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The Rule of Law Depending on the Electoral Calendar: The Seventh Edition of the EU Rule of Law Report

Main points

- **The 2026 Rule of Law Report confirms the thesis put forward a year ago: since 2023, the European Commission has assessed Poland's compliance with the rule of law considerably more leniently – even though the key legislation recommended by the Commission still has not been enacted.**
- **The consultation procedure underlying the Report raises doubts as to its impartiality – during the “country visit” to Poland, Commission staff met with organizations representing a single ideological current, one sympathetic to the current governing majority.**
- **The Commission appears not to notice that the procedure for the Sejm's election of judge-members of the National Council of the Judiciary (KRS) is identical to the one that the ruling coalition has for years called unconstitutional, using it as grounds to challenge the status of judges appointed since 2018.**
- **The Report addresses the dispute over the composition and legality of the Constitutional Tribunal only briefly and selectively, omitting the context of the President's refusal to accept the oath of office from some of the newly elected judges and the improvised swearing-in ceremony that followed.**
- **The Report is equally terse on the regulation issued by the Minister of Justice restricting the random assignment of cases to judges – a regulation the Constitutional Tribunal found unconstitutional.**



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- The government's plan to dissolve the Central Anti-Corruption Bureau, despite the persistently high perceived level of corruption in the public sector, is not even mentioned in the Report's official summary.
- A comparison of the chapters devoted to Poland, Hungary, and Romania shows that the leniency of the Commission's assessment depends, in practice, on the political complexion of the ruling coalition and on the Commission's own preferences, rather than on the actual state of the rule of law.

1. The European Commission and the Rule of Law in EU Member States

On 17 July 2026, the European Commission published the seventh edition of its Rule of Law Report, covering all 27 Member States as well as four candidate countries: Albania, Montenegro, North Macedonia, and Serbia¹.

As in previous years, the document consists of an EU-wide communication together with separate country chapters assessing four pillars: the justice system, the fight against corruption, media pluralism, and institutional checks and balances²— with an accompanying press release speaking both of a “positive trajectory” and of an “uneven” pace of reform across individual countries.

Before turning to this year's Report, it is worth noting that the editions published in past years differ significantly from one another in how they assess certain events and facts that, in principle, could be regarded as comparable.

¹ European Commission, 2026 Rule of Law Report strengthens Europe's prosperity, security and democratic resilience, press release IP/26/1613, 17 July 2026, https://ec.europa.eu/commission/presscorner/detail/en/ip_26_1613, (accessed 23.07.26).

² European Commission, 2026 Rule of Law Report – Communication, 17 July 2026, https://commission.europa.eu/document/download/66e838b2-498a-454a-9d02-3c9dff84c01b_en?filename=2026%20Rule%20of%20Law%20Report_Communication.pdf, (accessed 23.07.26).



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The reason for this lies in the European Commission's readiness to exploit the "legal gap" created by the absence of any legal definition of the "rule of law" in the EU treaties. I have already pointed out, on several occasions in other publications, how this concept is used instrumentally as a tool of political pressure³. Article 2 of the Treaty on European Union (TEU) merely lists the "rule of law" among the values on which the Union is founded, without specifying what it actually entails⁴.

The seventh edition of the *Rule of Law* Report offers particularly rich material in this respect. Not only because this "leniency mechanism" once again concerns Poland, but also because this year's document offers an opportunity to compare the Commission's position toward three countries of the region – Poland, Hungary, and Romania – where, in the relatively recent past, power was taken by groupings described in EU political parlance as "pro-European."

In light of the above, when analyzing this year's Report it is worth paying attention not only to which aspects and events the Commission chose to highlight, but also to how the Commission formulates its opinions. Do the "positive changes" it records genuinely reflect a real improvement in the rule of law in a given country? Or are they instead an expression of Brussels's political sympathy toward whichever political camp currently holds power?

2. The Report's Methodology: Whom Did the Commission Consult?

The procedure by which the Report is prepared has a direct bearing on its content. The Commission bases its findings on three sources: information provided by national authorities,

³ See A. Kubacka, *Praworządność w świetle prawa wewnętrznego Unii Europejskiej a stan rządów prawa w Polsce w 2022 r.*, ordoiuris.pl, 11 August 2022, <https://ordoiuris.pl/analiza/praworzadnosc-w-swietle-prawa-wewnetrznego-unii-europejskiej-a-stan-rzadow-prawa-w-polsce-w-2022-r/>, (accessed 23.07.26); A. Kubacka, *Praworządność na miarę politycznych sympatii. Raport KE na temat Polski*, ordoiuris.pl, 11 August 2025, <https://ordoiuris.pl/komentarz/praworzadnosc-na-miare-politycznych-sympatii-raport-ke-na-temat-polski/>, (accessed 23.07.26).

⁴ Treaty on European Union (consolidated version), OJ EU C 202 of 7 June 2016, Art. 2, <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX%3A12016M002>, (accessed 23.07.26).



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findings from so-called country visits, and comments submitted through targeted written consultations⁵.

