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Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Honouring of membership obligations to the Council of Europe by Poland

Information Note by the co-rapporteurs on their fact-finding visit to Warsaw (13-15 May 2026)

Co-rapporteurs: Mr Christophe Brico, Monaco, Group of the European People's Party, and Mr Didier Marie, France, Socialists, Democrats and Greens Group

¹ Document declassified by the Monitoring Committee at its meeting on 28 September 2026.

1. Introduction

1. This was the first monitoring visit since the appointment of the co-rapporteurs, Mr Christophe Brico, Monaco, Group of the European People's Party (EPP/CD) in 2025 and Mr Didier Marie, France, Socialists, Democrats and Greens Group (SOC) in 2026. The previous rapporteur visits were 13–15 March 2023 (Mr Pieter Omtzigt, Netherlands, EPP/CD) and 18-20 November 2024 (Ms Azadeh Rojhan, Sweden, SOC).

2. [Resolution 2316 \(2020\)](#) on “the functioning of democratic institutions in Poland” opened the monitoring procedure for the country. The Assembly expressed its serious concern about the fact that numerous aspects of the reforms of the judiciary established since 2015 ran counter to European norms and standards. They cumulatively undermined and severely damaged the independence of the judiciary and the rule of law in Poland. The reforms made the judiciary system vulnerable to political interference and to attempts to bring it under political control of the executive, which challenges the very principle of a democratic State governed by the rule of law. These reforms had an overall negative effect on the effective functioning of democratic institutions in Poland.

3. Following the adoption of Resolution 2316 (2020), the developments in Poland have mostly been dealt with by the Assembly in the context of the reports on the progress of the monitoring procedure, although thematic reports have also been relevant to Poland. Recent reports include:

- [Resolution 2404 \(2021\)](#) “Instrumentalised migration pressure on the borders of Latvia, Lithuania and Poland with Belarus”;
- [Resolution 2359 \(2021\)](#) “Judges in Poland and in the Republic of Moldova must remain independent”.

4. The years since then have seen further polarisation in Polish politics and society, difficulties in resolving the entrenched rule of law crisis affecting the judiciary, and an increasing willingness for institutions to use their constitutional roles for political purposes.

5. The aim of this visit was in particular to be better informed about the continuing challenges to the rule of law in Poland; the progress and challenges of the reform programme in light of the deep polarisation in the country; and the functioning of the Constitution – specifically the alleged misuse of the constitutional powers and prerogatives. The co-rapporteurs are grateful to the Polish authorities for their openness and the good organisation of the visit. This note reflects the co-rapporteurs' findings and additionally incorporates recent developments, where appropriate.²

2. Developments and political context

6. Prior to 2023, PiS held both the Presidency and Government/majorities within the lower House of the Parliament (Sejm), enabling it to introduce wide-reaching reforms, particularly of the judiciary, which undermined and severely damaged the independence of the judiciary and the rule of law in Poland. Since the parliamentary elections of October 2023, the analysis can be split between the period before and after the presidential elections of June 2025.

2.1. From the parliamentary elections of October 2023 to the presidential elections in June 2025

7. The parliamentary elections of 15 October 2023, with by far the largest turn-out in recent years (74.38%), marked a significant change in Polish politics. These elections were [observed by PACE](#) in the framework of an International Election Observation Mission which concluded that “*elections were competitive, and voters had a wide choice of political alternatives, but the ruling party enjoyed clear advantage through its undue influence over the use of state resources and the public media*”. The observers especially highlighted the “*politically polarised media environment, and a generally narrowing space for independent journalism, the public broadcaster openly favoured the ruling party.*”

8. Following the parliamentary elections of 2023, the United Right, consisting of the Law and Justice Party and the Sovereign Poland Party of former justice minister Zbigniew Ziobro, got 43.6% of the vote but failed to win a governing majority. In its place, a diverse alliance of opposition parties consisting of Civic Coalition, Third Way (Poland 2050 and the Polish People's Party) and The Left, formed a coalition government, ending 8 years of PiS rule. This coalition also obtained a majority in the Senate. The new government is thus composed of a

² The co-rapporteurs programme can be found at Appendix 1 and the statement issued at the end of the visit at Appendix 2.

broad coalition, led by the Civic Platform of Donald Tusk, and elected on promise to restore the rule of law and the independence of the Polish judiciary and to address accountability and reconciliation.

9. Following those elections, the political environment remained extremely polarised and contentious. The governmental coalition began to attempt to roll back several of the controversial policies and reforms of the previous authorities. However, this was strongly resisted by the opposition – previously in government – who retained significant power in various institutions. This tense standoff was compounded by a de facto Constitutional crisis resulting from the fact that then-President Duda (supported by PiS) used his constitutional powers – some say in violation of the constitutional requirement that the President remain above the parties – to block the most legally significant initiatives coming from the authorities. Thus, in the first 2 years after the election, the pace of progress was seen as slow by some voters. This was partly due to the risk of a presidential veto, and in part due to difficulties in forming agreement within the coalition (e.g. on sensitive issues such as abortion and same-sex relationships).

2.2. Since the Polish Presidential elections in June 2025

10. The Polish presidential elections took place on 18 May 2025 (first round) and 1 June 2025 (second round). The incumbent, Andrzej Duda, was ineligible for re-election for a third term. At the second round of elections, Karol Nawrocki – backed by the PiS party – was elected with 50.89% of the vote, as against 49.11% for the progressive-liberal Mayor of Warsaw, Rafal Trzaskowski (the turnout was 71.63%).

11. These elections were [observed by PACE](#) in the framework of an International Election Observation Mission which concluded that *“the Presidential election in Poland was competitive and well managed, but deeply affected by long-standing polarisation, media bias, and continuing controversies regarding the independence of key oversight institutions. Both rounds respected fundamental freedoms, and election day was calm and professionally organised. However, ballot secrecy was not always ensured, campaign finance lacked transparency, and disinformation and foreign interference posed serious risks”*.

