

Donald Tusk's anti-democracy handbook

Artur Ciechanowicz

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*How to capture a state,
dismantle the rule of law -
and not get persecuted by
the European Commission*

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The perfect dictatorship is not Fidel Castro's Cuba: it is Mexico, because it is a dictatorship in such a camouflaged way that it may seem that it is not, but in fact it has, if one digs, all the characteristics of a dictatorship.

Mario Vargas Llosa

Executive summary

Within a year of the left-liberal coalition led by Donald Tusk assuming power, Poland has witnessed an unprecedented assault on the rule of law – both in its scale and brutality. The new government selectively decides which judicial institutions to recognise and respects only court rulings that align with its political agenda. It has forcibly seized control of the prosecutor’s office and public media, circumvented constitutional legislative processes, and enacted new legal measures without proper oversight. This unfolding crisis is met with conspicuous silence from Ursula von der Leyen’s European Commission, which previously imposed severe sanctions on Poland for alleged rule-of-law violations under the former PiS-led government.

- **A narrative of ‘restoration’ as a tool for power**

Tusk’s government justifies its actions by framing them as part of a moral crusade to ‘restore the rule of law’ and settle scores with the previous administration. Statements from Donald Tusk and his ministers have drawn comparisons to denazification, the Nuremberg trials and postwar tribunals in Yugoslavia. Such rhetoric aims to demonise the former PiS government, equating it with authoritarian regimes, to delegitimise its legacy and cement the narrative that extraordinary measures are necessary.

Both Tusk and the minister of justice, Adam Bodnar, have suggested that breaking the law is acceptable if it serves the higher purpose of ‘restoring democracy’. This justification conveniently places Tusk above the law, allowing his administration to rewrite the rules to suit its agenda. The invocation of Nazi Germany is particularly provocative, using historical trauma to vilify PiS, Poland’s largest opposition party, and undermine political pluralism.

- **A constitutional crisis in motion**

Poland is now in the throes of a constitutional crisis. The executive and legislative branches have systematically undermined judicial independence, impartiality and the core principles of legality. Tusk’s government refuses to recognise key judicial bodies, including the Constitutional Tribunal, the National Council of the Judiciary and certain chambers of the Supreme Court. It has also disregarded numerous court rulings that conflict with its political objectives.

The government’s actions extend to demanding declarations of loyalty and self-criticism from judges who are seen as adversarial. Judges appointed under PiS are to be subjected to ‘independence tests’, and risk removal or demotion unless they align with the government’s expectations.

Where legal justifications are absent, Tusk’s administration fabricates them, often using parliamentary resolutions with no constitutional authority or commissioning supportive notarial opinions. These fig leaves of legality barely disguise the government’s disregard for the rule of law. Such tactics echo Soviet-era practices, summarised by the chilling maxim: ‘Give me the man, and I will find the crime.’

- **The weaponisation of justice**

Tusk's government has turned the justice system into a tool for political vendettas, marked by show trials, political prisoners and reports of mistreatment. High-profile cases are prosecuted with charges that stretch or misapply legal provisions. The result is a justice system that resembles a theatre of political retribution rather than an impartial arbiter of law. Simultaneously, the police and intelligence services have been weaponised against political opponents. Operating as feudal militias, these institutions are deployed at the ruling coalition's whim, sidelining their legal mandates. Officers are expected to obey superiors without question, undermining accountability and fostering an atmosphere of fear.

- **The European Commission: silence as endorsement**

The silence of the European Commission in the face of these developments is as telling as it is troubling. While the Commission previously wielded the rule of law as a cudgel against the PiS government, it has adopted a markedly different stance under Tusk. Far from condemning his administration's actions, the Commission's inaction suggests tacit approval.

This double standard is not surprising. For years, EU mechanisms ostensibly designed to uphold the rule of law have been repurposed as tools to pressure member states that diverge from the EU's dominant left-liberal ideology. Poland, under the PiS government, faced sanctions and withholding of EU funds for alleged judicial reforms that pale in comparison to Tusk's actions. Yet the Commission has remained silent, demonstrating its political alignment with Tusk's coalition.

- **An EU agenda at play**

The European Commission's complicity in Poland's current crisis underscores its broader role as a political actor. Its aim has not been to ensure genuine adherence to the rule of law, but to advance a 'progressive' agenda and suppress dissenting political movements. Poland under PiS was a target for its conservatism, with the EU deploying Article 7 proceedings and financial penalties to undermine the government.

Now, under Tusk, Poland has become a staging ground for the EU's experiments in political control. The Commission's tacit support for Tusk's methods sends a message to other member states: compliance with Brussels' ideological preferences will be rewarded, while dissent will be punished, even at the cost of democratic principles.

- **Implications for democracy and sovereignty**

The unfolding situation in Poland has far-reaching implications. Domestically, Tusk's administration has eroded the foundations of democracy by subverting judicial independence, politicising law enforcement and suppressing opposition voices. Internationally, the EU's selective application of the rule of law undermines trust in its institutions and exacerbates divisions among member states.

If these trends continue, Poland risks sliding into a de facto one-party system, where dissent is criminalised and power is consolidated under the guise of 'restoring democracy'. Meanwhile, the EU's credibility as a neutral arbiter of law and governance is eroded, revealing its prioritisation of political conformity over democratic pluralism.

Poland's constitutional crisis under Donald Tusk is not merely a domestic issue; it is a cautionary tale for Europe. By cloaking its actions in the language of democracy and the rule of law, Tusk's government has embarked on a campaign of institutional subversion and political retribution.

Introduction

Following the parliamentary elections of 15 October 2023, Poland saw a shift in power after eight years of centre-right governance by the Law and Justice Party (PiS). On 13 December 2023, a new council of ministers was formed under the leadership of Prime Minister Donald Tusk, representing a coalition of the left-liberal Civic Platform, the centrist Poland 2050, the agrarian Polish People's Party (PSL), and the far-left Left.

This coalition, spanning a broad ideological spectrum, has embarked on a governance path that critics argue undermines the very foundations of Poland's democratic state. Using ad hoc mechanisms such as parliamentary resolutions, informal 'guidelines' and legal opinions from aligned lawyers, Tusk's government has undertaken sweeping actions against judicial institutions, public media, political opponents and ordinary citizens – actions that lack a clear legal basis.

