

SUMMARY



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1. This monograph presented a case study of Polish constitutional experiences, focusing on the reversal of the rule of law – the use of arguments invoking its restoration or implementation while simultaneously violating the fundamental principles of the state’s constitutional order.

Against the backdrop of theoretical and doctrinal assumptions concerning the rule of law and the jurisprudence of the Constitutional Tribunal (CT) and international courts, the study identified behavioural standards and instances of their transgression within the legislative, executive, and judicial branches. It also examined the influence of international and EU law on these processes and assessed public authority actions lacking a basis in domestic competence norms governing the creation and application of law.

The research did not seek to evaluate Poland’s compliance with the rule of law requirements under Art. 7 TEU. Instead, it adopted a broader perspective, treating the rule of law as a fundamental principle of the Polish legal system that has shaped its constitutional framework and evolved through the jurisprudence of the CT. This principle serves as a standard of review for public authorities’ actions.

However, as the analysis has demonstrated, the rule of law can be reduced to a rhetorical device used to justify actions that, in reality, violate legal norms, including fundamental constitutional values. This approach breeds legal chaos, undermines state loyalty towards legal subjects – particularly citizens – erodes legal certainty and security, and relativizes the concept of law itself, ultimately diminishing public trust in state institutions.

The study aimed to diagnose the forms and justifications of reversing the rule of law and to develop arguments capable of deconstructing these narratives.

2. Accordingly, it found that the rule of law has evolved into an interpretative principle, often employed in both apologetics and criticism, at times as an ideological

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tool. While a normative constitutional value in many legal systems, especially in former dictatorships, its interpretation varies across countries due to distinct historical and political contexts.

A key challenge is the inconsistent application of the rule of law, frequently shaped by political will and public interest. Critics argue that political assessments are often superficial, disregarding deeper societal and cultural factors. International rankings oversimplify the concept, failing to account for historical and institutional differences. The fragility of the rule of law is also evident in its ready abandonment during crises or its replacement by algorithmic decision-making, which carries separate risks.

Democratic systems balance freedom and the need to restrain arbitrariness. The rule of law should be adapted to national contexts rather than imposed through rigid uniformity. Building trust in state and EU institutions through meaningful, context-sensitive dialogue is essential to ensuring fairness and predictability in governance.

3. The study's analysis of the reversed rule of law was grounded in the Polish legal order. The concept of a rule-of-law state was introduced in the December Amendment of 1989 to the Constitution, marking a symbolic break with socialist democracy and a turn towards Western democratic values. Initially unfamiliar to Polish jurists, it gained constitutional significance during systemic transformation and became a fundamental principle shaping the new political and legal order. Over time, its legal force evolved through three phases: the December Amendment (1989–1992), the Small Constitution (1992–1997), and the current Constitution (since 1997), where it became fully institutionalised.

Although the rule-of-law state has no universally accepted definition, it denotes a set of principles underpinning legal order. In Poland, these include constitutionalism, legality, the separation of powers, democratic legitimacy, and the protection of fundamental rights and freedoms. Additionally, it encompasses legislative principles such as legal clarity, non-retroactivity, legal certainty, and state loyalty to citizens. Before the 1997 Constitution, the CT played a decisive role in shaping these principles, deriving systemic norms such as democracy, legality, decentralisation, and pluralism, as well as individual rights including life, dignity, privacy, and access to justice. While now embedded in the Constitution, the rule-of-law clause continues to guide legislative processes and uphold democratic standards.

The rule-of-law state remains a cornerstone of Poland's legal system, influencing governance, legal stability, and the protection of fundamental rights. Yet its interpretation is dynamic, continuously shaping constitutional debates and state practice.

The CT's stance on the rule of law remains consistent: it has not endorsed doctrines permitting violations of this principle under the guise of its restoration. The requirements of the rule of law, developed over decades from the Constitution and CT jurisprudence, provide the benchmark for assessing the legislative, executive, and judicial branches' actions.

4. A fundamental issue examined was how the rule of law is reversed in relation to the constitutional system of legal sources and the legislative process. Law underpins the rule of law; the relationship between the two is central to a democratic state's stability, justice, and transparency. While the law provides the framework for regulating society, the rule of law guarantees its fair and consistent application, preventing arbitrary governance. However, recent legal and political developments have revealed alarming trends that erode constitutional legality and destabilise democratic governance.