12. Following those elections, Polish political life has been marked by a near-constant clash between the Government/Parliament and the President. Polarisation affects political life, society and has permeated into the different branches of the judiciary. These tensions are played out not only politically, but through the use – and alleged misuse – of the Constitution by the various organs.

13. Specifically, there are allegations that the Government, in their zeal to implement the reform programme, are willing to take shortcuts that would not be in line with the requirements of the rule of law.

14. Further, the newly elected President, Karol Nawrocki, continues the example of his predecessor by using his constitutional powers – arguably in violation of the constitutional requirement that he remain above the parties and often in a manner considered to be an abuse of those powers that is not in line with the Constitution – to block initiatives. This matter is explored in further detail below under ‘functioning of the Constitution’.

15. There are different perspectives in relation to accountability. Following the 2023 elections, efforts have been made to crack down on what society widely viewed as corrupt practices, nepotism and cronyism within the former Government. However, viewed from the PiS perspective, this is persecution of the opposition. Given that politics and polarisation have also severely permeated the judiciary, the different perspectives – as to whether this is accountability for corruption practices or persecution of the opposition – can also be seen in differing judgments of the courts. One example concerns European Arrest Warrants (EAW) for the arrest of politicians accused of corruption, such as the refusal of the Court to issue an EAW for the former Minister of Justice, Mr Zbigniew Ziobro and the lifting of the EAW issued for former Deputy Minister of Justice, Mr Marcin Romanowski.

16. Since April 2026, the main opposition party, Law and Justice (PiS) has been undergoing internal power struggles culminating in a major internal split, with former Prime Minister Mateusz Morawiecki, (2017-2023) and his allies being expelled from PiS after refusing to dissolve the Rozwój Plus association. This difference is between the traditionalist core, led by Jarosław Kaczyński, and others who are concerned that a move to becoming a more hardline right-wing party might impact the party’s chances in the next parliamentary elections of 2027. Internal tensions between hardline and moderate elements within PiS regarding party’s policies are not new – especially now that PiS support in polls has decreased from around 32% at the start of 2025 to around 25% in 2026, hitting its lowest level in 14 years.

3. The functioning of the Constitution

3.1. Impediments to appointments

17. Since his election in June 2025, President Nawrocki has used his various – often ceremonial – roles to prevent appointments:

- The President has failed to appoint many Ambassadors – despite the appointment role being largely ceremonial and his representative being on the Foreign Affairs Council who determines appointments. This means that across a majority of its Embassies, Poland has only a chargé d'affaires rather than an Ambassador.
- The President has failed or refused to swear in five elected Constitutional Tribunal judges, duly elected by the Sejm, despite his role being merely to hear their oath – see separate section below under rule of law.
- The President has delayed or refused to accord military ranks to intelligence officers. This seems to be linked, in part, to other disputes between the President and the Government relating to relations with the intelligence agencies.

18. Whilst many constitutional commentators consider that, under Poland's constitutional system of checks and balances, the President has a mere formal role in relation to such appointments – not a veto power – the Presidential Administration considers that the formal role, in light of the President's role as a guardian of the Constitution, should be construed as giving rise to a veto power for such nominations and that this should imply a negotiation between the Government and the President before any nomination are made or elected. Others view this as a usurpation by the President of appointment powers granted to the parliament under the Constitution.

3.2. The use of the presidential veto

19. As a result of successive presidential vetoes, the key laws needed to implement European Court of Human Rights judgments regarding the judiciary (e.g. the status of judges and the KRS – see below in this note) are effectively blocked, as are other key reforms mentioned in this note (e.g. separation of the Prosecutor General function from that of Minister of Justice).

20. President Nawrocki has used the presidential power to veto draft laws more than any other President in the history of the Third Republic (i.e. since 1989) – despite having only been in office for a year.³

21. The high-level of legislative vetoes have impeded the Government's ability to deliver on its election manifesto and have led to efforts to undertake creative work-arounds. By way of example:

- In March 2026, President Nawrocki vetoed a government bill intended to facilitate receipt of funds following a European Commission's loan agreement for Poland to borrow 43.7 billion euros for defence spending. The President considers that it would saddle Poland with debt for decades and would lead to greater EU interference in national defence policy, whilst the Government argues that these funds are needed for defence capability. The Government seems to have found a work-around without the legislation vetoed by the President.
- On 17 July 2026, President Nawrocki vetoed the "Closest Person" Act, which aimed to provide legal recognition for same-sex couples. As a result, the Government issues secondary legislation (an ordinance) giving guidance to civil registries on recognising foreign marriage certificates.

22. Thus, many of the Civic Platform coalition's reforms have floundered following vetoes or the threat of vetoes by the President refusing to sign them into law. In addition, given the threat of vetoes, it has been tempting to use the near-certain veto as an excuse for not pursuing the necessary reforms in earnest or to propose ever-more radical solutions to the rule of law challenges – with the risk that efforts to resolve the rule of law crisis may, themselves, not respect the rule of law. Poland thus serves as an important example of the challenges to restoring the rule of law and a healthy constitutional balance in a country that continues to suffer from extreme polarisation and severe institutional capture.

³ As of 24 September 2026, 45 times in about a year – thus at a rate of 39.6/year (compared to 5.4 a year for Lech Walesa the next frequent user of the Presidential veto), earning him the nickname 'Wetomat' (i.e. a veto machine). See [Statistics](#) of the Presidents of the Third Polish Republic.

3.3. Credibility of the Constitutional Tribunal

23. In *Xero Flor w Polsce sp. Z o.o. vs Poland* (see discussion below on the rule of law), in 2021, the European Court of Human Rights ruled that any bench of Constitutional Tribunal judges containing a judge that had been appointed in 2015 in violation of the Constitutional Court ruling on this matter cannot be considered a tribunal established by law, and that therefore the decisions of such a bench have no legitimacy.