The problem lies above all in the choice of interlocutors. The annex to the Poland chapter lists the entities that Commission staff met with in February and March 2026 as part of a remotely conducted “country visit.” Among them are Amnesty International Poland, the “Iustitia” Association of Polish Judges, the Stefan Batory Foundation, and the Helsinki Foundation for Human Rights, while the horizontal meetings included Human Rights Watch, ILGA-Europe, and Transparency International EU⁶. Not a single organization identifying with a sensibility other than liberal-left appears on this list.

As a result, since the voice of the “stakeholders” in practice amounts to organizations representing a single ideological current – one, moreover, sympathetic to the current government – it is difficult to speak of a methodology that guarantees impartiality.

Add to this the fact that consultations are also addressed to “national authorities,” meaning, in practice, the government administration. In Poland today, that administration is staffed by, and carries out the direction set by, the “pro-EU” camp, so it is hardly surprising that this coincides with Brussels’s expectations.

For this reason, the Report’s finding of “significant progress” on the rule of law in Poland may raise serious doubts. It is a fact that much has changed in Poland since the 2023 elections, but whether these changes amount to “significant progress” on the rule of law is, to put it mildly, debatable.

⁵ European Commission, 2026 Rule of Law Report – Targeted Stakeholder Consultation, https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/annual-rule-law-cycle/2026-rule-law-report_pl, (accessed 23.07.26).

⁶ 2026 Rule of Law Report – Country chapter Poland (Polish-language version), Annex II: Country Visit to Poland, p. 31, https://commission.europa.eu/document/download/593831c4-dde6-4443-89a1-fb81da85dd25_pl?filename=25_2_coun_chap_poland_pl.pdf, (accessed 23.07.26).



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3. The Justice System in Poland

3.1. The National Council of the Judiciary

The summary of the Poland chapter opens with a statement that Poland has taken “some further steps toward implementing the action plan for restoring the rule of law,” though the Commission immediately notes that the President of the Republic vetoed legislation intended to “strengthen the independence of the National Council of the Judiciary”⁷.

The Report states that the main reason for the veto was that “the President considers the act unconstitutional because it provides for a model under which judge-members of the Council are elected by other judges”⁸. In reality, this was only one of the motives behind the President’s decision. A second, equally important one was that the act essentially repeated the solutions provided for in the Act of 12 July 2024 Amending the Act on the National Council of the Judiciary⁹, which the Constitutional Tribunal found unconstitutional in its judgment of 20 November 2025 (case no. Kp 2/24¹⁰) – namely, the restriction of the passive electoral right of certain judges¹¹.

⁷ 2026 Rule of Law Report – Country chapter Poland (Polish-language version), Summary, p. 1, https://commission.europa.eu/document/download/593831c4-dde6-4443-89a1-fb81da85dd25_pl?filename=25_2_coun_chap_poland_pl.pdf, (accessed 23.07.26).

⁸ Ibidem, p. 7, note 13.

⁹ Text of the act available at [https://orka.sejm.gov.pl/opinie10.nsf/nazwa/219_u/\\$file/219_u.pdf](https://orka.sejm.gov.pl/opinie10.nsf/nazwa/219_u/$file/219_u.pdf), (accessed 23.07.26).

¹⁰ Published in OTK ZU A/2026, item 5.

¹¹ Application of the President of the Republic regarding the Act Amending the Act on the KRS and the Electoral Code, 19 February 2026, pp. 24–31, [https://www.prezydent.pl/storage/file/core_files/2026/5/11/cbf597a54b6338fb67cbb9d9dca89adb/Wniosek%20Prezydenta%20RP%20o%20ustawy%20o%20zmianie%20ustawy%20o%20KRS%20oraz%20ustawy%20E2%80%93%20Kodeks%20wyborczy%20\[dot%20C4%99pno%20C5%9B%C4%87\].pdf](https://www.prezydent.pl/storage/file/core_files/2026/5/11/cbf597a54b6338fb67cbb9d9dca89adb/Wniosek%20Prezydenta%20RP%20o%20ustawy%20o%20zmianie%20ustawy%20o%20KRS%20oraz%20ustawy%20E2%80%93%20Kodeks%20wyborczy%20[dot%20C4%99pno%20C5%9B%C4%87].pdf) (accessed 23.07.26).



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In response to the veto, the Sejm adopted a resolution committing itself, within the framework of existing law, to appoint as judge-members of the KRS only candidates previously endorsed by the judicial community in informal primary elections¹².

It is difficult to resist the impression that the Commission's Report "praises" this solution, even though the procedure proposed by the current ruling coalition – namely, the election of judge-members of the KRS by the Sejm under Articles 9a and 11a–11d of the Act on the National Council of the Judiciary¹³ – is exactly the same procedure that this very coalition has for years called unconstitutional, using it as grounds to challenge the status of all judges appointed since 2018¹⁴.

Minister of Justice Waldemar Żurek and the government-friendly "Iustitia" Association of Polish Judges have tried to soften this contradiction with the idea of informal "primaries" among judges, meant to precede the Sejm vote and bring it into line with "EU standards." The problem is that such primaries have no statutory basis whatsoever and remain, at most, a non-binding, informal consultation – they therefore cannot change the legal character of a vote that is, formally speaking, conducted in exactly the same way as in 2018.