Tusk's government justifies its actions as part of a broader mission to implement transitional justice and militant democracy – concepts historically associated with restoring democratic order in post-authoritarian societies. However, Poland has been a functioning democracy since 1989, and the narrative of rebuilding democracy is perceived by many as a pretext for consolidating power.

The non-partisan website *Rule of Law Observer*, established in early 2024 by several NGOs, has meticulously documented the government's controversial actions.¹ These include:

- **Creating a constitutional crisis:** by questioning the legitimacy of judges on the Constitutional Tribunal, Tusk's administration has undermined one of Poland's key judicial institutions
- **Eroding judicial independence:** numerous actions have been taken to weaken the judiciary, including questioning the status of the National Judicial Council (KRS) and judges appointed during the PiS era
- **Seizing the prosecutor's office:** the government has replaced key figures in the prosecutorial hierarchy through legally dubious means, compromising the impartiality of law enforcement
- **Controlling public media:** a forceful and extrajudicial takeover of public broadcasters has transformed them into platforms for government propaganda
- **Weaponising state apparatus:** state institutions are increasingly used to intimidate and persecute political opponents, fostering an atmosphere of fear

These measures signal a departure from constitutional norms, replacing them with a 'revolutionary' governance style that prioritises political expediency over legality.

A notable distinction between the governance of PiS (2015–2023) and Tusk's coalition lies in their institutional support and adherence to constitutional processes. During its tenure, PiS held both a parliamentary majority and the backing of President Andrzej Duda, allowing it to enact reforms within the formal bounds of Poland's legal and constitutional framework.

Regardless of one's perspective on PiS's policies – such as its judicial reforms or changes to public media – the party operated within the existing legislative system. Its decisions were subject to judicial review and, when necessary, were challenged at the European level.

In contrast, the Civic Platform-led coalition lacks the parliamentary supermajority required to override presidential vetoes. This has led Tusk's government to adopt a strategy of *fait accompli* – pushing through controversial decisions via non-binding parliamentary resolutions, legal interpretations or outright disregard for established procedures.

Tusk's government has plunged Poland into a constitutional crisis by openly defying judicial norms and constitutional provisions. The government refuses to recognise certain rulings of the Constitutional Tribunal, claiming that the Tribunal itself lacks legitimacy. It circumvents legal processes by invoking parliamentary resolutions and notarial opinions, and bypasses legislative procedures outlined in the Constitution.

Judges appointed during the PiS administration are subjected to 'loyalty tests', with their rulings often dismissed on politically motivated grounds.

This legal nihilism has transformed Poland's judiciary into a battleground, eroding public trust in the impartiality of the courts and fostering a sense of instability.

The illegal takeover of public media has been one of the most visible actions of Tusk's government. Using private security firms and police, the administration forcibly removed the leadership of Polish Television (TVP), Polish Radio and the Polish Press Agency (PAP). This extrajudicial action was justified by citing parliamentary resolutions, despite these having no legal authority to regulate public-media governance.

Simultaneously, the government has restructured the prosecutor's office to ensure loyalty to the ruling coalition. Key figures in the prosecutorial hierarchy have been replaced, and the office is increasingly used to pursue political opponents, raising concerns about the impartiality of criminal investigations.

State institutions under Tusk's government have been repurposed as tools for political intimidation. Opposition figures and individuals critical of the ruling coalition face targeted investigations, pre-trial detentions and legal harassment. The police and intelligence services, designed to serve the public interest, are now deployed as instruments of political control.

Interestingly, none of this has raised a red flag in Brussels. The European Commission, so eager to jump to the defence of the rule of law when Poland was governed by PiS, unquestioningly accepts whatever measures the Tusk government deems to be necessary. So complete is the trust that the Commission has revoked its punitive measures imposed on Poland due to various acts of the PiS government – even before Tusk had taken any significant steps to reverse those.

Poland's democratic fabric is being tested under Donald Tusk's government. The replacement of constitutional norms with ad hoc legal mechanisms threatens the rule of law, while the erosion of judicial independence and media impartiality undermines key democratic safeguards.

1 Forcible takeover of public media

On 19 December 2023, a mere six days after Donald Tusk assuming office, the Sejm (the lower house of the Polish parliament) passed a resolution titled ‘On the Restoration of Legal Order and the Impartiality and Integrity of the Public Media and the Polish Press Agency’. This marked the beginning of a politically motivated and illegal takeover of Poland’s public media. Despite the resolution’s lofty rhetoric, it became the justification for unprecedented government actions that disregarded constitutional principles and the statutory independence of public media institutions.

The Sejm, as Poland’s legislative body, does not have the authority to assess the constitutionality of laws. If MPs suspect that legislation violates the Constitution, they must address it through proper legislative or judicial mechanisms, such as referring the matter to the Constitutional Tribunal. Instead, this resolution became a pretext for immediate executive actions targeting the leadership of Polish Television (TVP), Polish Radio and the Polish Press Agency (PAP).

That same day, Bartłomiej Sienkiewicz, the minister of culture and national heritage, exercising ownership rights over the State Treasury (which holds 100 per cent of shares in public media companies), dismissed the presidents and supervisory boards of these institutions. Citing the Commercial Companies Code, he installed new supervisory boards, which promptly appointed new management teams.

However, these actions were patently illegal. Public media governance is regulated by the 2016 law establishing the National Media Council (RMN), a body specifically empowered to appoint and dismiss public media leadership. By invoking the Commercial Companies Code – a law irrelevant to public media – Sienkiewicz bypassed statutory requirements.

To enforce the takeover, private security firms and police were used to forcibly install the new boards of directors in company offices, in scenes reminiscent of authoritarian crackdowns.

Adam Bodnar later admitted the lack of legal basis for these actions, stating during a radio interview: ‘We are not operating in a situation of public media run on the principles of full freedom and pluralism, but of media serving as a party monopoly on information. We are restoring constitutionality and looking for some legal basis to do so.’²

This remarkable admission – acknowledging the government’s retroactive search for justification after the forced takeover – revealed the political motives behind the move.

Following the seizure, Polish Television, Polish Radio and the Polish Press Agency were placed into liquidation. This was ostensibly a restructuring move but was, in reality, a means to consolidate control. Companies under liquidation are not fully bound by labour laws, making it easier to dismiss employees.