24. In addition, the Constitutional Tribunal has become increasingly politicised – with increasingly political members being appointed by the previous PiS government often under the process that lacked legitimacy – due to procedural errors such as the ‘double judges’ replacing judges who had already been elected to sit on the Constitutional Tribunal. In its current form the Constitutional Tribunal is used a mechanism for the PiS and the President to undermine the reforms of the government. This has been evident – for example following some very legally questionable rulings, including with regard to the supremacy of the Polish Constitution over the European Convention of Human Rights.⁴

25. As a result, the current Government has been systemically ignoring – and indeed refusing to officially publish – the judgments of the Constitutional Tribunal, which it considers to be illegitimate given the defects in the appointments of some of the judges.

26. However, the refusal to recognise judgments of the Constitutional Tribunal itself raises questions of consistency (particularly when applied to all judgments indiscriminately). Indeed, the current authorities, when in opposition, strongly criticised the PiS authorities for ignoring Constitutional Tribunal rulings issued by that court before it was under PiS control. Clearly the current situation, which means that the country has de facto no functioning Constitutional Tribunal, cannot be maintained, and needs to be addressed.

27. A linked issue is the long-running lack of publication of the judgments of the Constitutional Tribunal. Starting around 2015, the PiS Government – in an unprecedented move – instructed the Head of the Governmental Legislative Centre not to publish a Constitutional Tribunal judgment in the Official Journal. This practice continued since then, with the PiS Government refusing to publish judgments that struck down various PiS reforms, or alternatively refusing to recognise such judgments as binding. Since 2023, the Tusk Government has continued with this practice – initially justified by the unlawfully appointed judges meaning that the tribunal was ‘not established by law’. This means that few to no Constitutional Tribunal judgments have been published in recent years. In December 2024 the Government adopted a formal resolution that Constitutional Tribunal judgments would not be published because the Constitutional Tribunal in its current formation is unable to exercise its constitutional role.

28. Separate issues concern allegations about the distribution of files within the Constitutional Tribunal with investigations ongoing into alleged improper interference by the previous President of the Constitutional Tribunal in the distribution of case-work to judges – including allegedly removing a file from a reporting judge after having seen an initial draft of a judgment. The current President of the Constitutional Tribunal has taken a different approach in simply refusing to recognise the status of elected judges who the President of the Republic fails to swear in – and thus refusing to allow them to undertake their functions.

29. Whilst some of the legitimacy issue could be resolved by fresh elections to the Constitutional Tribunal (see below) this is problematic in practice as the President of the Republic and the President of the Constitutional Tribunal are blocking such elected judges from sitting. This enables the President to retain a composition that is broadly considered to be more pro-PiS, however this is becoming increasingly untenable.

30. Importantly, due to refusals to allow certain judges to sit (and objections from some judges to their treatment), the Constitutional Tribunal no longer has a sufficient number of judges in order for its General Assembly to adopt its budget for the year and therefore the Government currently has not foreseen any budgetary allocation for the Constitutional Tribunal for 2027.

31. A longer-term resolution would mean a change in the appointment procedures for Constitutional Tribunal judges in order to ensure that they are genuinely independent of any political party and its interests. This would mean the adoption of Constitutional amendments and a consensus between the opposition and the

⁴ See, for example, the Judgment of 10 March 2022, Ref K 7/21 in which the Constitutional Tribunal considers that Article 6 of the ECHR is inconsistent with the Polish Constitutions insofar as it applies some of the requirements of Article 6 ECHR to the Constitutional Tribunal and the National Council of the Judiciary.

current authorities, which is currently not a realistic option. The reform of the Constitutional Tribunal is therefore unlikely to happen in the immediate future.⁵

3.4. Appointment of judges to the Constitutional Tribunal

32. Under the Polish Constitution, judges of the Constitutional Tribunal are elected by the Sejm. The President has no role in choosing Constitutional Tribunal judges. However, under an ordinary law, those judges are required to swear an oath before the President before taking up their duties. This is widely viewed as a ceremonial function of receiving the oath. The President has no constitutional role to review the Sejm's prerogative in appointing the judges.

33. President Nawrocki has failed to organise a ceremony for the oath swearing, for five of the judges to the Constitutional Court elected by the Sejm, thus effectively preventing the newly elected judges from taking up their duties and thus preventing the effective functioning of the Constitutional Court. Most important cases require to be heard to an 11-judge panel (of what should be a 15-judge Constitutional Tribunal). However, at present only 10 of the 15 elected Constitutional Tribunal judges are allowed to sit. Thus the Constitutional Tribunal is prevented from taking a number of important decisions.

34. In March 2026, President Nawrocki accepted to invite and hear the oaths of two of the judges – Dariusz Szostek (nominated by the Polish People's Party – PSL) and Ms Magdalena Bentkowska (nominated by Poland 2050). The President did not invite the other four Constitutional Tribunal judges (nominated by Mr Tusk's Civil Coalition) – citing 'doubts' over the legality of their election, despite all 6 being appointed in the same process and in accordance with the same procedure and despite the strong legal and judicial credentials of the elected judges. The government and many legal experts argue that the President's actions were unlawful: the President has no role in choosing Constitutional Tribunal judges – if he accepted the validity of two of the six, all of whom were elected by Sejm at the same time, he should also have sworn in the other four as well.

35. In light of the President's failure to organise the oath-swearing ceremony required by the ordinary law, on 9 April 2026, the Parliament hosted the swearing-in of the remaining four Constitutional Tribunal judges and invited President Nawrocki to attend; he did not. President Nawrocki condemned the move as illegal, pointing to a provision of Polish law requiring that new judges swear their oaths "towards the President".