The manipulation of legal sources and the erosion of the rule of law in the legislative sphere pose a severe threat to democratic governance. When legislative processes deviate from constitutional principles, law ceases to safeguard citizens' rights and instead becomes an instrument for arbitrary political action. Violations such as circumventing constitutional legality, marginalising independent oversight bodies like the CT, and introducing dispersed constitutional review create legal uncertainty and weaken institutional checks and balances.

Undermining the hierarchy of legal sources is particularly damaging. Constitutional norms must retain primacy to ensure coherence and predictability. Yet, political interference, extra-legal control mechanisms, and attempts to redefine constitutional legality distort this hierarchy, allowing norms to be reshaped contrary to democratic values. Additionally, the increasing reliance on informal mechanisms – such as political directives or non-binding expert opinions – exacerbate arbitrariness, further destabilising the legal order.

These abuses do more than impair technical aspects of the legal system; they undermine the core principles of democracy by weakening transparency, accountability, and public confidence in institutions. A democratic state governed by the rule of law requires clear, stable, predictable legal standards and independent judicial oversight to prevent legislative overreach. Without such safeguards, law becomes a tool of political expediency rather than a framework for justice and rights protection. Restoring trust requires a return to constitutional integrity, judicial independence, and adherence to legal certainty so that law can resume its proper role as the foundation of democratic governance.

A significant threat arises from redefining constitutional legality in ways that relativise fundamental constitutional values. As the supreme legal act, the Constitution should establish clear limitations on state power and guarantee rights. When its principles are reinterpreted to justify political actions, the legal system loses its coherence, and the rule of law becomes an instrument of power rather than a check upon it. Weakening the CT is particularly destructive. As the primary guardian of constitutional compliance, it ensures that legislation conforms to democratic principles. Ignoring or undermining its authority destabilises the legal system, disrupts the separation of powers, and deprives citizens of an essential mechanism for protecting their rights.

Another concerning development is the shift from concentrated constitutional review – whereby a single independent body ensures legal consistency – to dispersed

review, allowing multiple courts to assess the constitutionality of laws. While intended to democratise legal oversight, this leads to conflicting interpretations, legal uncertainty, and inconsistent judicial decisions. Citizens risk unequal treatment depending on how courts interpret their cases, violating the principle of equality before the law and eroding trust in the judiciary. The growing use of non-legal mechanisms – political pressures, informal guidelines, or expert opinions without legal basis – further undermines the rule of law, enabling those in power to manipulate the law to serve their own interests.

The cumulative effect of these practices is the destabilisation of the legal system and a profound loss of public confidence in state institutions. When authorities disregard constitutional constraints, circumvent oversight mechanisms, and introduce unpredictable legal standards, the protective function of the law collapses. This not only weakens individual rights but also undermines the fundamental principles of a democratic state. Upholding the rule of law requires strict adherence to constitutional provisions, respect for judicial independence, and a firm commitment to legal clarity and consistency. Without these safeguards, the integrity of governance is compromised and democracy deteriorates.

5. The political narrative surrounding the restoration of the rule of law in Poland has increasingly been framed in revolutionary and militarised terms. The assertion that constitutional order must be defended through ‘militant democracy’ has led to the instrumentalisation of legal norms, where adherence to the rule of law is subordinated to political imperatives. This shift undermines the autonomy of law from politics, a cornerstone of liberal legal culture, and promotes a model in which political decisions override legal constraints in the name of higher objectives. The executive’s actions after 2023 suggest that it perceives itself as operating in an exceptional state, where ordinary legal standards are subordinated to urgent political needs. This approach erodes legal stability as principles central to the rule of law – judicial oversight, the separation of powers, and legal predictability – give way to ad hoc decision-making driven by short-term goals.

This rhetoric of emergency governance echoes key tenets of the decisionism doctrine, which prioritises the act of decision over adherence to established legal norms. The premise that exceptional situations require exceptional measures allows political actors to redefine legality on their terms, effectively blurring the line between the rule of law and rule by law. This trend reflects historical theories of emergency powers, particularly the concept of constitutional dictatorship, which permits temporary departures from democratic norms to safeguard the state. However, such measures are legitimate only, when necessary, temporary, proportionate to the crisis, and directed at restoring the pre-existing constitutional order. In Poland’s case, these criteria are not met. There is no demonstrable existential crisis, and actions taken in the name of defending the rule of law appear to entrench new power dynamics rather than restore constitutional normalcy.