Contrary to the narrative of restructuring, the liquidated companies continued operations without interruption. They expanded programming, hired new staff and increased investments, all the while transforming into propaganda tools for the ruling coalition.

The impact of these actions on media impartiality was swift. By the second quarter of 2024, Polish Television devoted an overwhelming 82.76 per cent of its political coverage to promoting the ruling coalition and its allies, leaving just 17.24 per cent for opposition parties.³ While public media

under the previous Law and Justice (PiS) government similarly favoured the ruling party, the broader media landscape was ideologically balanced.

A 2023 study⁴ showed that the Polish infosphere was polarised yet proportionate:

- Television: right-wing perspectives dominated (46 per cent), followed by left-liberal (36 per cent) and centrist (18 per cent).
- Radio: mirrored television's ideological split
- Online media: left-liberal content prevailed (52 per cent), over right-wing (33 per cent) and centrist (15 per cent)
- Print media: Evenly divided between right-wing and left-liberal views (46 per cent each), with centrists at eight per cent

The study concluded: 'The Polish media space can be considered polarised in a balanced way, with the left-liberal worldview occupying 43 per cent of the coverage, the right-wing 41 per cent, and centrist 16 per cent. Public media provided a counterbalance to left-liberal dominance in online media by offering a right-wing perspective.'

This balance has been dismantled. The government's overt manipulation of public media tilts the broader media landscape heavily in favour of the ruling coalition, stifling alternative viewpoints. And while PiS was heavily criticised for influencing public media in its favour, the European Commission remains silent when Donald Tusk does the same.

The takeover of public media served a dual purpose:

- Control of information: the government ensured that public broadcasters became mouthpieces for its narrative, marginalising opposition voices and reinforcing its hold on public opinion.
- Intimidation and censorship: employees critical of the government were systematically removed under the guise of liquidation, creating a chilling effect on dissent within the media industry.

The forcible takeover of public media exemplifies the ruling coalition's broader strategy of consolidating power through institutional subversion. While presented as a restoration of legality and pluralism, these actions reveal an agenda focused on silencing dissent and controlling the flow of information.

In the long term, this approach risks deepening societal divisions and eroding trust in state institutions. Media that once provided a platform for diverse perspectives now serves as an echo chamber for the government, undermining Poland's democratic foundations.

2 State capture

Since forming a coalition government on 13 December 2023, Donald Tusk and his administration have faced significant constraints imposed by Poland's constitutional and legal framework, as well as by President Andrzej Duda, a political rival from a competing camp. Although the president's powers under Poland's constitution are relatively limited, his role carries significant weight due to his direct democratic mandate. Crucially, the president possesses the authority to veto legislation passed by parliament, a power that can act as a formidable barrier to the government's legislative agenda.

To navigate these constraints and align Poland's policies with the trajectory long demanded by the European Union, the new government has taken steps that have sparked accusations of precipitating a constitutional crisis. These actions include targeting key institutions that traditionally serve as checks on government power. The Constitutional Tribunal, the Supreme Court and the National Council of the Judiciary have been subjected to overt political pressure, with the aim of curbing their independence. Moreover, the government has displayed a marked disregard for the president's role and court rulings, while taking control over the National Public Prosecutor's Office.

One of the government's most controversial moves has been the rapid and legally questionable takeover of public media. From the perspective

of the ruling coalition, this manoeuvre was deemed essential to reshape public opinion and steer societal sentiment in their favour. Critics argue that this strategy undermines democratic norms, as it prioritises the government's ability to act unilaterally over adherence to constitutional principles. By subordinating these key state institutions, Tusk's government aims to recalibrate the balance of power in a manner that is dangerously arbitrary.

2.1 Constitutional Tribunal

In Poland's legal system, the Constitutional Tribunal is a judicial body tasked with reviewing the compliance of laws and other normative acts with the Constitution. Its role includes striking down unconstitutional laws to maintain the integrity of the legal order. Judges of the Tribunal are elected by the Sejm and take an oath of office before the president.

Since taking office, Donald Tusk's government has not only disregarded the Tribunal's judgments but has also actively undermined the legitimacy of its judges. Notably, in the *Journal of Laws* – the official publication of legal acts overseen by the prime minister's office – the government has annotated Tribunal rulings with a disclaimer stating:

'In accordance with the judgments of the European Court of Human Rights, the Constitutional Tribunal lacks the characteristics of a tribunal established by law.'⁵

This annotation is legally problematic. Firstly, under Polish law, judgments from the European Court of Human Rights (ECtHR) are not direct sources of law. Secondly, there is no legal provision allowing such annotations in official publications. Legal texts, including court rulings, must be published exactly as signed by the authorised body – in this case, the Constitutional Tribunal. Altering or commenting on these texts without the Tribunal's consent constitutes a breach of established legal norms.⁶

Furthermore, this practice directly violates Article 7 of the Polish Constitution, which states: ‘The organs of public authority shall act on the basis and within the limits of the law.’ By annotating official legal texts, the government has overstepped its authority, interfering with the independence of the judiciary and undermining the rule of law.⁷

Another excuse created to justify ignoring the judgments of the Constitutional Tribunal and questioning the status of judges is the resolution adopted on 6 March 2024 by the Sejm majority. It calls for ‘removing the effects of the constitutional crisis of 2015-2023 in the context of the activities of the Constitutional Tribunal’ and amounts to denying the status of the Tribunal in the Polish legal order. Resolutions of the Sejm have no universally binding force in the Polish legal order. On 28 May 2024, the Constitutional Tribunal ruled that such a resolution is contrary to the Polish Constitution.⁸

The status of a judge of the Constitutional Tribunal is regulated by law, which stipulates that a person elected by the Sejm becomes a judge and assumes office after taking an oath before the president. From that moment on, a judge of the Constitutional Tribunal becomes independent in the exercise of his or her office and is subject only to the Constitution. The Sejm does not have the competence to verify the status of a judge of the Constitutional Tribunal after taking the oath.