36. The Constitutional Tribunal President, Bogdan Świączkowski, was elected as an MP in 2011 (although his mandate was terminated as he refused to resign from his position of retired prosecutor), former undersecretary of State in the Ministry of Justice (from 2015), former national prosecutor (from 2016), elected to the Constitutional Tribunal in 2022, named as its President in 2024 and ally of the former PiS Minister of Justice Ziobro, who is now living in the United States of America in order to avoid prosecution proceedings for corruption-related offences. The Constitutional Tribunal President has effectively supported President Nawrocki, by accepting only the two judges who were sworn in before the President, and not the remaining four who made the same formal oath, but without the presence of the President of Poland as he failed to call them to an oath-swearing ceremony. The Constitutional Tribunal President considered that, although the judges were elected by the Sejm, they had not taken their oath in the presence of the President. Moreover, he considered that their subsequent attendance at the oath-swearing ceremony organised in the Sejm premises raised concerns.

37. In early April 2026, the Polish Justice Minister ordered prosecutors to launch a criminal investigation into advisers to President Nawrocki for their role in President Nawrocki's decision not to swear in Constitutional Tribunal judges appointed by Parliament. The individuals are alleged to have aided and abetted the President in the crime of abuse of power. The President himself has immunity for his actions.

38. On 6 May 2026, the European Court of Human Rights issues interim measures in the case of *Dziurda and Others v Poland*, which concerns the four elected judges of the Constitutional Tribunal who has so far not been allowed to take up their duties. The Court asked the Polish Government to ensure that the applicants are not hindered in taking up and exercising their duties as judges of the Constitutional Court until any further decision is taken by the Court.

39. The Polish authorities – notably the President of Poland and the President of the Constitutional Tribunal – have not complied with the decision of the European Court of Human Rights.

⁵ On 6-7 December 2024, the Venice Commission issued an Opinion on the [draft Constitutional amendments concerning the Constitutional Tribunal and two laws on the Constitutional Tribunal](#) (CDL-AD(2024)035), requested by the then Minister of Justice of Poland, Mr Adam Bodnar.

40. On 23 September 2026, these matters have recently escalated further, with reports of criminal offences being investigated against two officials of the Court (the Registrar and the Head of Security) for preventing the elected judges from carrying out their work (in part seemingly relying on a failure to comply with the interim measure). In response, the President of the Constitutional Tribunal on 24 September 2026 initiated disciplinary proceedings against Constitutional Tribunal judges for their role in this complaint.

41. It seems difficult to see a constructive way out of the current polarisation and the use and misuse of constitutional powers for party political ends, particular where institutions that ought to serve the Constitution rather than a particular political party have been the subject of institutional capture. Whilst the President is supposed to be above party politics in Poland, this is not always borne out in practice.

42. On Thursday 25 June 2026, following the fact-finding visit, and in light of the challenges caused by the continued prevention of elected Constitutional Tribunal judges from taking up their functions, the Monitoring Committee decided to request an opinion of the Venice Commission on the scope and limits under the principle of the separation of powers of the exercise of presidential powers in relation to oaths of office of constitutional court judges and in relation to other appointment, in light of comparative examples. The Venice Commission is due to adopt its Opinion in October.

43. On 3 September 2026, the Polish Sejm elected a former Cabinet Minister, Maciej Berek, to the Constitutional Tribunal. Unlike the previous judges elected to the Constitutional Tribunal in the last year, Mr Berek is seen as a more political appointment, having been a Minister until very recently. President Nawrocki has subsequently confirmed that he will not invite him for an oath-taking procedure unless he produces documentation proving his legal professional experience.

44. While both sides might, ultimately, prefer a slightly different Constitution, there is no consensus about the desirability of constitutional reform – the Presidential Administration have indicated a preference for a stronger presidential system and a greater role for the President to veto or negotiate on matters within the competence of the parliament or the Government. Others argue that the current system allows sufficient checks and balances, but that institutional capture and misuse of formal roles is frustrating the smooth and correct functioning of the Constitution.

4. The Rule of Law crisis in Poland

4.1. Introduction

45. Rule of law reforms under the former PiS Government were widespread. The justification was to tackle the low public trust in the judiciary in Poland. Reforms, since 2017, removed some of the rights of judges to nominate members to the National Council of the Judiciary (KRS), instead granting increasing rights to politicians and to Parliament for such appointments. Many judges were moved, removed, or promoted in wide-ranging upheavals that were seen as deeply politicised and which deeply divided the judiciary. The newly appointed or promoted judges are often referred to as ‘neo-judges’.

46. The KRS, according to the Polish Constitution, is the “autonomous self-governing body of the judiciary established to safeguard the independence of the judiciary.” Following its reform in 2017, all the members of the KRS are now appointed by the Sejm, which can also nominate the candidates for KRS positions. As a result of these reforms, the KRS could no longer be considered an independent judicial institution – independent from the legislative or executive powers. Legislation to restore improved independence of the KRS was vetoed by the President of Poland, the Sejm thus recently sought a work-around through implementing in practice the proposed reforms (involving an increased role for judges associations) in an attempt to improve the independence of the KRS.

47. The reform of the Supreme Court established two new chambers: the disciplinary chamber and the Chamber of Extraordinary Review and Public Affairs. The members of these two chambers were nominated by the KRS and appointed by the President of Poland. Given the lack of independence of the KRS, the independence of these two chambers is widely questioned. This was confirmed in the judgements of both the Court of Justice of the European Union (CJEU) and the European Court of Human Rights.