The very possibility of holding such elections without a clear legal basis is itself doubtful – both this question and the question of whether the Sejm may bind itself to the results of the primaries have been challenged before the Constitutional Tribunal, where they await

¹² Resolution of the Sejm of the Republic of Poland of 27 February 2026 on Restoring Constitutional Standards for the Election of Members of the National Council of the Judiciary Elected from Among Judges, M.P. 2026, item 259

¹³ Act of 12 May 2011 on the National Council of the Judiciary (consolidated text, Dz.U. 2024, item 1186), hereinafter: the "Act on the National Council of the Judiciary" or the "KRS Act."

¹⁴ See J. Jabłoński, *Donald Tusk's Government Contradicts Its Own Narrative on the Lack of Judicial Independence Under the Previous Conservative Government*, obserwator-praworzadnosci.pl, 19 February 2026, <https://obserwator-praworzadnosci.pl/en/donald-tusks-government-contradicts-its-own-narrative-on-the-lack-of-judicial-independence-under-the-previous-conservative-government/>, (accessed 23.07.26).



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resolution in case no. K 7/26¹⁵. On 23 June 2026, the Constitutional Tribunal issued an interim order in this case, calling on the Council and its members to refrain from exercising their powers until the Constitutional Tribunal issues a final ruling on the constitutionality of the provisions governing the appointment of the KRS in its current composition¹⁶.

It may also be noted, in passing, that many judges – indeed entire courts, led by the Supreme Court, the Supreme Administrative Court, and the voivodeship administrative courts – did not take part in the “primaries”; according to some estimates, actual turnout among judges was only around 40 percent¹⁷. Moreover, the manner in which the primaries were conducted – particularly given the electoral rules adopted and their effective domination by politicized judicial associations – proved clearly inconsistent with the international standards articulated by the Venice Commission in a similar matter¹⁸. The European Commission did not note any of these problems at all.

Instead, the Commission stated in the Report that “[b]ecause legislative work has been carried out to implement the action plan for restoring the rule of law, some further progress is found in the implementation of the relevant recommendation”¹⁹. Such a remarkably lenient assessment would seem unthinkable had the current situation in the judiciary occurred under the previous government.

¹⁵ Case file: <https://trybunal.gov.pl/sprawy-w-trybunale/art/kwestia-zwiazania-sejmu-instrukcjami-innego-organu-panstwa-lub-organizacji-pozarzadowych-zawierajacy-mi-liste-kandydatow-w-trakcie-wyboru-przez-sejm-sedziow-do-krajowej-rady-sadownictwa>, (accessed 23.07.26).

¹⁶ Constitutional Tribunal interim order in the case concerning the procedure for electing the National Council of the Judiciary, 23 June 2026, <https://trybunal.gov.pl/wiadomosci/uroczystosci-spotkania-wyklady/art/postanowienie-zabezpieczajace-tk-w-sprawie-dotyczacej-procedury-wyboru-krajowej-rady-sadownictwa>, (accessed 23.07.26).

¹⁷ Łukasz Zawadzki, *Sędziowskie prawyборы – kronika pasma bezprawia*, 26 April 2026, <https://dorzeczy.pl/opinie/878806/lukasz-zawadzki-sedziowskie-prawyборы-kronika-pasma-bezprawia.html>, (accessed 23.07.26).

¹⁸ See Spain - Opinion on the manner of election of the judicial members of the General Council of the Judiciary (Adopted by the Venice Commission at its 144th Plenary Session (Venice, 9-10 October 2025), CDL-AD(2025)038-e, <https://www.coe.int/en/web/venice-commission/-/cdl-ad-2025-038-e>, paras. 36, 40, and 43, (accessed 23.07.26).

¹⁹ Op. cit. 2026 Rule of Law Report – Country chapter Poland (Polish-language version), p. 7.



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3.2. The Constitutional Tribunal

Although the government has, for two years now, failed to publish Constitutional Tribunal judgments in the Journal of Laws – itself a flagrant breach of the law – the Commission’s Report merely notes this in passing²⁰.

The Commission shows far greater interest in the “confirmation by the Court of Justice of the EU” of serious reservations regarding the Constitutional Tribunal and its 2021 case law.²¹ The CJEU did indeed, in its December 2025 judgment, call into question the status of the Constitutional Tribunal as an independent and impartial tribunal established by law within the meaning of EU law. The sentence on this point is even set in bold in the Report. No such emphasis, however, was given to the fact that, in response, the Polish Constitutional Tribunal stated that the CJEU has no jurisdiction to rule on matters concerning it and that the EU court’s judgment has no bearing on the Tribunal’s functioning.

The Report is similarly terse regarding the election of Constitutional Tribunal judges by the Sejm on 13 March 2026²² and regarding the fact that the President invited only two of the six persons elected at that time to take the oath. Rather than wait for the President’s invitation, the remaining four decided to take part in an improvised ceremony in which – together with the two individuals already properly sworn in a week earlier – they read the oath in the presence of the Speaker of the Sejm, the Speaker of the Senate, and a notary, but in the President’s absence²³.

²⁰ Ibidem, p. 10.

²¹ See Court of Justice of the European Union, judgment of 18 December 2025, Case C-448/23, Commission v. Poland.