A telling example of this shift was the government's appointment process in December 2023, where key constitutional requirements were openly disregarded. Alterations to the oath of office text – a symbol of commitment to legal continuity in established democracies – signalled a readiness to sideline constitutional formalities. Such departures from legal norms, even when justified by political necessity, set a dangerous precedent: the law is selectively followed or ignored according to expediency. These risks transforming what is framed as temporary exception into systemic practice, dismantling constitutional barriers intended to protect democratic governance.

The reliance on crisis rhetoric to justify these actions is particularly problematic because it fosters a self-perpetuating cycle in which political leaders claim the necessity of extraordinary measures while simultaneously eroding the very legal framework that enables disputes to be resolved institutionally. This further destabilises the legal system and diminishes trust in state institutions, as laws and constitutional principles are reduced to tools for consolidating power. The shift from concentrated constitutional review by an independent tribunal to a fragmented, politically influenced process exacerbates legal uncertainty, enabling those in power to shape interpretations for immediate advantage.

The Polish constitutional framework does not recognise a doctrine of emergency powers that would allow fundamental principles to be suspended. Constitutional absolutism – the idea that the Constitution applies equally in all circumstances – directly opposes the notion that legal norms can be temporarily overridden to address perceived crises. This approach assumes that the Constitution was designed with sufficient foresight to handle all challenges and does not grant political actors discretionary authority to circumvent its requirements. Any departure from this principle undermines the legal order and the democratic legitimacy of governance itself.

Ultimately, attempting to restore the rule of law through measures that violate legal norms is self-defeating. Bypassing constitutional procedures under the pretext of defending democracy leads to legal nihilism, where the ends justify any means. The experience of the past year in Poland demonstrates that ignoring constitutional constraints weakens democracy rather than strengthens it. The preamble to the Polish Constitution underscores the duty of state authorities to engage in dialogue and cooperation, even amid political tensions. Respect for constitutional provisions, legal certainty, and institutional checks and balances remains the only viable path to preserving the rule of law and rebuilding public trust in democratic governance.

6. The Polish justice system is experiencing multidimensional lawlessness, characterized by breaches of constitutional principles, institutional disruption, and procedural irregularities. At the core of this crisis is the erosion of fundamental constitutional values, including the rule-of-law state, the supremacy of the Constitution, and the separation of powers. Courts, the executive, and the legislature have sometimes disregarded these principles, instead aligning judicial interpretations with external legal frameworks shaped by international courts. This has shifted Poland's

constitutional system, with domestic legal standards redefined through international judicial activism, upsetting the balance between national sovereignty and international obligations.

Institutionally, the authority of judges, courts, the NCJ, and the President's role in judicial appointments has been openly challenged. International courts, particularly the ECtHR and the CJEU, have influenced these changes by extending their authority beyond conventional treaty obligations. National courts have followed suit, questioning judicial appointments and rulings, further destabilising the system. This process has blurred the lines between constitutional and international law, allowing foreign judicial interpretations to shape domestic governance, often without a clear legal basis.

Procedurally, the judiciary has been destabilised by rulings that contradict established legal norms. Courts have disregarded binding laws, introduced fictional legal constructs, and adjudicated cases without a legitimate legal foundation. The application of repealed laws, judgments based on interpretations lacking statutory authority, and manipulation of legal precedents have fuelled legal chaos. Such practices have undermined the constitutional framework and eroded legal certainty, a core element of the rule-of-law principle. As a result, the judiciary has become increasingly detached from constitutional legitimacy, prioritising international rulings and political narratives over domestic legal order.