48. The Venice Commission has produced five opinions relating to Poland since 2024 – two at the request of the Monitoring Committee.⁶

⁶ Urgent Joint Opinion, 6-7 March 2026, on the [draft law concerning the status of judges appointed or promoted between 2018 and 2025](#) and other related matters (CDL-AD(2026)002); Opinion, 6-7 December 2024, on the [draft Constitutional amendments concerning the Constitutional Tribunal and two laws on the Constitutional Tribunal](#) (CDL-AD(2024)035); Joint

4.2. Judgments of the European Court of Human Rights on judicial independence as a “tribunal established by law”

49. The rule of law crisis in Poland is well known and well-documented, with judgments of the Court of Justice of the European Union and the European Court of Human Rights finding that judges appointed following these reforms did not meet the necessary procedural standards. This was to the extent that court judgments by judges appointed pursuant to such processes could not be considered to be a judgment by an independent and impartial tribunal established by law” (a requirement of Article 6 ECHR). This called into question countless judgments, divorces, civil settlements, prosecutions, – and made it difficult for other courts of European member States to have trust or confidence in Polish court judgments.

50. We will not list here all of the many judgments finding that various – notably the highest – Polish courts were not a “tribunal established by law” for the purposes of Article 6 ECHR due to the procedure for appointing judges being unduly influence buy legislative and executive powers, but examples of relevant European Court of Human Rights judgments include:

- [Xero Flor w Polsce sp. Z o.o. vs Poland](#) (7 May 2021), the European Court of Human Rights found that any bench of Constitutional Court judges that contains a judge that had been appointed in 2015 in violation of the Constitutional Court ruling cannot be considered a tribunal established by law, and that therefore the decisions of such have no legitimacy;
- [Reczkovicz vs Poland \(43447/19\)](#), (22 July 2021), the European Court of Human Rights ruled unanimously that the Disciplinary Chamber of the Supreme Court, was not a “tribunal established by law” within the meaning of the European Convention, given the presence of invalidly appointed judges on the bench;
- [Dolińska-Ficek and Ozimek v. Poland \(49868/19 and 57511/19\)](#) (8 November 2021) and [Wałęsa v. Poland \(50849/21\)](#), (23 November 2023) the European Court of Human Rights similarly found that invalidly appointed judges to the Chamber of Extraordinary Review and Public Affairs of the Supreme Court similarly meant that it was not an “independent and impartial tribunal established by law”.⁷

51. Since these reforms, the judiciary has been heavily divided between newly appointed or newly promoted judges – often called ‘neo-judges’ – and judges whose appointments pre-date these reforms (many of whom refused to apply for posts given the known invalidity and lack of independence of the KRS). This has led to both sets of judges feeling – often understandable – levels of resentment and unfair treatment:

- Many judges who sought to follow the correct procedures and not to apply for promotions through processes (the KRS) that they knew were deficient feel that this has cost them vital career opportunities and that the ‘neo-judges’ should not be rewarded for profiting from an inappropriate system.
- Conversely, other judges who were promoted through the (inappropriately constituted) KRS point out that they have long-standing, respectable judicial careers and that they should not be penalised, en masse, merely for applying for roles that arose. In this context they find the name ‘neo-judges’ to be offensive given their proven judicial track-record.
- Importantly, many of the newly-appointed junior judges highlight that they had no alternative to appointment by the – admittedly problematic – KRS as they simply finished their studies in the last decade and therefore the only method for judicial appointment was through KRS. Many of these more junior judges understandably feel stigmatised through no fault of their own. The authorities seem to recognise the need to regularise, without undue stigma, the position of this more junior judges.

52. The result is that judgments involving ‘neo-judges’ risk being successfully challenged, given that the National Council of the Judiciary (KRS) – following the 2017 reform – was no longer considered a body that is independent from the legislative or executive powers. This issue is significant because around 30% of the Polish judiciary (around 3000 judges) were appointed under the defective procedure – on the recommendation

Opinion, 11-12 October 2024, on [European Standards regulating the status of judges](#) (CDL-AD(2024)029); Opinion, 11-12 October 2024, on the [draft amendments to the Law on the Public Prosecutor's Office](#) (CDL-AD(2024)034); Urgent Joint Opinion, 21-22 June 2024, on the draft law amending the [Law on the National Council of the Judiciary of Poland](#) (CDL-AD(2024)018). Additionally the Venice Commission is currently working on a Joint Opinion on the draft law “on [reinstating the right to a fair trial and hearing the case without undue delay](#)” proposed by the President of the Republic of Poland.

⁷ Although the European Court of Human Rights has communicated several cases concerning the alleged irregularities in the appointment of ordinary court judges, no judgment has yet been delivered.

of the reformed KRS that lacked sufficient independence (as recognised by both the CJEU and the European Court of Human Rights). This represents a huge challenge for the Polish justice system – in terms of how to resolve the status of those judges, but also how practically to attribute cases between judges. In practice, the most important cases within the ordinary courts have tended to be attributed to validly appointed judges to avoid risks to the rule of law and the stability of judgments, but this itself creates a strain on resources.

53. It has therefore been necessary to reform the KRS to ensure future appointments are properly made (point c below) and to determine the status of the ‘neo judges’ appointed during this period – whilst bearing in mind that a distinction can be drawn between judges of the Constitutional Tribunal and Supreme Court – and judges of the ordinary courts.

4.3. Reform of the National Council of the Judiciary (KRS)

54. The coalition government was elected in 2023 on the promise of restoring the rule of law in Poland and, in that context, implementing the different judgements of the European Court of Human Rights regarding the independence of the Polish justice system, including: reform of the Constitutional Court; reform of the KRS (National Judicial Council); resolving the status of those judges appointed by the KRS (so-called neo-judges) after the controversial reform in 2017, and the separation of the powers of the minister of justice from those of the Prosecutor General.

55. On 21 February 2024, the Polish Government tabled with the Sejm a draft “Law on amendments to the Law of the National Council of the Judiciary”, to change the manner of appointment of the judicial members of the KRS, which is essential for the independence of the judiciary in Poland. On 6 March 2024, the Monitoring Committee asked for an opinion of the Venice Commission.