²² Resolutions of the Sejm of the Republic of Poland of 13 March 2026 on the Election of a Judge of the Constitutional Tribunal, M.P. 2026, items 300–305.

²³ See J. Jabłoński, *Unlawful "swearing-in-of-judges" ceremony in the Polish Sejm – How the Tusk government is trying to take control of the Constitutional Tribunal*, obserwator-praworzadnosci.pl, 9 April 2026, <https://obserwator-praworzadnosci.pl/en/unlawful-swearing-in-of-judges-ceremony-in-the-polish-sejm-how-the-tusk-government-is-trying-to-take-control-of-the-constitutional-tribunal/>, (accessed 23.07.26).



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It should be stressed that, under Article 5 of the Act of 30 November 2016 on the Status of Constitutional Tribunal Judges²⁴, a Tribunal judge's term of office begins only once the oath has been taken, while under Article 4(2), refusal to take the oath is tantamount to relinquishing the position of Tribunal judge.

It is telling that the Poland chapter treats the above matter with the utmost brevity, confining itself to stating that judges were "elected" to vacant seats on the Tribunal and adding only in a footnote that the President has "so far" accepted the oath from two of the judges elected by the Sejm, while the remaining four took the oath in the Sejm and filed notarized copies of the oath addressed to the President with the Chancellery of the President²⁵. The Report's wording thus wrongly suggests that no major legal problem or dispute over competence arose in this matter. The Commission notes only that "on 5 May 2026 the European Court of Human Rights issued an interim measure ordering the competent Polish authorities to refrain from obstructing four of these judges in taking up and performing their duties"²⁶ – yet it did not accompany that sentence with any commentary that would allow the context to be understood²⁷. It also omitted the Constitutional Tribunal's judgment of 12 May 2026 (case no. K 3/26)²⁸, in which the Tribunal held that imposing on the President an absolute statutory duty to accept the oath from a person elected by the Sejm as a Constitutional Tribunal judge would be unconstitutional.

3.3. Separation of the Offices of Minister of Justice and Prosecutor General

Interestingly, the European Commission states that Poland has "[m]ade limited further progress in implementing the recommendation to carry out a reform separating the functions

²⁴ Dz.U. 2018, item 1422.

²⁵ Op. cit., 2026 Rule of Law Report – Country chapter Poland (Polish-language version), p. 10.

²⁶ Ibidem.

²⁷ Interim measure of 5 May 2026 in the case of Dziurda and Others v. Poland (no. 17392/26).

²⁸ Not yet officially published; available only on the Tribunal's website: <https://trybunal.gov.pl/postepowanie-i-orzeczenia/wyroki/art/zasady-i-tryb-wyboru-sedziego-trybunalu-konstytucyjnego-3>, (accessed 23.07.26).



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of Minister of Justice and Prosecutor General and ensuring the functional independence of the prosecution service from the government”²⁹.

It is worth noting that the 2025 Rule of Law Report recommended that Poland “[c]arry out a reform separating the functions of Minister of Justice and Prosecutor General and ensuring the functional independence of the prosecution service from the government.” That recommendation had already been repeated for several years in successive reports, and in 2025 significant progress in its implementation was claimed, even though, *de facto*, apart from an announcement of changes, nothing at all happened on this front.

The bill, currently adopted by the Standing Committee of the Council of Ministers, is “ready to be forwarded to the Sejm,” but further progress depends on work on implementing regulations whose content – as the Commission itself admits – “has not yet been made public”³⁰. After several years of rule by the same coalition, and four consecutive editions of the Report repeating an identical recommendation, both offices are still held by the same person, and the only novelty is that the bill “is to move” to the next stage of the legislative process – though exactly how and when remains unclear.

The institutional structure of the prosecution service, including the decision whether to separate the functions of Minister of Justice and Prosecutor General, remains within the exclusive competence of the Member States and has not been transferred to the Union under any of the treaties³¹. A recommendation repeated for years regardless of who governs in Warsaw suggests instead that, under the banner of concern for the rule of law, the Commission

²⁹ Op. cit., 2026 Rule of Law Report – Country chapter Poland (Polish-language version), p. 3.

³⁰ Ibidem, p. 11.

³¹ See P. Ignaszczak, *Instytucje Unii Europejskiej arbitralnie i ukradkiem rozszerzają swoje kompetencje kosztem państw członkowskich. Ważny raport o praworządności w UE*, ordoiuris.pl, 2025, <https://ordoiuris.pl/analiza/instytucje-unii-europejskiej-arbitralnie-i-ukradkiem-rozszerzaja-swoje-kompetencje-kosztem-panstw-czlonkowskich-wazny-raport-o-praworzadnosci-w-ue>, (accessed 23.07.26).



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is attempting to standardize the model of the prosecution service across all Member States – an aim that finds no basis in the founding treaties.

3.4. The Random Case Assignment System

The Report mentions only in passing that the Minister of Justice “changed the rules for the random assignment of cases to judges, allowing exceptions in specific circumstances,” and that, although the Constitutional Tribunal found this change unconstitutional, “the amended provisions continue to be applied in practice”³².