By undermining the status of judges and the very role of the Constitutional Tribunal, Donald Tusk is, de facto, eliminating from the functioning of the Polish state an important control body that monitors the compliance of laws with the constitution. This is a deliberate and crucial action, allowing those in power to go beyond the constitutional framework in their legislative activities at will. And yet the fiercest defender of the rule of law, the European Commission, does nothing.

2.2 Arbitocracy

Over the past year, members of the new government have selectively recognised or disregarded rulings from the Constitutional Tribunal and the Supreme Court, applying decisions arbitrarily to suit their agenda.

For example, Adam Bodnar dismissed a Constitutional Tribunal ruling from 25 March 2019, which upheld the constitutionality of reforms to the National Council of the Judiciary. Similarly, in January 2024, the speaker of the Sejm, Szymon Hołownia, refused to acknowledge the ruling of the Chamber of Extraordinary Control and Public Affairs of the Supreme Court, which overturned a decision declaring that the mandate of MP Maciej Wąsik had expired. Hołownia questioned the legitimacy of the Chamber itself.⁹ Paradoxically, the same Chamber's resolution validating the parliamentary elections – favourable to the ruling coalition – was readily accepted.

In another case, on 27 September 2024, the Criminal Chamber of the Supreme Court ruled that Dariusz Barski's reinstatement as national prosecutor in 2022 was lawful, dismissing the current minister of justice's attempt to replace him. Despite this, Adam Bodnar publicly declared the ruling non-binding.¹⁰

By selectively applying rulings and undermining the judiciary, the government not only clears obstacles to passing questionable legislation, but also solidifies control over day-to-day governance, showing little concern for challenges to its decisions.

2.3 Undermining the independence of judges

One of the central elements in dismantling the separation of powers in Poland has been the undermining of the National Council of the Judiciary (NCJ). The NCJ is a constitutional body tasked with safeguarding judicial

independence, handling matters such as the appointment, promotion, and retirement of judges, advising the president on judicial appointments and upholding judicial ethics.

Since its creation in 1989, the NCJ's role in Poland's constitutional system has been debated. Its composition – featuring representatives from the legislative, executive and judicial branches – raised questions about its compatibility with the principle of separation of powers. Nonetheless, it functioned as a key institution preserving judicial independence.¹¹

Under the PiS government, significant changes were made to the NCJ in 2017, altering how some of its members were selected. PiS justified these changes as part of their broader judicial-reform agenda, a major election promise. Critics, however, argued that the reforms compromised the Council's independence, sparking domestic and international concerns.¹²

The new ruling coalition, led by Donald Tusk, has used these reforms as a pretext to question the legitimacy of the NCJ and, by extension, the status of approximately 2,500 judges appointed since the changes. On 20 December 2023, the Sejm passed a resolution declaring the 2017 reforms unconstitutional and called for members of the NCJ elected under the new rules to step down. However, this resolution directly contravened Articles 186 and 187 of the Polish Constitution, which outline the NCJ's structure and operation. The NCJ itself declared the Sejm's resolution unconstitutional.¹³

The new government claims that judges appointed or promoted by the NCJ since 2017 lack legal status. As a result, it proposes that these judges return to their prior positions and undergo new selection processes. Some 'experts' have even suggested nullifying all rulings made by judges appointed under the reformed NCJ. This has led to proposals for an 'independence test', aimed at assessing the impartiality and independence of affected judges.

However, this test, based on undefined criteria, raises significant concerns about judicial independence and fairness.

Introducing mechanisms to evaluate judges based on subjective criteria undermines judicial guarantees enshrined in the Polish Constitution. Article 178(1) states that judges are independent and subject only to the Constitution and laws, while Article 180(1) guarantees judges' irremovability.

Despite constitutional protections, the minister of justice has pushed forward with these initiatives. A draft regulation, issued in December 2023 and later formalised in September 2024, includes a requirement for judges to submit statements of 'active regret', admitting that they erred in accepting appointments or promotions under the previous government. Judges who comply face no further action, but those who refuse risk sanctions. Critics argue this amounts to coercion and violates principles of equality and non-discrimination.

The government's approach creates a two-tier judiciary, with judges appointed after 2018 treated as an inferior group, barred from participating in key functions such as nominating candidates to the NCJ. Legal experts contend this is discriminatory, breaching Article 32(1) of the Constitution, which guarantees equal treatment, as well as Article 14 of the European Convention on Human Rights.

Even the Venice Commission – an advisory body of the Council of Europe that issued biased, negative opinions on judicial reforms under the previous centre-right government – issued an opinion on 14 October 2024 stressing that the evaluation of the performance of judges must always be individual and that group removal is not possible. Furthermore, any negative evaluation must be subject to judicial review at the request of the person concerned. In addition, the evaluation should be carried out by a body independent of the executive.¹⁴

The government's actions appear designed to intimidate or remove independent judges, consolidating control over the judiciary. Combined with efforts to subordinate the public prosecutor's office, this strategy risks transforming state institutions into tools of political power, capable of targeting opposition figures and ordinary citizens without independent oversight.

As judicial independence erodes, so does the foundation of the rule of law, threatening not only democratic governance, but also the rights and freedoms of all Polish citizens. Despite these alarming signs, the European Commission, once so eager to point out any perceived failings of the PiS government, hasn't voiced any concerns over the erosion of the rule of law under Tusk.

2.4 Illegal takeover of the prosecutor's office

On 12 January 2024, Adam Bodnar summoned the national prosecutor, Dariusz Barski, and presented him with a document claiming that his appointment by the previous minister of justice, Zbigniew Ziobro, on 16 February 2022, was legally invalid. The move sought to nullify Barski's tenure, effectively removing him from office. Bodnar justified this by alleging procedural violations during Barski's appointment, though such claims remain unsubstantiated.

This action was widely seen as an attempt to circumvent the 2016 Law on the Public Prosecutor's Office, which explicitly stipulates that the national prosecutor's appointment requires the president of Poland's approval and can only be terminated with the president's written consent. Despite these legal safeguards, Bodnar unilaterally appointed Dariusz Korneluk, a figure aligned with the new government, as the de facto national prosecutor.

On 27 September 2024, the Supreme Court ruled that Bodnar's dismissal of Dariusz Barski was unlawful and confirmed Barski's legal status as the national prosecutor. However, the ruling did little to change the situation. Bodnar openly declared that he would not comply with the court's decision, continuing to recognise Korneluk as the national prosecutor in practice.