56. In its urgent Joint Opinion, 21-22 June 2024, on the draft law amending the [Law on the National Council of the Judiciary of Poland](#) (CDL-AD(2024)018), the Venice Commission:

- Stressed that “any measure taken with a view to ‘restoring’ the rule of law has to meet the overall requirements of the rule of law” even if that means “some balancing between different – apparently conflicting – rule of law principles.” (paragraph 78).
- Considered that while the proposal of the election of fifteen judicial members of the KRS by the judicial community is fully in line with European standards, the exclusion of the right to stand for election for judges who were appointed or promoted during the activities of the KRS as reformed in 2017, without individual assessment, raises questions of proportionality, and thus compatibility with Rule of Law standards.
- Recommended the authorities to reconsider the eligibility criteria for judges seeking candidacy in the election for the KRS. An amendment that would allow the so-called neo-judges to stand in the elections for the KRS was adopted by the Polish Senate, but not taken over by the Polish Sejm.
- Considered that the “ex lege early dismissal of sitting judicial members of the NCJ [KRS] appears justified in the particular circumstances of the Polish case, and compatible with European standards” (§ 83).

57. On 2 August 2024, the former President Duda decided not to sign the law but to send it to the Constitutional Tribunal for a review of its constitutionality. Given the (PiS-weighted) composition of the Constitutional Tribunal was widely seen as a delaying tactic. Efforts to amend the law to provide for a rule-of-law-compliant KRS, and thus to guarantee the independence of the judiciary consequently failed.

58. In consequence, the Government sought a more practical way of implementing the reforms in practice, even if the legislation remained unchanged, thus seeking to improve the independence of this key judicial institution, notwithstanding the Presidential blockage. The Government thus sought to enable the judges organisations in practice to nominate members (even if these nominations still technically must be endorsed by the Sejm). On 7 April 2026, the Sejm published a [list](#) of 60 candidates, supported either by a group of at least 25 judges or 2000 citizens. The list was a genuine mixture of candidates, including well-known judges involved in the defence of the rule of law after 2015 (including former President of the “old” KRS, Supreme Court Judge Dariusz Zawistowski), current members of the “neo” KRS (Judge Stanisław Zdun, Judge Anna Dalkowska), several ‘neo-judges’ of the Supreme Court, as well as two former Disciplinary Officers for Ordinary Court Judges, determined by the ECHR to have been instrumental in persecuting judges defending the rule of law (Przemysław W. Radzik and Piotr Schab – see for instance the judgment in *Tuleya v. Poland*). The Sejm – on the final day of the fact-finding visit- then formally elected the judges, but based on the candidates supported by the judges associations. The judges elected to the KRS reflected the genuine mixture of candidates – for example it included the former Deputy Minister of Justice under PiS (2015-2019), Mr Piebiak. Whilst a lack of legislative reform is not ideal – and legislative reforms remain necessary – given the opposition

to the necessary legislative reform by the previous and current Polish President, the compromise of enabling judicial involvement in the nominations seems to be an improvement in the independence of the KRS, even though legislative reforms remain necessary to address the structure and legislative failings of the existing law.

59. It is important to note that we met with the outgoing KRS members – a mere couple of days before the vote in the Sejm on the new members. We did not therefore have the opportunity to meeting the current KRS composition since the change in membership. It was clear that some of the outgoing KRS members felt they had been treated unfairly. We have unfortunately not yet had the opportunity to assess the independence and functioning of the new composition of the KRS, who have only taken up their functions following out visit.

4.4. Status of judges

60. A significant issue remains as to what to do in relation to the so-called ‘neo-judges’. In its Joint Opinion, 11-12 October 2024, on [European Standards regulating the status of judges](#) (CDL-AD(2024)029), requested by the then Minister of Justice of Poland, Mr Adam Bodnar; the Venice Commission:

- Considered that the question of how to deal with the judges that had been appointed via a deficient procedure (by the KRS after its controversial 2017 reform) should be seen foremost in the light of Poland’s obligation of executing the relevant judgments of the European Court of Human Rights regarding the judiciary.
- The authorities are free to choose the means of how to do this as long as those means are compatible with the principles of the Rule of Law and the European Convention on Human Rights.
- Any mechanism should deal with all judges concerned; should not be implemented by a government-controlled body; should be subject to judicial; and should allow for an individual assessment of the deficient appointments (§ 47- 48 and 51).
- The *ex tunc* invalidation of appointments made by the KRS following the 2017 reforms would run counter to rule of law principles, especially as it would fail any proportionality test (§ 49).

61. Discussions on how best to resolve these issues are taking place within the context of deep divisions within the judiciary, as outlined above. Many of the judges’ organisations whose members have suffered as a result of the reforms insist that appointments, promotions or transfers during the relevant period should be reversed and that key judicial positions should be reserved for judges that opposed the reforms under the previous government, even if this would run against the principles of a merit-based appointment process. Others argue that each appointment should be evaluated individually in order to comply with European principles for the rule of law (that are also part of the Polish Constitution). President Nawrocki has also refused to promote any judges who question the legitimacy of ‘neo-judges’ – even if they are merely following the judgments of the ECHR and CJEU.

62. In its Joint Opinion, 6-7 March 2026, on the [draft law concerning the status of judges appointed or promoted between 2018 and 2025](#) and other related matters (CDL-AD(2026)002) the Venice Commission noted that the most recent draft law, if it integrated some minor changes, would be a viable solution compatible with the requirements of the rule of law and the ECHR judgments. This seems unlikely to prove successful as the Presidential administration has refused to take this law as a departure point for a compromise solution (which, given the liberal use of the veto power means that the bill is unlikely to lead to legislative change).