Behind this one unassuming sentence lies something far more serious than the Commission is willing to admit, for interference with what had until then been a fully random assignment of cases to judges means that “randomness” becomes a fiction – and, as a result, the guarantee that a judge will not be assigned to a given case “by hand,” on political instruction, simply ceases to exist.

Minister Waldemar Żurek’s regulation of 29 September 2025, which entered into force on 1 October³³, allowed court presidents, in “exceptional cases,” to draw only the reporting judge by lot, selecting the remaining members of the panel outside the random system altogether. This constitutes a flagrant violation of the constitutional principles of judicial independence and impartiality³⁴. Although the Constitutional Tribunal, in its judgment of 12 November 2025 (case no. U 4/25)³⁵ found the regulation unconstitutional, that judgment simply was not published in

³² Op. cit., 2026 Rule of Law Report – Country chapter Poland (Polish-language version), p. 9, note 35–36.

³³ Regulation of the Minister of Justice of 29 September 2025 Amending the Regulation on the Rules of Procedure for Common Courts, Dz.U. 2025, item 1325.

³⁴ Cf. *Minister Żurek ogranicza losowy przydział spraw w sądach. Prezydent wezwał sądy do obrony Konstytucji*, obserwator-praworzadnosci.pl, 7 October 2025, <https://obserwator-praworzadnosci.pl/pl/minister-zurek-ogranicza-losowy-przydzial-spraw-w-sadach-prezydent-wezwal-sady-do-obrony-konstytucji/>, (accessed 23.07.26).

³⁵ Published in: OTK ZU A/2025, item 132.



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the Journal of Laws – just like every other Constitutional Tribunal ruling issued since March 2024. Despite the Tribunal’s judgment, the regulation is, of course, still being applied.

3.5. The National Prosecutor

The Poland chapter deals just as briefly with the fact that “in some cases the status of the National Prosecutor was called into question,” immediately adding the National Public Prosecutor’s Office’s own assurance that this had no effect on its functioning³⁶.

This dispute has been ongoing since January 2024, when the new Prosecutor General, Adam Bodnar, challenged Dariusz Barski’s return from retirement and installed first Jacek Bilewicz, and later Dariusz Korneluk, in his place. The Ordo Iuris Institute, participating in the proceedings before the Supreme Court as a representative of the public interest, argued that, in light of the resolution of the Supreme Court’s Criminal Chamber of 27 September 2024³⁷, Dariusz Barski remains the National Prosecutor, and that the procedural and personnel actions taken by Bilewicz and Korneluk are legally ineffective³⁸.

Doubts as to who formally heads the Polish prosecution service today may, in the future, produce problems similar to those now observed in the judiciary; nevertheless, the Report devotes only a single footnote sentence to this issue, even though one might expect a matter this significant to weigh heavily in the assessment of “the rule of law” in a given country.

Once again, the inconsistent assessments of the rule of law in Poland stand out: before the change of government in 2023, EU reports treated Poland far more severely than they do today,

³⁶ Op. cit., 2026 Rule of Law Report – Country chapter Poland (Polish-language version), p. 11, note 53.

³⁷ Case no. I KZP 3/24.

³⁸ *Sąd Najwyższy odmówił podjęcia uchwał w sprawie statusu prokuratora Dariusza Barskiego. Instytut Ordo Iuris uczestniczył w postępowaniu*, ordoiuris.pl, 2024, <https://ordoiuris.pl/informacje-prasowe/sad-najwyzszy-odmowil-podjecia-uchwal-w-sprawie-statusu-prokuratora-dariusza-barskiego-instytut-ordo-iuris-uczestniczyl-w-postepowaniu/>, (accessed 23.07.26). See also Patryk Ignaszczak, Marek Puzio, *Przejęcie prokuratury krajowej*, 13 December 2024, <https://obserwator-praworadzności.pl/pl/przejecie-prokuratury-krajowej/>, (accessed 23.07.26).



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when – despite mounting problems in the justice system – the Commission generally perceives “progress” and raises no major objections to the situation in Poland.

4. Combating Corruption

According to the Commission, in the view of citizens, experts, and business executives, corruption in the public sector remains at “a relatively high level” – under the 2025 Corruption Perceptions Index, published by Transparency International, Poland, with a score of 53/100, ranks 19th in the European Union and 52nd worldwide³⁹.

At the same time, however, the Flash Eurobarometer 582 (2026) survey, cited in the Report itself, shows that only 21 percent of Polish businesses believe that corruption prevented them from winning a public tender within the past three years – a result fully 9 percentage points better than the EU average of 30 percent.⁴⁰

The Commission’s own data thus appear to contradict the Report’s general assessment that corruption in the public sector remains at “a relatively high level” in Poland. While 19th place among the 27 EU states puts Poland in the lower half of the ranking, that result still sits closer to the middle of the table than to the bottom. That the Commission’s assessment is overstated is, moreover, borne out by the very declarations of Polish businesses cited above – and cited in the Report itself.

4.1. Immunity Clauses

In the section on corruption in Poland, the Report addresses the so-called immunity clauses – provisions allowing criminal liability for corruption and abuse of power to be excluded under

³⁹ Perceived levels of corruption are divided into the following categories: low (above 79), relatively low (79–60), relatively high (59–50), high (below 50); as reported in: Op. cit., 2026 Rule of Law Report – Country chapter Poland (Polish-language version), p. 12.