This blatant defiance of legal norms signals a deeper strategy by the new government under Donald Tusk: consolidating control over the prosecutorial apparatus to exert influence over the justice system. By sidelining Barski and installing Korneluk, the government has effectively neutralised a key constitutional safeguard against arbitrary power.

The National Prosecutor's Office plays a pivotal role in Poland's justice system, overseeing and coordinating lower-level prosecutorial offices at the regional and district levels. Prosecutors wield significant powers, such as the ability to request pre-trial detention – a measure with a strikingly high acceptance rate of 90 per cent in Poland. This creates a powerful tool that, if misused, can target political opponents, subjecting them to prolonged detention without formal charges.

This potential for abuse underlines the political stakes of controlling the prosecutor's office. Critics warn that the government's actions could pave the way for politically motivated prosecutions and the harassment of opposition figures and officials.

The implications of the government's actions extend beyond immediate political concerns. An unlawful takeover of the National Prosecutor's Office risks creating systemic chaos within the legal system. Criminal cases handled by an improperly appointed national prosecutor could face annulment, leading to the dismissal of ongoing investigations, the release of convicted individuals and claims for compensation by those affected.

Unlike the judicial appointments overseen by the president – where the act of appointment provides a constitutional shield for judges – the legitimacy of prosecutors hinges on adherence to administrative procedures. Any procedural defect renders the appointment invalid. According to Article 17(1)(9) of the Polish Code of Criminal Procedure, proceedings initiated without the involvement of a ‘legitimate prosecutor’ must be discontinued. Furthermore, Article 439 obliges appellate courts to address such defects *ex officio*, regardless of whether they are raised in appeals. This opens the door to widespread procedural invalidation, which could culminate in what some describe as a de facto mass amnesty.

The government’s pursuit of control over the prosecutor’s office reflects a broader erosion of constitutional principles and the rule of law. Minister Bodnar’s disregard for procedural requirements and Supreme Court rulings undermines the independence of key state institutions. This threatens to create a legal vacuum in which justice becomes a tool of political power rather than a safeguard for citizens’ rights.

Despite warnings from legal experts and the judiciary, the government seems intent on continuing its efforts to subordinate prosecutors. The long-term consequences of these actions – ranging from judicial paralysis to a collapse in public trust – could profoundly damage Poland’s legal and political system.

Ultimately, the consolidation of the prosecutorial apparatus appears less about legal reform and more about political expediency. By weakening impartial oversight, the government risks transforming the justice system into a mechanism for arbitrary rule, with far-reaching implications for democracy and the rule of law in Poland.

3 Targeted intimidation

The swift politicisation of Poland's prosecutor's office under the new government has led to a series of alarming incidents, including the demonstrative persecution of political opponents and individuals connected to the previous administration. A striking example is the pre-trial detention of three individuals accused of irregularities involving the Justice Fund – a state programme aimed at supporting victims of crime, preventing crime and assisting offenders reintegrate into society.

In late March 2024, the Internal Security Agency (ABW) – a service typically tasked with counter-espionage and anti-terrorism operations – detained Father Michał Olszewski, head of the Profeto Foundation, along with Ministry of Justice officials Urszula Dubejko and Karolina Kucharska. The foundation had received tens of millions of zlotys from the Justice Fund to establish a support centre for crime victims and their families. The detainees were charged with money laundering, corruption and participation in an organised crime group.

The charges raised immediate suspicion. Critics noted that the allegations seemed constructed to justify ABW's involvement and the harsh pre-trial conditions. For example, prosecutors claimed the Profeto Foundation lacked prior experience in managing such projects. However, EU regulations

explicitly prohibit limiting grant eligibility solely to experienced entities, as this restricts fair competition.

The detainees reported severe mistreatment during their detention. Father Olszewski was denied legal counsel, food and toilet access for extended periods, while the two women were subjected to degrading treatment, including being monitored by male officers during showers and bathroom use. They were classified as ‘N’ (particularly dangerous), isolating them entirely from other detainees. After 213 days, they were released on bail, but the psychological and reputational damage had already been inflicted.

In an interview, Urszula Dubejko revealed that ABW officers had been explicitly instructed to act with maximum harshness and demonstrative force during her arrest, underlining the political motivations behind the operation.

Another case illustrating the misuse of power by the prosecutor’s office was the detention, in July 2024, of an opposition MP and former deputy minister of justice, Marcin Romanowski. Despite his parliamentary immunity and an additional immunity as a member of the Parliamentary Assembly of the Council of Europe (PACE), Romanowski was arrested on charges of abuse of power, causing substantial financial damage, and – once again – participation in an organised crime group.

The prosecution’s justification for the ‘organised crime group’ charge was particularly tenuous. Investigators argued that since the Ministry of Justice had a structured organisation with defined roles, it fulfilled the criteria for a criminal group. This interpretation defies established legal definitions, which require such groups to be clandestinely organised and formed specifically to commit crimes. Applying this reasoning, nearly any bureaucratic institution could be classified as a criminal organisation.

Legal experts criticised this logic as absurd and intentionally misleading. Romanowski's release came swiftly due to his PACE immunity. The organisation's president, Theodoros Rousopoulos, reminded Polish authorities in a letter that PACE members enjoy immunity for the entire duration of its sessions. Despite the legal debacle, the damage to Romanowski's reputation had already been done.

And let's not forget the case of political persecution that two PiS politicians are facing. A former interior minister, Mariusz Kamiński, and his deputy, Maciej Wąsik, were arrested and imprisoned in January 2024 for abusing their authority when working at the Central Anti-Corruption Bureau of Poland in 2009.

While both had been convicted of that crime in 2015, the president of Poland pardoned them that same year. However, the case was reopened in 2023, citing procedural errors in the presidential pardon. With their pardon overturned, Kamiński and Wąsik were sentenced to two years of prison, starting in January 2024. President Andrzej Duda promptly launched the procedure to pardon them again and demanded their release. During their time in prison, Kamiński and Wąsik had started a hunger strike to protest the political nature of their imprisonment.

The modus operandi of the prosecutor's office under Adam Bodnar has been to compile exaggerated, manipulated or legally tenuous charges against individuals associated with the former government. This approach serves two purposes.