63. Subsequently, in March 2026, the European Court of Justice (CJEU) ruled that defects in how Polish judges of the ordinary courts were appointed do not automatically mean the judge lacks independence, and national courts must examine each case individually. Importantly, however, this finding is only relevant for judicial appointments in ordinary courts (i.e. not the Supreme Court or the Constitutional Tribunal). This echoes the Polish Supreme Court judgment of January 2020 in which the Supreme Court held that there must be no doubt regarding the legality of the appointments of judges to the Supreme Court (given its systemic position for justice in Poland); however, for ordinary courts, an individual case-by-case examination was appropriate. The recent CJEU judgment was welcomed by PiS as they say that it indicates that there is no requirement for the en masse negation of ‘neo-judges’ appointed to the ordinary courts.

64. Given the strength of feeling – in particular amongst members of the judiciary – and the feeling of unfair treatment by all sides, it is imperative that a viable and trusted solution is found and implemented as soon as possible in order to restore the trust in the Polish judiciary and justice system and to try to mend to rift between the newly appointed or promoted judges and the rest.

4.5. Law on the Public Prosecutor's Office

65. The Government introduced a draft law to separate the offices of Prosecutor General and Minister of Justice. These positions had been combined under the previous PiS government, which had raised serious concerns with regard to checks and balances (separation of powers) and centralisation of powers in the position of the Minister of Justice.⁸

66. In its Opinion, 11-12 October 2024, on the [draft amendments to the Law on the Public Prosecutor's Office](#) (CDL-AD(2024)034), requested by the then Minister of Justice of Poland, Mr Adam Bodnar, the Venice Commission:

- welcomed the proposed separation of the offices of the Prosecutor General and the Minister of Justice, which has been a long-standing recommendation of the Venice Commission as well as the Assembly.
- welcomed the election of the Prosecutor General by the Sejm with absolute majority and with consent of the Senate.
- recommended that the authorities consider additional measures to ensure a non-politicised appointment process.
- to avoid any risk of abuse, it recommended that procedural “*guarantees against the unfair dismissal of the Prosecutor General should be provided*” (paragraph 98(v)).

67. Given the indication that these legislative reforms would likely be blocked by the Presidency (in part due to separate disagreements around the appointment of the current National Prosecutor), as a work-around, the Minister of Justice has, in practice, created administrative separations between these different functions as a means of seeking to implement the spirit of the separation of powers – even if legally this requires legislative reform that the Government is blocked from implementing.

5. Human rights

5.1. The right to asylum, respect for the judgments of the European Court of Human Rights and interim measures

68. The right to claim asylum is guaranteed under the Constitution of Poland. Under Polish law this should mean that the core of this right cannot be restricted (and that any restriction must be done by statute).

69. Since 25 March 2025, this constitutional right to claim asylum in Poland is ‘temporarily’ suspended. This has led to refusals to consider asylum applications and to the return of refugees to countries where they will be persecuted, in breach of the Refugee Convention and often the ECHR.

5.2. Respect for the judgments of the ECHR and interim measures

70. On 10 April 2026, Poland deported 3 Afghan citizens, despite interim measures indicated by the European Court of Human Rights. Overall, the Court granted 9 interim measure requests, indicating that the applicants should not be removed from Poland until 5 June 2026. Despite that fact, 3 applicants were put on a military flight and taken to Tashkent, Uzbekistan. Human rights lawyers argued that the applicants still remained under Polish jurisdiction and should be taken back to Poland. According to oko.press, the Foreign Ministry “could not reach the Polish Border Guard in time to prevent the deportation”. Similar events seem to have occurred in February 2026.

71. This situation therefore represents an arguably violation of constitutional rights, the principle of non-refoulement in the Refugee Convention, as well as various provisions of the ECHR. Specifically, all Council of Europe States must have in place adequate mechanisms to ensure respect for ECHR decisions – including mechanisms to prevent deportations that would permanently deprive the applicants of their rights.

72. As mentioned above, on 6 May 2026, the European Court of Human Rights issued interim measures in the case of *Dziurda and Others v Poland*, asking the Polish Government to ensure that the four elected Constitutional Tribunal judges who have been prevented from assuming their functions are not hindered in taking up and exercising their duties as judges of the Constitutional Court until any further decision is taken by

⁸ The Monitoring Committee had sought the Opinion of the Venice Committee on this law, which resulted in “Opinion on the Act on the Public Prosecutor's Office, as amended” of 8-9 December 2017, which concluded that these reforms resulted in “the accumulation of too many powers for one person” with “direct negative consequences for the independence of the prosecutorial system from the political sphere, but also for the independence of the judiciary”.

the Court. The Polish authorities – notably the President of Poland and the President of the Constitutional Tribunal – have not complied with the decision of the European Court of Human Rights.

73. On 4 September 2026, the Sejm adopted the Act on the execution of ruling of the European Court of Human Rights, which would clarify Governmental responsibility for giving effect to European Court of Human Rights judgments and interim measures. It is currently awaiting the decision of the President of Poland.

5.3. Media freedom

74. During the years of PiS Government, PiS officials were appointed to run the main state media outlets. This led to unbalanced media reporting, with concerns that the media were contributing to polarisation within Polish society. One well-known example is the killing of the Mayor of Gdansk, Pawel Adamowicz in 2019, by a former prisoner who was allegedly radicalised by watching State television. Such unbalanced media reporting continued after the elections given the continued control of State media outlets. As a result, the Tusk government dismissed the heads and boards of the Polish Television, Polish Radio and the Polish Press Agency. The manner in which this was done was controversial:

- The PiS government had set up a National Media Council, which remained under its control even after the election, and which would be responsible for the appointments and dismissal of the heads of these institutions.
- Given questions about the constitutionality of the National Media Council, the Government sidestepped the Council and instead used the law on Commercial Companies (claiming the government was the biggest or single shareholder of the public media companies) to put the media outlets into liquidation in order to be able to intervene to dismiss and replace the respective heads of these organisations.
- The National Media Council, on its side, appointed alternative Heads for these agencies, leading to a legal, and physical, standoff, which resulted in the public media being taken off the air temporarily.
- The controversial manner in which the heads of the public media were replaced was strongly criticised by the international commentators and civil society, which questioned the legality of the procedure.
- The Constitutional Court has ruled the replacement of the heads of these media institutions as unconstitutional, but as this ruling was made by a bench that included judges that are considered to be illegally appointed, this ruling is being ignored by the authorities.

