the European Union Central Statistical Office, “38.0 million people in Poland inhabit an area of 312,685 square kilometres. The average density of the population is 122 people per square kilometre.”¹ This substantial population, combined with its expansive territory, establishes Poland as the ninth most populous nation in Europe.² The geography of the country is strikingly diverse, showcasing the sandy beaches of the Baltic Sea to the north, the rolling plains of the central region, and the majestic Carpathian Mountains in the south. According to a study conducted by the University of Silesia in Katowice, approximately 70% of Poland's population resides in urban areas, primarily concentrated in cities such as Warsaw, Kraków, and Wrocław, which are situated in the lowland regions that facilitate development and agriculture.³ The varied topography not only influences settlement patterns but also affects climate, with coastal areas experiencing milder winters compared to the harsher conditions found in the mountainous southern regions.⁴ This diverse landscape not only enhances Poland's natural beauty but also supports a rich array of ecosystems, making it a haven for biodiversity and outdoor enthusiasts alike.

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1. European Union Central Statistical Office. "Poland." Last updated March 14, 2024. <https://eurydice.eacea.ec.europa.eu/national-education-systems/poland/population-demographic-situation-languages-and-religions>.
 2. European Union Central Statistical Office. "Poland."
 3. Institute of Social and Economic Geography and Spatial Management, Faculty of Natural Sciences, University of Silesia in Katowice. "Geography and Urbanization in Poland: A Statistical Overview." MDPI, published July 25, 2021. <https://www.mdpi.com/2073-445X/10/8/779>.
 4. Institute of Social and Economic Geography and Spatial Management. "Geography and Urbanization in Poland."

Historically, Poland's journey has been marked by conflict and transformation. Author Norman Davies of *A History of Poland* details the origins can be traced back to the 10th century when the Piast dynasty unified several warring Slavic tribes which established the foundation of the Polish state.⁵ After gaining independence in 1918 following more than a century of partitions by neighboring empires, Poland faced the challenges of rebuilding a nation from the ashes of conflict and foreign domination. Additionally, Poland entered a period known as the Interbellum, between the country's independence in 1918 and its invasion by Nazi Germany in 1939.⁶ This period was characterized by attempts to establish a stable government and foster economic development, however, these efforts were hindered by political instability and the looming threat of external aggression.

World War II inflicted catastrophic damage on Poland, subjecting it to brutal occupations by both Nazi Germany and the Soviet Union. The invasion of Poland in September 1939 marked the beginning of this brutal occupation, which quickly led to widespread suffering. The Nazis orchestrated a horrific campaign of extermination, resulting in the deaths of approximately six million Polish citizens, including around three million Jews, leaving permanent scars on the nation's cultural identity.⁷ In the aftermath, the Soviet regime further deepened Poland's suffering through oppressive policies that sought to erase its national identity. Among the most tragic events of this period was the Katyn Massacre, where thousands of Polish officers were executed, symbolizing not just the loss of lives but also a profound cultural trauma that continues to

5. Norman Davies, *God's Playground: A History of Poland*. Volume I: The Origins to 1795; Volume II: 1795 to the Present (New York: Oxford University Press, 2005), 53, accessed October 31, 2024, <https://www.jstor.org/stable/569304>.

6. Davies, *God's Playground*, 11-16.

7. "The Invasion of Poland, September 1939," National WWII Museum, accessed October 31, 2024, <https://www.nationalww2museum.org/war/articles/invasion-poland-september-1939>.

resonate in Poland's collective memory today.⁸ According to the Institute of National Remembrance, “this dark chapter significantly shaped the country's historical narrative and national consciousness”.⁹

In the post-war era, Poland fell under Soviet influence, establishing a communist regime that persisted until the late 1980s. *Reassessing Communism*, by Katarzyna Chmielewska, explores how this system suppressed political dissent and economic freedoms, fueling public discontent. The emergence of the Solidarity movement, led by figures like Lech Wałęsa, united workers and intellectuals in a powerful call for reform. Chmielewska observed that, by the late 1980s, “the political circumstances...unexpectedly [led to] a peaceful...dismantling of the communist system” as formerly accepted solutions “lost their validity” in the shifting political landscape.¹⁰ This grassroots push for rights and freedoms ultimately played a central role in toppling communist rule in Poland.

In 1989, Poland’s shift to a democratic government marked a defining moment, laying the groundwork for its integration with Western Europe. The Round Table negotiations between Polish leaders and opposition figures opened the path to semi-free elections, where Solidarity emerged victorious, setting an inspiring example for other Eastern European nations.¹¹ Even further with Poland’s 2004 accession to the EU, the country is fully committed to market reforms and democratic values, showcasing their resilience.