First, by publicising the charges through government-aligned media, the prosecutors shape public perception, portraying their targets as emblematic of widespread corruption and abuse by the previous administration. This narrative seeks to justify ongoing purges and further actions against political opponents.

Second, the extensive charges create a veneer of legitimacy for pre-trial detention requests. Judges are presented with an overwhelming list of allegations, often leading them to approve detentions despite the dubious nature of the evidence.

These actions set a troubling precedent for the politicisation of justice. By leveraging the prosecutor's office to target opposition figures, the ruling coalition erodes trust in the independence of state institutions. Moreover, the use of pre-trial detention as a political weapon undermines fundamental rights and sends a chilling message to dissenters: no one is safe from state persecution.

The systemic consequences could be far-reaching. If legal proceedings against these individuals collapse – as is likely, given the flimsy basis of the charges – the government risks discrediting itself internationally while further polarising Polish society. Meanwhile, the lives and careers of those targeted may be irrevocably damaged.

In both the Justice Fund case and the detention of Marcin Romanowski, the government's tactics reflect a broader campaign to consolidate power through fear and suppression. By weaponising the prosecutor's office, it risks turning Poland's legal system into an instrument of political control, undermining democracy and the rule of law in the process.

4 A (not so) silent ally

The European Commission had repeatedly criticised the PiS (Law and Justice) government in Poland for alleged violations of the rule of law. In doing so, it has specifically pointed to the exact same areas in which the rule of law is currently being openly violated by Donald Tusk's government.

The Commission criticised the PiS government for introducing a number of changes to the Polish judicial system that, in the Commission's view, weakened its independence. It pointed to the creation of the Disciplinary Chamber of the Supreme Court, which was to be used to put political pressure on judges, and the lowering of the retirement age of judges to allow for the early retirement of inconvenient judges as the most important problems.

The Commission considered that the change in the way some members of the National Council of the Judiciary were elected was aimed at taking control of the institution and subordinating it to the executive.

PiS was criticised for taking control of the public media and turning it into a tool of government propaganda. The EC pointed out that such actions limit citizens' access to reliable information.

Already in January 2016 – roughly six months after PiS formed its government – the Commission launched its Rule of Law Framework against Poland, marking the first use of this mechanism since its creation in 2014. The process was initiated in response to concerns over the government's control of the Constitutional Tribunal.

In December 2017, the Commission escalated its actions by triggering Article 7(1) of the Treaty on European Union. Dubbed the ‘nuclear option’, Article 7 allows the EU to determine whether there is a clear risk of a serious breach of EU values. The decision was based on Poland’s judicial reforms that allegedly allowed political interference in the judiciary.

A string of infringement procedures and cases to the Court of Justice of the European Union (CJEU) followed.

In addition to legal action, the Commission imposed significant financial penalties:

- October 2021: The CJEU ordered Poland to pay €1 million per day for failing to suspend the Disciplinary Chamber, which continued operating despite prior rulings.
- September 2022: Poland faced cumulative fines exceeding €400 million, signalling the EU’s determination to enforce compliance.

A pivotal move involved withholding billions of euros from Poland’s share of the EU’s Recovery and Resilience Facility. The Commission conditioned the release of these funds on Poland implementing reforms to ‘restore judicial independence’.

While Poland under the PiS government faced harsh criticism and sanctions for alleged breaches of the rule of law, Donald Tusk’s government has received praise despite openly violating the same principles. The Commission has lifted Article 7 proceedings against Poland and even unlocked previously frozen EU funds – this, notably, without the new administration enacting any significant legislative changes to address the supposed issues.

In July 2024, the Commission published its annual report on the rule of law in EU member states. The section on Poland highlighted ‘significant progress’ in areas of judicial administration and media independence.

The report encouraged Poland to continue efforts to separate the roles of minister of justice and prosecutor general, and to ensure the prosecution service operates independently of government influence. On public media, the Commission advised developing a legal framework for independent management and editorial freedom, consistent with European standards.

However, these recommendations stopped short of demanding immediate reforms, contrasting sharply with the punitive approach taken against PiS. Under Tusk, Poland appears to be judged by an entirely different standard, raising questions about the impartiality of the EU's institutions.

The divergent treatment of the PiS and Tusk governments has sparked accusations of bias within the European Commission. Critics argue that the Commission has abandoned its role as the 'impartial guardian of the European Treaties', instead transforming into a political actor advancing a left-liberal agenda. Former Commission President Jean-Claude Juncker described the Commission many times as a 'political body', prioritising progressive ideals over neutral governance.

The concept of the rule of law within the EU has become a source of contention, with its application criticised as inconsistent and politically motivated. Professor Anna Łabno – a Polish lawyer and constitutionalist at the University of Silesia in Katowice – highlights the nebulous nature of the rule of law, describing it as a loosely defined principle subject to varying interpretations. She argues that the CJEU has wielded rule-of-law violations as a tool to pressure member states into compliance with policies favoured by dominant powers, particularly Germany and France.

Łabno warns that this approach centralises power within the EU and undermines the sovereignty of smaller member states. Referring to Article 7 proceedings against Poland and Hungary, she notes: 'The principle of the rule of law enables the imposition of political and ideological agendas.'

The centralisation of the Union, along with planned reforms, demonstrates that the rule of law can be used as a tool to enforce the policies of the strongest EU states.¹⁵

Ghislain Benhessa, a French public-law scholar, echoes similar concerns in his book, *The Totem of the Rule of Law: A Vague Concept with Clear Consequences*. He describes the rule of law as a ‘conceptual weapon’ employed by Brussels to suppress dissent and impose conformity to its values.¹⁶

According to Benhessa: ‘The rule of law is wielded as political blackmail, targeting those who resist prevailing ideologies, judicial governance and the encroachment on national sovereignty not sanctioned by the Treaties.’¹⁷

This framing positions the rule of law as a flexible instrument leveraged to advance specific political objectives rather than as a neutral principle of governance.

4.1 Dangerous double standards

Under the PiS government, Poland was subject to unprecedented scrutiny. The European Commission triggered Article 7 proceedings in 2017, alleging that judicial reforms violated EU values. Funding from the Recovery and Resilience Facility was withheld, and the CJEU imposed daily fines for non-compliance with rulings on the judiciary. These measures were justified on the grounds of preserving judicial independence and media pluralism.