A central feature of this reversed rule of law is the attempt to legitimise legal disruptions by shifting them from the constitutional domain into the sphere of international law. Traditionally, constitutional order and democratic governance were matters of national sovereignty, yet recent judicial interventions have reframed them as subject to international oversight. This shift has been driven by EU law and the Council of Europe's legal framework, which imposes standards that at times conflict with national constitutional principles. The ECtHR, originally tasked with upholding human rights, has evolved into a quasi-constitutional body shaping member states' legal systems beyond its original mandate. Similarly, the CJEU has expanded its influence by interpreting Art. 2 TEU as an enforceable legal obligation rather than an aspirational principle. This reinterpretation has directly affected Poland's judicial system, imposing external standards that override constitutional provisions.

A particularly alarming consequence of this external interference is the erosion of national sovereignty in judicial matters. The primacy of EU law has been invoked to replace national legal norms with EU standards, even at the constitutional level. The CJEU's expanded influence – moving from interpreting EU treaties to reshaping national legal structures – has resulted in Polish courts, under pressure from international rulings, questioning the legitimacy of judicial appointments and the President's prerogative to appoint judges. This has created a legal paradox: decisions reached within the constitutional framework are challenged by external interpretations, placing domestic judicial authority under international supervision.

In response, some national courts have overstepped their constitutional mandates, acting as self-appointed arbiters of systemic legal disputes. Judges have questioned

the status of their colleagues, refused to apply laws they deemed politically motivated, and disregarded CT rulings. This internal judicial rebellion, supported by political factions and external legal narratives, fractured the judicial hierarchy, with lower courts at times rejecting the decisions of higher courts. The resulting legal uncertainty eroded public trust in the judiciary and weakened the rule of law.

The crisis deepened through procedural manipulations, notably the use of preliminary rulings to challenge national legal standards. The CJEU has expanded the scope of preliminary rulings beyond their original purpose, enabling Polish courts to bypass domestic procedures in favour of EU law. This has led to the 'revival' of repealed national laws, the suspension of valid norms, and the application of legal principles without grounding in Polish constitutional law. The result is a fragmented legal system where different courts apply conflicting standards, creating an unpredictable and unstable judiciary.

Moreover, the judiciary has been politicised by ideological divisions, with some judges aligning with external political forces to resist domestic judicial reforms. The influence of political factions within the EU and the Council of Europe has intensified international legal pressure on Poland, offering a means to circumvent domestic processes through external rulings. This intervention has had a profound impact: legal principles have been selectively applied, judicial appointments questioned, and constitutional guarantees overridden.

A crucial factor in this judicial disarray was the introduction of the statutory test of judicial independence and impartiality, which was intended as a compromise to meet EU conditions for accessing recovery funds. Rather than resolving disputes, this legal concession backfired, furnishing judges with a formal instrument to challenge appointments, thereby strengthening opposition to reforms. It institutionalized judicial uncertainty, allowing courts to question their peers' independence on subjective grounds. Its use by judges previously involved in related disputes has further eroded credibility and impartiality, deepening the instability of the judicial system.

The collapse of legal certainty in Poland results directly from judicial activism, international interference, and internal judicial conflict. The rule of law has been paradoxically undermined in the name of defending it, as courts selectively interpreted legal principles to serve political agendas. The judiciary no longer operates under a unified constitutional framework but is instead divided along political and legal lines. Judicial authority has been eroded, constitutional principles redefined by external rulings, and legal predictability dismantled, creating a justice system in crisis.

To restore legal stability, the judiciary must return to constitutional foundations, reestablish clear boundaries between national and international legal obligations, and reaffirm the supremacy of the Constitution as the highest legal norm. Judicial independence must be protected but cannot be used as a tool for institutional anarchy. Without a constitutional realignment, the erosion of the justice system will continue, ultimately threatening the stability of Poland's democratic governance.

7. One of the core elements of the rule of law in Poland is the supremacy of the Constitution. A coherent interpretation of constitutional principles underpins the concept of the rule of law, which forms part of each state's unique identity. By contrast, the EU's conception of the rule of law, as enshrined in Art. 2 TEU, is derived from the constitutional traditions of its Member States.

This raises the question of whether – and to what extent – the constitutional value of the 'rule of law' can be defined by other legal systems reflexively. Even if the Constitution permits the operation of other legal systems on Polish territory, it determines the form and effectiveness of their operation. For many years, the coherence of these systems remained unchallenged. Difficulties arose when international bodies, by interpreting guarantees of human rights, attempted to influence values that also formed part of Poland's political system and thus fell within the sphere of absolute state sovereignty.