⁴⁰ Directorate-General for Communication, Flash Eurobarometer 582 (2026) on businesses' attitudes towards corruption in the EU, quoted in: Op. cit., 2026 Rule of Law Report – Country chapter Poland (Polish-language version), p. 18, note 110.



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certain circumstances. This mechanism was applied in eighteen proceedings in 2025, and in nine the year before⁴¹.

Although these clauses were introduced into the legal system under the United Right government, it is not without significance that the current ruling camp has yet to repeal them.

The problem concerns above all Article 305 § 6 of the Criminal Code⁴², which excludes the criminal liability of an offender who notified “a body responsible for prosecuting offenses or a competition authority of an EU Member State, or the European Commission, of the commission of the offense, and disclosed all material circumstances of that offense before the prosecuting body learned of it on its own.”

Such an exemption from criminal liability might be justified in less serious cases – but here it concerns Article 305 §§ 1 and 2 of the Criminal Code, that is, respectively, “obstructing or thwarting a tender or public procurement proceeding, to the detriment of the owner of the property, the person or institution for which the tender is conducted or which conducts the proceeding, or to the detriment of the public interest,” and, similarly, acting “with a view to unlawfully influencing the outcome of an ongoing or prospective tender or public procurement proceeding.”

Unfortunately, such clauses are no longer a rarity in the Polish legal system today. They also appear in the act of December 2022 discontinuing prosecution of acts related to the organization of the so-called “postal-ballot” presidential election, in the April 2022 amendment to the Commercial Companies Code, and in the COVID-19 act of April 2020⁴³. The recommendation to remove them has been repeated for years without any response. This fact

⁴¹ Op. cit., 2026 Rule of Law Report – Country chapter Poland (Polish-language version), p. 15, note 85.

⁴² Act of 6 June 1997, the Criminal Code (consolidated text, Dz.U. 2025, item 383, as amended), hereinafter: the “Criminal Code.”

⁴³ Op. cit., 2026 Rule of Law Report – Country chapter Poland (Polish-language version), note 84.



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weighs equally on the current government and its predecessor. Similarly, since 2025 the Report has consistently recorded no progress whatsoever on legislation regulating lobbying⁴⁴.

4.2. The Dissolution of the Central Anti-Corruption Bureau

One matter deserves separate attention precisely because it is nowhere to be found in the Report's official summary: the government's plan to dissolve the Central Anti-Corruption Bureau by the end of September 2026 and transfer its powers to the Police, the Internal Security Agency, and the National Revenue Administration⁴⁵.

Given the Commission's own observation that "in the view of citizens, experts, and business executives, corruption in the public sector remains at a relatively high level"⁴⁶, one might have expected an attempt to dissolve a specialized anti-corruption body to trigger a firm reaction from the Commission. Yet the Report dispatches the topic in a mere footnote, noting only that the plan has not yet been finalized – which only reinforces the impression that Brussels's assessment of government action depends on who happens to be in power.

5. Media Pluralism

In the area of media, the Report once again notes ongoing work on amending the Broadcasting Act. Indeed, in December 2025 the government presented a media bill intended to increase the independence of the National Broadcasting Council (KRRiT)⁴⁷. It nonetheless remains only a bill, one that, from a practical standpoint, has nothing to do with the possibility of assessing the current state of the public media.

5.1. The 2023 Takeover of the Public Media

⁴⁴ Ibidem, p. 16, note 86.

⁴⁵ Ibidem, p.13, note 68; see also the President's 2026 press release (2026c), quoted therein, note 70.

⁴⁶ See note no. 40 above.

⁴⁷ Op. cit., 2026 Rule of Law Report – Country chapter Poland (Polish-language version), p. 19.



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The central point of reference for assessing the state of the public media should instead be the events of December 2023 and their aftermath – namely, the forcible takeover of Telewizja Polska (TVP), Polskie Radio (PR), and the Polish Press Agency (PAP) by temporary liquidators, bypassing the KRRiT⁴⁸.

Few remember today that just a few days earlier, on 14 December 2023, the Constitutional Tribunal issued an interim order directing the State Treasury to refrain from any action aimed at liquidating the public broadcasting companies or altering their management boards. Despite this, Minister of Culture and National Heritage Bartłomiej Sienkiewicz dismissed the management and supervisory boards of TVP, Polskie Radio, and PAP a few days later, invoking a Sejm resolution of 19 December 2023 on restoring legal order and the impartiality and reliability of the public media and the Polish Press Agency⁴⁹. At this point it is worth recalling what the Ordo Iuris Institute pointed out as early as 2023⁵⁰: that Sejm resolutions do not constitute acts of universally binding law and, consequently, have no legal force; no authority may take action against citizens on their basis.

Unfortunately, this year's Report does not address the dysfunctional situation of the public media that has persisted since late 2023.

5.2. Pluralism of Media Service Providers

⁴⁸ See, at greater length, Bartosz Zalewski, *Bezprawne zmiany w mediach publicznych*, <https://obserwator-praworznosci.pl/pl/bezprawne-zmiany-w-mediach-publicznych/>, (accessed 22.07.26).