Yet, Tusk’s administration has engaged in these practices without facing equivalent consequences. For example: the merger of the roles of minister of justice and prosecutor general remains unchanged, despite being a focal point of EU criticism under PiS. Tusk’s government forcibly took over public broadcasters, dismissing management and transforming them into propaganda outlets for the ruling coalition. These actions contravene EU

recommendations on media independence, yet they have been met with no resistance from Brussels.

One of the starkest examples of double standards is the decision to unblock EU funds for Poland under Tusk. Despite the lack of substantive legislative changes addressing judicial or media concerns, the Commission lifted financial sanctions. This decision starkly contrasts with its stance under PiS, where even minor infractions were met with severe penalties.

The EU's apparent favouritism towards Tusk underscores a deeper issue: the politicisation of its institutions. By selectively applying principles like the rule of law, the Commission risks alienating member states and undermining trust in its neutrality. Instead of fostering unity, this approach exacerbates divisions within the Union.

Both Łabno and Benhessa emphasise that the rule of law, as applied by the EU, lacks a clear and consistent definition. This ambiguity allows it to be used as a 'totem' – a symbolic ideal invoked to justify political intervention. While the principle is essential for good governance, its misuse risks transforming it into a tool of coercion, undermining its legitimacy.

As Benhessa notes: 'The rule of law leaves no room for nuance or debate. It is wielded as a weapon to enforce conformity, often at the expense of the sovereignty and diversity of member states.'¹⁸

The EU's treatment of Poland under Donald Tusk reveals the extent to which the rule of law has become a politically charged concept. While the principle is vital for ensuring accountability and justice, its selective application undermines its credibility.

5 'Transitional justice'

Donald Tusk's government has invoked the concepts of militant democracy, transitional justice and even denazification to justify a sweeping agenda of institutional reforms and political purges. These ideas, historically employed to restore democratic order after authoritarian rule or mass atrocities, have been controversially adapted to Poland – a nation that has been a functioning democracy since 1989.

While Tusk claims that these measures are vital to defending democracy, in fact his approach represents an overreach, exploiting historical frameworks for political consolidation rather than genuine reconciliation.

The concept of *streitbare Demokratie* (fighting democracy) emerged in pre-Second World War Germany as a response to the collapse of democratic institutions under the Nazi regime. It asserts that democracies must actively protect themselves by limiting the freedoms of individuals or groups seeking to undermine democratic order.

Tusk has explicitly embraced this principle, positioning his government as a defender of democracy against the alleged threats posed by the institutional legacy of the PiS administration. In his words: 'Democracy is not neutral to its enemies. We must be vigilant and proactive in defending it, even if it requires difficult decisions.'

To this end, his government has introduced measures such as judicial purges, media takeovers and investigations targeting former officials. While

these actions are framed as temporary and necessary to stabilise governance, their legality and proportionality have been widely questioned.

Another pillar of Tusk’s strategy is transitional justice, a framework typically applied in post-conflict or post-authoritarian societies to address past abuses, ensure accountability and promote societal healing. Tusk presents this process as essential for rebuilding trust in public institutions and restoring the rule of law in Poland.

Even before the elections, Tusk stated: ‘To remember – to settle – to reconcile, and to redress the wrongs of those who have been wronged by the authorities over these past years. (...) Unfortunately, we will not have the comfort of reconciliation for the foreseeable future.’¹⁹

While transitional justice often balances punitive measures with reconciliation, Tusk’s implementation has leaned heavily towards punitive actions. Investigations and charges against former officials and allies of the previous government have dominated the agenda, raising concerns that the process prioritises political retribution over genuine healing.

The reference to denazification – a process that aimed to eradicate Nazi influence from postwar Germany – has also featured prominently in Tusk’s rhetoric. He has characterised his government’s actions as a necessary institutional cleansing to restore democracy: ‘What we are doing is not vengeance. It is the restoration of a state governed by law. Those who used public office to destroy democracy must answer for their actions.’²⁰

In one of his speeches, Tusk made a striking comparison: ‘The scale of accountability, including criminal responsibility for abuses of power by the previous authorities, is the largest seen in decades in Europe. Comparing this to the postwar settlements in Germany – Nuremberg and its aftermath – or Yugoslavia after its war, while not identical, highlights the scale of what we are addressing in Poland today.’²¹

This analogy has drawn significant criticism, given that the previous conservative governments (2015–2023) were democratically elected and did not engage in human-rights violations or authoritarian rule. Framing them as akin to dictatorships has been interpreted by some as an attempt to delegitimise legitimate political opposition.

Yet, unsurprisingly, Tusk's initiatives have received strong backing from international actors, particularly within the European Union. European Commission President Ursula von der Leyen described the measures as 'a step in the right direction', praising Poland's renewed commitment to democracy and the rule of law.²²

This endorsement, however, has been criticised as a reflection of double standards. The same EU institutions that sanctioned Poland under PiS for alleged breaches of judicial independence and media freedom now applaud similar, if not more extreme, measures taken by Tusk's government.

6 Conclusions

Jerzy Kwaśniewski, an attorney and president of a conservative NGO, Ordo Iuris Institute, has described Poland as an ‘experimental field’ where left-liberal elites in Brussels and Washington are testing strategies to combat the rise of right-wing populism. According to Kwaśniewski: ‘The methods being employed in Poland today could easily be exported elsewhere in the West. In fact, they might already be in use, albeit less openly.’ He warns that the tactics employed – judicial purges, media control and the politicisation of justice – set a dangerous precedent for other democracies. Once normalised, these tools could be weaponised against any political movement challenging the mainstream liberal consensus.²³

Tusk’s invocation of transitional justice and militant democracy has raised numerous concerns. Critics argue that the government’s actions lack a legal foundation, relying instead on moral and rhetorical justifications. The absence of clear evidence of institutional decay under PiS undermines the rationale for extraordinary measures.

Far from fostering reconciliation, these measures deepen societal divisions. By framing political opponents as enemies of democracy, Tusk’s government is alienating a significant portion of the population.