8. Institute of National Remembrance, "Katyn Massacre: Basic Facts," Institute of National Remembrance, accessed October 31, 2024, <https://eng.ipn.gov.pl/en/news/3921,Katyn-Massacre-Basic-Facts.html>.

9. Institute of National Remembrance, "Katyn Massacre."

10. Chmielewska, Katarzyna, Agnieszka Mroziak, and Grzegorz Wołowicz. *Reassessing Communism: Concepts, Culture, and Society in Poland, 1944–1989*. Budapest: Central European University Press, 2021. Accessed October 31, 2024. <https://viewer.ebscohost.com/EbscoViewerService/ebook?an=2707076>.

11. Davies, God's Playground, 44.

As Michałek and Hagemeyer note, joining the European Market lowered trade costs, encouraged specialization, and drove economic expansion through increased efficiency and economies of scale.¹² This shift helped Poland transition from a relatively closed economy to an active player in a larger market, enhancing consumer options, lowering costs, and generating sustainable growth, particularly through foreign direct investment and diverse trade. EU membership solidified Poland's path to prosperity, reinforcing both its national identity and stability in the post-communist era.¹³

Poland operates as a parliamentary democracy, with leadership divided between the Prime Minister and the President. The President, currently Andrzej Duda, serves as the head of state, influencing foreign policy and retaining veto power, while the Prime Minister leads government administration and legislative agendas. In the recent 2023 elections, Civic Platform (PO), under the Civic Coalition and led by Donald Tusk, ousted the long-standing Law and Justice (PiS) party, which had governed for eight years.¹⁴ PO's pro-European focus emphasizes restoring judicial independence and democratic principles that many believe PiS eroded. In the Sejm, Poland's 460-member lower house, Civic Coalition holds around 157 seats, while PiS retains influence with approximately 194 seats, with the rest distributed among other parties.¹⁵

12. Jan Jakub Michałek, and Jan Hagemeyer. 2024. "The Long-Term Effects of Poland's Accession to the European Union: A Literature Review." *Studia Europejskie* 28 (2): 89–120. doi:10.33067/SE.2.2024.5.

13. Michałek and Hagemeyer, "Long-Term Effects of Poland's Accession," 89–120.

14. Joanna Maria Stolarek and Agata Gontarczyk. "Poland's Political Marathon: Navigating the Road to the 2024 EU Elections." Heinrich Böll Stiftung, June 3, 2024. <https://eu.boell.org/en/2024/06/03/polands-political-marathon-navigating-road-2024-eu-elections>.

15. "Poland: Government." GlobalEDGE, Michigan State University. Accessed November 1, 2024. <https://globaledge.msu.edu/countries/poland/government>.

In the Senate, PO and allies have a narrow majority, giving them legislative leverage but presenting challenges in enacting reforms without the President's support. This political landscape suggests a balanced yet contentious environment for policymaking, especially regarding democratic governance and EU alignment.

However, the recent history of PiS's governance has raised concerns regarding democratic integrity and judicial independence, as the party has been accused of undermining checks and balances and consolidating power within the executive branch. As Poland grapples with these contemporary challenges, the interplay of its historical experiences and political dynamics continues to influence its path forward, shaping its identity as a resilient nation in a rapidly changing Europe.

Identified Domestic Political Issue:

The key issue facing Poland today is the institutional damage inflicted by the Law and Justice Party (PiS) during its tenure in power. Since its electoral victory in 2015, PiS systematically undermined the country's judicial independence and removed civil liberties, leading to a significant erosion of democratic principles. This troubling trend began with PiS's swift action to reshape Poland's democratic structures and consolidate its power, leveraging its parliamentary majority to enact laws that aligned with its political agenda.

A critical target of PiS's reform agenda was the National Council of the Judiciary (KRS), the highest court responsible for upholding the constitutionality of laws. By appointing pro-PiS judges and refusing to recognize those appointed by the previous government, PiS effectively manipulated the judiciary to align with its interests. This approach has drawn significant domestic and international criticism, undermining essential checks and balances crucial for a functioning democracy.