⁴⁹ Resolution of the Sejm of the Republic of Poland of 19 December 2023 on Restoring Legal Order and the Impartiality and Reliability of the Public Media and the Polish Press Agency, https://orka.sejm.gov.pl/proc10.nsf/uchwaly/117_u.htm, (accessed 22.07.26). M.P. 2023, item 1457.

⁵⁰ "Bezprawny atak na media publiczne" [Unlawful Attack on the Public Media], *Obserwator Praworządności*, 16 January 2024, <https://obserwator-praworznosci.pl/pl/bezprawny-atak-na-media-publiczne/>, (accessed 23.07.26).



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The 2026 Media Pluralism Monitor rates the risk to pluralism among media service providers in Poland as “very high,” and the risk to editorial independence from commercial and ownership influence as “high” – exactly as it did a year earlier⁵¹.

The Commission noted that commercial broadcasters (TVN and Polsat) remain classified as “strategic enterprises,” meaning that any change of ownership requires state approval. Interestingly, the Polish solution closely resembles the Hungarian mechanism for designating certain transactions as “strategic for the national economy.” In Hungary, that mechanism is described as leading to increased legal uncertainty (owing to the possibility of discretionary government blocking of transactions)⁵², whereas the Poland chapter refers to the very same instrument without any such reservation.

6. Checks and Balances

The Report notes that Poland has tightened its rules on public consultations and curtailed the practice of introducing government bills in the guise of parliamentary member bills⁵³.

These positive changes are noted not only by the Commission; they should also prompt a broader reflection that, alongside the many objections that can be raised against our state, it is worth bearing in mind that there are problems the EU Report flags in other countries of the region which either do not occur in Poland at all, or occur only marginally.

Consider, by contrast, Romania, where the government – citing budget constraints – suspended an independent audit of the random case-assignment system, and judges were removed from

⁵¹ Media Pluralism Monitor (2026), pp. 19–20, quoted in: Op. cit., 2026 Rule of Law Report – Country chapter Poland (Polish-language version), p. 19.

⁵² 2026 Rule of Law Report – Country chapter Hungary, p. 25–26, especially note 198.
https://commission.europa.eu/document/download/0e737e3a-55fd-424e-883d-72c2d3092be1_en?filename=Country%20chapter%20-%20Hungary%20-%20EN.pdf&prefLang=pl, (accessed 27.07.26).

⁵³ Op. cit., 2026 Rule of Law Report – Country chapter Poland (Polish-language version), p. 24.



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adjudicating panels merely for intending to refer a preliminary question to the European courts⁵⁴ – that is, for a practice that has never been a matter of dispute in Poland.

Similarly, in Serbia, in January 2026, the parliament amended five statutes on an emergency basis and without transparent consultation, rolling back safeguards for prosecutorial independence introduced by the 2023 reform – a step the Venice Commission assessed as a violation of the autonomy of the prosecution service⁵⁵.

7. Hungary and Romania After the Change of Government

Finally, it is worth returning once more to the “leniency mechanism” mentioned at the outset, this time examining it comparatively. This year, Hungary offers the clearest evidence that the assessments contained in the EU Report depend on the political complexion of the ruling faction in a given country: in April 2026, parliamentary elections there were won by Péter Magyar’s pro-European Tisza party.

The new government was sworn in in May 2026, and the Rule of Law Report, published barely two months later, already reports that this government has undertaken “intensive reform efforts to restore the rule of law”⁵⁶. Moreover, Justice Commissioner Michael McGrath,

⁵⁴ 2026 Rule of Law Report – Country chapter Romania, p. 6, https://commission.europa.eu/document/download/3aab2482-4772-4579-bdf0-03f5a93a5a95_en?filename=Country%20chapter%20-%20Romania%20-%20EN.pdf&prefLang=pl, (accessed 22.07.26).

⁵⁵ 2026 Rule of Law Report – Country report Serbia, p. 2, https://commission.europa.eu/document/download/b0b87aac-b88d-405b-bdc5-4e32f0765926_en?filename=Country%20report%20-%20Serbia%20-%20EN.pdf, (accessed 23.07.26).

⁵⁶ Op. cit., 2026 Rule of Law Report – Country chapter Hungary, Summary, p. 1.



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presenting the document, spoke of very positive trends and acknowledged that “a great deal” had already been achieved in the first weeks of the new government’s term⁵⁷.

And yet, despite describing the new government in such superlatives, that very same Hungary chapter records that in 2026 the perceived level of judicial independence – among the general public (31 percent) as much as among businesses (33 percent) – not only remains low but has actually deteriorated compared with the previous year⁵⁸. The procedure for electing the Prosecutor General, which carries a risk of political interference in individual cases, the lack of transparency in case assignment in lower courts, and the manner of appointing the Commissioner for Fundamental Rights without any prior open competition or consultation with civil society – none of these have been changed in any way⁵⁹. Indeed, the chapter openly admits that further constitutional amendments concerning the justice system, the anti-corruption framework, and checks and balances are still only under consideration – meaning all of them remain at the stage of mere “announcements.”