Poland's position is not one of rejecting the rule of law, contrary to its portrayal internationally, but rather of defending its sovereign right to define standards relating not to human rights as such but to the structure of the political system. Even if these standards support the effective implementation of human rights, such implementation can be achieved through various legitimate means. External intervention that redefines state obligations through interpretative expansions of treaties, rather than formal amendments, lacks authorisation and legal basis.

External legal systems should respect constitutional individualism. International conceptions of the rule of law cannot dictate how domestic systems regulate the relationship between the judicial power and other authorities in the state. Nor can they prescribe the allocation of powers among state organs, which remains the prerogative of the Constitution and the sovereign will of the legislature. This diversity explains the variety of judicial systems, court positions, and judges' statuses across European countries. While outcomes may be evaluated, prescriptive directives cannot be imposed.

8. The government's uncritical subordination to the CJEU and ECtHR poses serious risks to Poland's statehood. Both tribunals, through their rulings, have encroached upon areas reserved for the state's discretionary competence. EU treaties themselves delimit the competences transferred to the Union, leaving all others to the state. As for the ECtHR, the matters at issue lie entirely outside the *ratione materiae* of the ECHR.

Both tribunals have relied on the construction of human rights – particularly the right to a fair trial and the right to a court – to exert influence over the organisation and personnel of the judiciary. They have sought to eliminate any role of domestic law in defining the content of the 'right to a court', contrary to the CT's judgment K 7/21, which affirmed the primacy of the Polish Constitution.¹

By accepting this judicial overreach, the government effectively consents to the extra-treaty expansion of the tribunals' jurisdiction at the expense of state

1 Judgement of CT, K 7/21, OTK ZU A/22 pt. 5.2.5.

sovereignty. This infringes Poland's right to determine its political system and the structure of its statehood. It also violates the essence of state sovereignty. The two tribunals are not concerned with overseeing the exercise of sovereignty in areas where the state has granted consent through treaty provisions; rather, they seek to influence the structure of the state's political system and the status of state officials (judges),² the foundations of which are enshrined in constitutional provisions such as Art. 144(3)(17), Art. 173, Art. 178(1), Art. 180(1), Art. 186, Art. 187, and others.

Such actions undoubtedly also breach the Constitution as interpreted in the CT's judgment of 11 May 2004, K 18/04, which held that competences cannot be transferred 'to the extent that would result in the Republic of Poland being unable to function as a sovereign state'.³

Moreover, by consenting to expansive treaty interpretations by the tribunals, the government transfers new competences by extra-constitutional means, bypassing the procedures of Art. 90 of the Constitution – a matter warranting scrutiny in terms of both constitutional and criminal liability.

At the substantive law level, the conflict pits tribunal rulings against constitutional law. These rulings are based on ratified international agreements, which, as sources of law, rank below the Constitution. By attempting to implement such judgments through legislative amendments, the government risks introducing norms that conflict with the Constitution.

As the CT has repeatedly emphasised, it is not permissible for norms derived from international agreements to exist in the legal system if they are inconsistent with the Constitution. This prohibition stands regardless of Art. 9 of the Constitution, which obliges Poland to respect binding international law. That obligation cannot be interpreted in a manner that modifies constitutional content through external treaties, circumventing constitutionally prescribed amendment procedures and encroaching upon the competences of public authorities.⁴

9. In conclusion, while this analysis focuses on Poland, its findings extend to the protection of the rule of law in other states. The diagnosis conducted has identified the areas and mechanisms through which the rule of law can be subverted under the guise of its restoration, and it offers arguments that can be tailored to the specific constitutional and institutional contexts of individual states to counter such practices.

The rule of law is predicated upon the supremacy of law. However, when the very concept of law is relativised and the constitutionally mandated hierarchy of legal sources is disregarded to the point that it becomes unclear what constitutes binding law, a critical question arises: can the rule of law still be said to exist? If law no longer governs, then what – or who – does ultimately govern?

2 See Judgement of CT, K 18/04, OTK 2005/5A/49 pt. I.3.

3 Judgement of CT, K 18/04, OTK 2005/5A/49 pt. III.8.4.

4 Judgement of CT 7/21, OTK ZU A/22 pt. 5.3.2 and 5.3.4.