A significant aspect of this erosion of judicial independence is embodied in the controversial "muzzle" law, which allows the disciplinary chamber to sanction judges who challenge the ruling party's agenda.¹⁶ As noted in *The Collapse of Judicial Independence in Poland*, this law enables the government to impose penalties on judges for questioning its platform. Since the establishment of the disciplinary chamber in 2017, over a thousand judges have faced repercussions, illustrating a systematic effort to stifle dissent within the judiciary.¹⁷ Originally, judges on the National Council of the Judiciary were appointed from within the judiciary, but following new legislation enacted by President Andrzej Duda, the ruling party gained the authority to appoint council members directly, effectively consolidating its control over judicial appointments.¹⁸

In addition to official reforms, the Law and Justice Party (PiS) has resorted to online harassment and smear campaigns aimed at judges who oppose its agenda.¹⁹ For instance, Judge Igor Tuleya, a vocal critic of the government's judicial reforms, has reported facing severe intimidation tactics designed to compel compliance. He has experienced threats of violence, including alarming incidents that forced him to evacuate his office over concerns of possible anthrax attacks.²⁰

16. Macy, John, and Allyson K. Duncan. "The Collapse of Judicial Independence in Poland: A Cautionary Tale." Judicature International, accessed November 1, 2024.

17. Macy and Duncan, "The Collapse of Judicial Independence in Poland."

18. Macy and Duncan, "The Collapse of Judicial Independence in Poland."

19. Corke, Susan, and Karen Kerschke. "Poland's Judges Are Being 'Harassed into Obedience.'" GMFUS, June 28, 2023. Accessed November 1, 2024.

<https://www.gmfus.org/news/polands-judges-are-being-harassed-obedience>.

20. Susan Corke and Karen Kerschke, "Poland's Judges Are Being 'Harassed into Obedience.'"

Furthermore, right-wing media has played a role in vilifying him. Investigations have revealed a coordinated smear campaign orchestrated by officials within the Ministry of Justice, which involves abusive social media posts, such as aggressive tweets that disparage judges and vulgar postcards sent to the chief justice of the Supreme Court.²¹ This campaign even includes government-sponsored efforts to undermine judges' reputations through national television broadcasts.

Another critical aspect of Poland's erosion of judicial independence has been the PiS party's reaction to the European Court of Justice (ECJ) rulings. The ECJ oversees the correct application and implementation of EU law within the whole Union, and consists of judges from all member states.²² Despite numerous decisions from the ECJ condemning Poland's judicial reforms, PiS has shown little regard for these judgments.

The European Commission has specifically called on the ECJ to implement interim measures to address specific actions of Poland's Disciplinary Chamber in the Supreme Court. This includes suspending the Chamber's authority over matters related to judicial immunity and employment, which are crucial for maintaining judicial independence. The Commission has also asked for a suspension of any prior decisions by the Disciplinary Chamber on immunity issues and requested that Polish judges be allowed to apply EU law directly without fear of disciplinary repercussions.²³

21. Susan Corke and Karen Kerschke, "Poland's Judges Are Being 'Harassed into Obedience.'"

22. European Union. "Court of Justice of the European Union (CJEU)." *European Union*, https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/court-justice-european-union-cjeu_en.

23. European Commission, "Rule of Law: European Commission Refers Poland to the European Court of Justice to Protect Independence of Polish Judges and Asks for Interim Measures," European Union, April 2021, https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1524

An official statement made by the European Union showcases the ECJ's rejection of Poland's judicial review, "The Commission also decided to ask the Court of Justice to order interim measures until it has issued a final judgment in the case...The Commission considers that the Polish law on the judiciary undermines the independence of Polish judges and is incompatible with the primacy of EU law".²⁴

In addition to publicly ordering PiS into submission, there is an ongoing effort to enforce compliance. The European Commission has pursued legal action under Article 7(1) against Poland and introduced a mechanism linking adherence to rule of law principles with access to EU funds.²⁵ This legislation allows the Commission to suspend funding in response to rule of law violations, serving as a financial incentive for compliance. This tactic is particularly significant for Poland, one of the largest recipients of EU financing.²⁶

Additionally, The Law and Justice Party (PiS) has demonstrated a persistent disregard for EU law and regulations, prioritizing its political agenda over compliance with European standards. For instance, in 2020, PiS attempted to block judicial reforms mandated by the EU, arguing that such reforms were illegal under EU law.²⁷ When these attempts failed, the government shifted the narrative, claiming that the COVID-19 pandemic hindered its ability to address related fines and compliance measures.

24. European Commission, "Rule of Law: European Commission Refers Poland to ECJ to Protect Judicial Independence," April 2021,

https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1524.

25. European Commission. "Rule of Law: Commission Welcomes European Court of Justice Judgment on Polish Disciplinary Regime." European Union, 2017.

https://ec.europa.eu/commission/presscorner/detail/en/ip_17_2161.

26. European Commission. "Rule of Law: Commission Welcomes European Court of Justice Judgment on Polish Disciplinary Regime." European Union, 2017.

https://ec.europa.eu/commission/presscorner/detail/en/ip_17_2161.