75. Added to this is an increasing diversification of alternative media outlets, with some concerns over Russian influence. In sum, whilst there have been dramatic changes to the Polish media landscape since 2023, public trust in the media has not improved.

6. Conclusion

76. We are grateful to the Polish authorities for their assistance and engagement during the visit. Poland remains an important and significant country. Our visit focussed particularly on the rule of law and the functioning of the constitution, and we were able to develop an idea of the scale and nature of the challenges affecting this area.

77. The level of polarisation within the country -and mutual feelings of grievance – are a significant concern and are pervasive across society. It is perhaps exemplified by the genuine – and often understandable – feelings of grievance by the different categories of judges; constitutional actors who should be above party politics. This does not only affect particularly politicised individuals – indeed the polarisation has bled across to all individuals within these institutions. Efforts to re-establish a common cause and to reunite and reconcile society are much needed.

78. Efforts to pass much-needed reforms often risk being blocked or vetoed. Key judicial bodies, notably the Constitutional Tribunal are politicised, undermining judicial independence, the separation of powers and the ability of these institutions to perform their constitutional functions. Indeed, the situation of the Constitutional Tribunal seems to have deteriorated further since our visit and is at risk of becoming untenable.

79. There are significant concerns that some actors appear willing to manipulate the law, the constitution or legal procedures to seek to expand their own power or block the functions of other branches of government. These developments could constitute a misuse of power, undermining the constitution and constitutional and rule of law principles.

80. It is important the Monitoring Committee and the Assembly seek to support Poland in re-establishing a functioning and credible justice and rule of law system, and in being able to move beyond the current extreme polarisation within Polish society and politics.

APPENDIX 1: PROGRAMME OF THE VISIT

Programme of the fact-finding visit to Warsaw (13-15 May 2026)

Co-rapporteurs:	Mr Christophe BRICO, Monaco, Group of the European People's Party Mr Didier MARIE, France, Socialist, Democrats and Greens Group
Secretariat:	Ms Eleanor HOURIGAN
Main topics:	Democratic Institutions: polarisation; checks and balances and institutional restraint; the role of the President; the functioning of the Constitution. Rule of Law: the reputation of, and respect for, the Constitutional Tribunal. Rule of Law: the status of the "neo-judges" and the impact on legal certainty for citizens.

Wednesday 13 May 2026

- 9:00–10:00 Meeting with Professor Mirosław Wyrzykowski** (former judge of the Constitutional Tribunal, former dean of the Faculty of Law and Administration at the University of Warsaw).
- 10:00–11:00 Roundtable with Civil Society Organisations in Poland focusing on the rule of law**
- 11:00–12:00 Meeting with professional organisations for legal professionals, prosecutors and judges**
- 13:00–14:15 Lunch with the Deputy Marshall of the Sejm Mr Szymon Hołownia**
- 14:45-15: 45 Meeting with the Government Agent to the European Court of Human Rights**
- 16:00-18:00 Meeting with National Council of the Judiciary (NCJ/KRS)**
- 19h30 Dinner** organised by the French Embassy for a briefing from the international community.

Thursday 14 May 2026

- 09:00-10:00 Meeting with the Undersecretary of State in the Ministry of Justice, Ms Maria Ejchart**
- 11:00-12:00 Meeting with the President and judges of the Constitutional Tribunal**
- 13:00-14:15 Lunch with Ms Agnieszka Pomaska, Chairperson and members of the Polish delegation to PACE**
- 14:30-15:30 Meeting with Supreme Court Praesidium**
- 16:00–17:00 Meeting with ruling majority parties**
- 17:10-18:10 Meeting with opposition parties**

Friday 15 May 2026

- 9:00-10:00 Meeting with Presidential Administration**
- 10:30–11:30 Meeting with the Deputy Ombudsman of the Republic of Poland**

APPENDIX 2: PRESS STATEMENT OF 19 MAY 2026 FOLLOWING THE FACT-FINDING VISIT**Poland: PACE monitors concerned at persisting politicisation of the highest judicial functions**

Ending a three-day visit to Warsaw, the co-rapporteurs of the Parliamentary Assembly of the Council of Europe (PACE) for the monitoring of Poland, Christophe Bricq (Monaco, EPP/CD) and Didier Marie (France, SOC), have reiterated their concern at the level of polarisation within the country.

“Key judicial bodies, notably the Constitutional Tribunal and the National Judicial Council, are politicised, undermining judicial independence, the separation of powers and the ability of these institutions to perform their constitutional functions,” warned the co-rapporteurs, calling on all actors to urgently make concerted efforts to depoliticise the senior judicial roles.

“There are significant concerns that some actors appear willing to manipulate the law, the constitution or legal procedures to seek to expand their own power or block the functions of other branches of government. These developments could constitute a misuse of power, undermining the constitution and constitutional and rule of law principles,” they said.

The co-rapporteurs concluded that Poland has still to resolve its long-running rule of law and constitutional crisis, and that enhanced efforts from all state actors are required for the country to remain in compliance with accepted European standards of judicial independence and respect for the rule of law.

PACE opened its monitoring of Poland on 28 January 2020. Poland is one of ten Council of Europe member states subject to the full monitoring procedure.