The only concrete action of the new government that is recorded is the dissolution of the controversial Sovereignty Protection Office, set up by the previous government to collect citizens’ personal data for the purpose of pursuing “foreign agents,” together with the filing of an application for Hungary to join the European Public Prosecutor’s Office⁶⁰. It is difficult, however, to regard these two decisions alone as sufficient to describe the situation in Hungary as a “radical change,” given that the other elements of the Hungarian system – criticized for a decade – for the most part remain firmly in place.

⁵⁷ Euronews, *Rule of Law in Hungary shows 'radical change' under Magyar, EU says*, 17 July 2026, <https://www.euronews.com/my-europe/2026/07/17/rule-of-law-in-hungary-shows-radical-change-under-magyar-eu-says>, (accessed 23.07.26).

⁵⁸ Op. cit., 2026 Rule of Law Report – Country chapter Hungary, p. 4, note 2.

⁵⁹ Ibidem, p. 26, note 200.

⁶⁰ Ibidem, p. 1.



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The Report is meticulous, however, in attributing responsibility to the “previous government,” noting that it was that government which exercised emergency powers until 13 May 2026, undermining legal certainty by maintaining a “state of danger” declared back in May 2022⁶¹.

Romania’s situation looks somewhat different. In May 2025, the independent, pro-European Nicușor Dan assumed the Romanian presidency, after the country’s Constitutional Court had annulled the previous election on suspicion of Russian interference.

One might expect the Romania chapter to strike a tone just as indulgent as the Hungary chapter. Nothing of the kind occurred: the summary notes that public debate on the functioning of the justice system was suspended following a decision of the High Court of Cassation and Justice, that no legislative steps were taken to strengthen the independence of senior prosecutors, and that lower courts continue to overturn convictions – including in high-level corruption cases – citing the statute of limitations⁶². The recommendations for Romania remain, this year, just as numerous and critical as in previous years.

The fact that the Romania chapter maintains a far more critical tone than either the Hungary or Poland chapters shows that the Commission can, when it chooses to, maintain a rigorous, objective assessment even of a government formally within its own political camp. Not every “pro-European” government, then, is automatically treated so leniently. It seems that the particular treatment of Poland and Hungary may stem from the fact that both states had previously been the subject of disputes under the Article 7 TEU procedure and the conditionality mechanism. The dispute over the rule of law in Romania has never reached a comparable degree of political intensity.

8. Conclusions

⁶¹ Ibidem, p. 22 (Chapter IV).

⁶² 2026 Rule of Law Report – Country chapter Romania, Summary, p. 1.



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Despite the numerous objections that can be raised regarding the objectivity of the Rule of Law Report, and doubts about its methodology, the seventh edition of the EU's rule of law report is by no means without value. Alongside imprecise assessments and, not infrequently, the unwarranted omission of significant issues while marginal events are given undue weight, it remains a document remarkably rich in data and information that speak for themselves.

It is worth noting, for instance, the data cited in the Report itself, according to which, in 2026, 42 percent of the general public and 44 percent of businesses perceive the level of judicial independence in Poland as “fairly good” or “very good”⁶³. This result should be regarded as very good indeed, given the political chaos prevailing in the justice system and the fact that, as recently as 2025 – much as in 2022 – judicial independence was rated by Polish society at only 24 percent.⁶⁴

At the same time, the current Report confirms the thesis already put forward in last year's analysis⁶⁵ regarding the clear softening of the European Commission's approach to Poland following the change of government in 2023 – even though the key reforms recommended by Brussels still have not been enacted, and problems in the justice system continue to mount (from the repetition, within the KRS, of the very election procedure previously deemed unconstitutional, through the non-publication of Constitutional Tribunal rulings, to the continued application of provisions found unconstitutional). A comparison with the chapters devoted to Hungary and Romania reveals that the severity of the assessment depends, in practice, on the political temperature of the dispute and on who happens to hold power – not on the actual state of the rule of law.

⁶³ EU Justice Scoreboard 2026, Figures 48 and 50, and EU Justice Scoreboard 2024, Figures 51 and 53. The perceived level of judicial independence may be: very low (where fewer than 30% of respondents perceive judicial independence as fairly good or very good); low (30–39%), medium (40–59%), high (60–75%), or very high (above 75%); as reported in: Op. cit., 2026 Rule of Law Report – Country chapter Poland, p. 6.

⁶⁴ Ibidem.

⁶⁵ Op. cit. A Kubacka, *Praworządność na miarę politycznych sympatii...*



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The seventh edition of the Report thus offers particularly rich material for reflection: in its EU incarnation, the rule of law turns out to be a concept dependent on the electoral calendar and on Brussels's political sympathies. When the government in power is the "right" one, even flagrant violations can be ignored or downplayed, and a mere promise of change becomes "progress."

Such an approach not only undermines the credibility of the rule-of-law monitoring mechanism but, above all, instrumentalizes the very values on which – under Article 2 TEU – the Union is supposed to rest. Given the absence of any treaty definition of "the rule of law" and the consistent disregard for Member State competences, the Report once again confirms that the dispute over the rule of law remains, in essence, a political rather than a legal dispute.

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