CONCLUSIONS

The broad international support for these measures highlights the growing politicisation of principles like the rule of law, raising questions about their consistent application. As Poland becomes a testing ground for these tactics, the implications extend far beyond its borders. If unchecked, the strategies employed today could reshape the democratic landscape of the West, with potentially far-reaching consequences for political freedoms and institutional integrity.

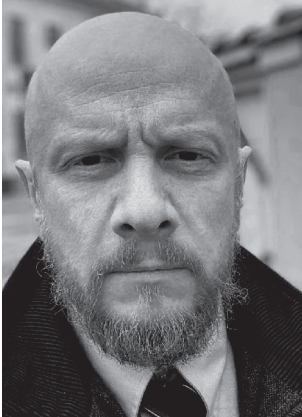
End notes

- Accessed September 2024
- 1 Rule of Law Observer
obserwator-praworzadnosci.pl
 - 2 ‘Minister Bodnar dał popis! “Przywracamy tę konstytucyjność i szukamy jakiejś podstawy prawnej”. Bezlitosne KOMENTARZE’, wpolityce.pl, 30 December 2023 wpolityce.pl
 - 3 Mariusz Kowalczyk, ‘In the public media in the second quarter, the government had more time than the opposition’, [Press](https://press.pl), 28 July 2024 press.pl
 - 4 Radosław Sojak, et al, Who Has the Upper Hand in Polish Media Discourse?, Uniwersytet Mikołaja Kopernika w Toruniu, 2023 umk.pl
 - 5 ‘Violation of the independence of the Constitutional Tribunal’, Rule of Law Observer, 16 January 2024 obserwator-praworzadnosci.pl
 - 6 Ibid.
 - 7 ‘A year of devastation for the rule of law – major violations of the rule of law and democratic principles by Donald Tusk’s government’, Ordo Iuris Institute, 18 October 2024 ordoiuris.pl
 - 8 Ibid.
 - 9 Mateusz Orzechowski, ‘Supreme Court’s Extraordinary Control Chamber overturns Sejm Speaker’s decision on Wąsik’, Rzeczpospolita, 4 January 2024 rp.pl
 - 10 ‘SC ruling on Barski. Bodnar comments: I will not deviate from the path taken’, [Polskie Radio 24](https://PolskieRadio24), 27 September 2024 polskieradio24.pl
 - 11 ‘History of the National Council of the Judiciary’, National Council of the Judiciary krs.pl
 - 12 Ibid.
 - 13 ‘Resolution of the Presidium of the National Council of the Judiciary of 20 December 2023’, National Council of the Judiciary krs.pl
 - 14 Poland – Joint Opinion of the Venice Commission and the Directorate General Human Rights and Rule of Law on European standards regulating the status of judges, adopted by the Venice Commission at its 140th Plenary Session (Venice, 11–12 October 2024), Venice Commission, Council of Europe venice.coe.int
 - 15 Łabno, Anna, ‘Can the Formal Concept of the Rule of Law be Revived in the European Union?’. *The Legal Culture*, Volume 6 (December 2023) doi.org
 - 16 Quoted in Yann Caspar. ‘The rule of law: A totem with a thousand facets’, MCC Brussels, 24 April 2024 europeanstudies.mcc.hu
 - 17 Ghislain Benhessa, *Le Totem de l’Etat De Droit: Concept Flou, Conséquences Claires*, L’Artilleur, November 2021
 - 18 Yann Casper, op.cit.
 - 19 ‘Donald Tusk: The condition for national reconciliation is to hold the current government accountable’, [Dziennik Gazeta Prawna](https://DziennikGazetaPrawna), 25 March 2023 gazetaprawna.pl
 - 20 ‘“PiS-oist occupation of Poland”: Tusk’s strong announcement’, [Do Rzeczy](https://DoRzeczy), 14 January 2024 dorzeczy.pl
 - 21 ‘Law and Justice politicians point out Tusk’s absurd statement about accountability’, wpolityce.pl, 6 September 2024 wpolityce.pl
 - 22 Michał Gostkiewicz, ‘Brussels praises Poland for restoring the rule of law’, Wyborcza, 26 July 2024 wyborcza.pl
 - 23 Jerzy Kwaśniewski, ‘EU liberals crushing the law in Poland by “transitional justice”’, [Brussels Signal](https://BrusselsSignal), 6 June 2024 brusselsignal.eu

About the author

Artur Ciechanowicz is a journalist and international affairs expert.

He is a former reporter for the Polish newswire PAP in Berlin and Brussels.



Previously, he was an analyst at the Centre for Eastern Studies (OSW) in Warsaw. His research interests are in decision-making processes and lobbying in the EU, and EU agricultural policy.

About MCC Brussels

At a time of unprecedented political polarisation, MCC Brussels is committed to providing a home for genuine policy deliberation and an in-depth exploration of the issues of our time.

MCC Brussels is committed to asking the hard questions and working with people of goodwill from all persuasions to find solutions to our most pressing problems. An initiative of MCC (Mathias Corvinus Collegium), the leading Hungarian educational forum, MCC Brussels was founded in the autumn of 2022 to make a case for celebrating true diversity of thought, diversity of views, and the diversity of European cultures and their values.

The rule of law has been one of Brussels' signature concerns. The EU spends an extraordinary amount of time compiling reports, holding debates and funding NGOs about the issue. It reserves its most serious powers for dealing with those who don't comply. Poland's conservative government under PiS was, for some time, in the EU's 'rule of law' firing line.

But then something strange happened. A genuine rule-of-law crisis emerged in Poland, when a new government came to power and started an authoritarian power grab against the media, the judiciary and its political opponents. But this time, the EU was silent.

This report tells the story of Donald Tusk's incredible power grab – one which subverts all the supposed rule-of-law norms the EU has spent so long trying to champion. In fact, Tusk's government has explicitly announced it is suspending normal democratic processes. Tusk has spoken proudly of his development of new, Orwellian concepts of 'militant democracy' and 'transitional justice' – concepts that are being closely watched in Brussels as European elites plan regime change elsewhere.

The EU's silence on this issue exposes the hypocrisy of the rhetoric around the rule of law. But worse, it has cheered on as a genuine authoritarian has consolidated power in one of Europe's largest countries. This is the untold story of how Donald Tusk consolidated power, abandoned the rule of law and – above all – how he got away with it.