27. European Commission. "European Commission Issues Recommendation on the Rule of Law in Poland." European Union, 2024.

https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1222.

In a further attempt to appease EU concerns, the Polish parliament passed new legislation regarding the judiciary in February 2023, aimed at unlocking EU funding. However, this legislation has been effectively stalled due to a request from the Polish President for a constitutional tribunal review, known as "preventive control."²⁸ This process means that the new laws will not come into force until the tribunal determines their constitutionality. Such actions highlight the ongoing tension between Poland and the EU, as the PiS government continues to prioritize its political interests over adherence to EU law, reflecting a broader conflict between national sovereignty and EU obligations. This trend suggests a deepening crisis in Poland's relationship with the EU, as the government seems more focused on consolidating power than on fulfilling its commitments to uphold democratic principles and the rule of law as expected by its European counterparts.

Implications and consequences:

The erosion of democratic institutions in Poland has profound implications, threatening both national stability and European unity. Historically, Poland's post-1989 democratic transition relied on a strong commitment to the rule of law and judicial independence, largely inspired by the Solidarity movement.²⁹ However, the PiS's systematic dismantling of these frameworks has resulted in significant public disillusionment with governance. The European Commission's 2021 Rule of Law Report indicates that these actions not only jeopardize Poland's integration into the EU but also reflect rising tensions within the bloc over democratic values (European Parliament, Rule of Law Report).³⁰

28. Wigler, Matthew. 2023. The EU's Rule of Law Mechanism: An Empirical Study of the Commission's Tools in Poland and Hungary. EU Law Working Paper No. 78. Stanford Law School. <https://law.stanford.edu/wp-content/uploads/2023/05/EU-Law-WP-78-Wigler.pdf>.

29. Davies, God's Playground, 11-16.

30. European Commission. 2021. 2021 Rule of Law Report: The Rule of Law in the European Union. https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/annual-rule-law-cycle/2021-rule-law-report_en.

Notably, the EU has previously addressed similar issues in Hungary through judicial review, leading to improved compliance with democratic standards. This precedent suggests that applying similar measures to Poland could restore judicial independence and strengthen EU solidarity.

Aside from the legal issues, to thoroughly grasp the economic ramifications of Poland's compliance with EU regulations, it is crucial to examine the potential impact on EU funding amidst ongoing rule of law disputes. The European Commission has recently put forth a structured framework that could facilitate Poland's access to up to €137 billion in funding, emphasizing the importance of adhering to judicial independence and other legal benchmarks.³¹ This approach of conditional funding, which has seen success in Hungary, should be reinforced in Poland.³² By consistently linking funding to compliance, the EU can effectively promote necessary reforms, ensuring that Poland meets the required standards while continuing to benefit economically. This method not only underscores the economic stakes involved but also reinforces the EU's commitment to upholding democratic values across its member states.

Poland's history is marked by numerous episodes of social unrest, with significant parallels drawn to the Solidarity movement of the 1980s. This movement emerged in response to government repression and economic difficulties, characterized by widespread public protests and acts of civil disobedience.³³

31. European Commission. "The European Commission Approves €1.36 Billion for the Recovery and Resilience Facility in Poland." January 25, 2024.

https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1222.

32. European Commission. "Poland: European Commission Proposes to Disburse €6.3 Billion in Recovery and Resilience Facility Funds." December 12, 2023. Accessed November 3, 2024.

https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6465.

33. Davies, *God's Playground*, 11-16.

It ultimately led to transformative political change, underscoring the essential role of grassroots mobilization in challenging authority and advocating for democratic principles.

Today, Poland faces renewed social unrest as protests intensify in reaction to alarming threats made against judges, including reported anthrax threats that highlight the dangerous environment for legal professionals.³⁴ Such intimidation not only reveals deep societal divisions but also emphasizes the urgent need for civil society to coalesce against the erosion of democratic norms. As public dissent grows, it draws upon the historical context of movements that have successfully challenged authoritarian regimes, suggesting a similar trajectory for Poland's current struggles. The interplay between social unrest and civic engagement is pivotal, as it will undoubtedly influence the future of democracy in Poland and shape the nation's response to ongoing challenges. This moment serves as a critical reminder of the power of collective action in the face of adversity, fostering hope for a more democratic and just society.

34. Susan Corke and Karen Kerschke, "Poland's Judges Are Being 'Harassed into Obedience.'"

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https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1524.
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- European Union. "Court of Justice of the European Union (CJEU)." European Union.
https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/court-justice-european-union-cjeu_en.
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