



## Communicating vessels: Rule of law in Poland and the EU

**Adam Balcer**

**D**espite their record of dismantling the rule of law for the past four years, Poland's soft Eurosceptic populist party, Law and Justice (PiS), were returned to power in the parliamentary elections of 13<sup>th</sup> October, with an increased share of votes. This raises huge questions about the state of Poland's democracy, questions that will only partly be answered by the outcome of the presidential elections to be held next spring.

External factors also play a role, especially the outcome of presidential race in the US and political developments in Italy. Even more importantly for the EU as a whole, the state of rule of law in Poland, which after Brexit will be the fifth-largest EU member state, will constitute a litmus test of the EU's ability to defend its fundamental values.

Compared to the 2015 parliamentary elections in Poland, PiS has now increased its vote share from 38% to almost 45%, again winning more than half of the seats and confirming that national populists pose a considerable challenge to the rule of law in Europe. The far right also increased their share of votes, to 7%. The opposition parties won the Senate, theoretically allowing it to slow down the legislation process.

Even greater tensions can be expected in coming months because the power of the PiS government may be decisively curtailed if it loses the presidential elections next spring. The president has a power of veto that can only be overruled by a three-fifths majority vote. If an opposition candidate becomes president, the power of the PiS government will be limited. If, however, President Andrzej Duda, originating from PiS, is re-elected, the opposition is likely to be weakened for longer than one term. This scenario is likely because Duda's popularity is growing far beyond the PiS electorate. Nevertheless, even the defeat of the opposition may be counterbalanced by external factors, to some extent.

**EPIN Commentaries offer concise, policy-oriented insights into topical issues raised by the debate on the political integration of Europe. The European Policy Institutes Network (EPIN) is a network of think tanks and policy institutes based throughout Europe, which focuses on current EU political and policy debates (see <http://www.epin.org>). Unless otherwise indicated, the views expressed are attributable only to the author in a personal capacity and not to any institution with which he is associated.**

**Adam Balcer is Head of Foreign Policy Project at WiseEuropa, an independent Polish think tank, national researcher at the European Council of Foreign Relations (ECFR) and lecturer at the Centre for East European Studies (SEW) at the University of Warsaw.**

Available for free downloading from the CEPS (<http://www.ceps.eu>) and EPIN (<http://www.epin.org>) websites

## **Dramatic decline in the quality of Polish democracy**

PiS gravely undermined the foundations of the rule of law in Poland during its first term in power (2015-19). As Freedom House rightly concluded, the dismantling of the rule of law “resulted in a dramatic decline in the quality of Polish democracy”. In practice, the PiS considerably slowed down the pace of court proceedings, failed to investigate or covered up corruption and embezzlement scandals involving party leaders and took a rather relaxed approach to hate crimes and paedophilia in the Catholic Church. The EU reacted – often too late – by triggering EU Treaty Article 7 disciplinary measures against Poland, for the first time ever. Under that procedure, Poland became the subject of hearings at the Council and European Parliament (EP) debates, which endorsed several resolutions criticising the dismantling of rule of law by the Polish government by majority of around two-thirds. The European Commission referred Poland to the European Court of Justice over various laws concerning so-called reforms of the judiciary. Nevertheless, during its electoral campaign, PiS declared that it would go on with the ‘reforms’.

This issue is central to the ideology of the party and PiS will definitely not renounce it. As a consequence, Poland may well slip into the category of ‘partly free’ countries – a category to which Hungary became the first EU country to be relegated, earlier this year. Further authoritarian backsliding in Poland is likely to meet with more negative reaction from the EU institutions and member states. Besides Article 7 measures, ECJ hearings and EP debates and resolutions, the EU will probably make the receipt of EU funds conditional on respect for the rule of law. Poland is the biggest beneficiary of these funds.

## **‘Enemies’ of the rule of law**

Poland needs like-minded allies to counter the external pressure of the EU mainstream. PiS party leader Jarosław Kaczyński has often said that he would like to have Budapest in Warsaw. In fact, Viktor Orbán’s near ten-year rule of Hungary has become a major source of inspiration for Kaczyński’s ideology. Despite considerable differences between PiS and Fidesz, and between Polish and Hungarian societies (the rule of law has been dismantled to a greater extent in Hungary), no other EU member state is more like Poland than Hungary in terms of its hybrid political system (i.e. authoritarian elements). When it comes to flouting the rule of law, Budapest and Warsaw can count on the understanding of Czechia and Andrej Babiš, a populist tycoon who, despite numerous corruption scandals and allegations of abuse of power, still enjoys considerable public support. Significantly, after the triggering of Article 7 against Hungary by the EP in October 2018, the Czech Parliament endorsed a resolution expressing unequivocal support for Orbán by an almost two-thirds majority – a gesture of solidarity that was unprecedented in the EU. The longer Babiš stays in power the greater the risk that Czechia becomes a soft version of Poland. Warsaw may be able to count on Hungary and Czechia, but the strength of that coalition of ‘enemies’ of the rule of law is too weak to permanently counterbalance the external pressure of the EU mainstream on the Polish government.

However, the coalition may be dramatically reinforced if the national populists (Lega and Fratelli d’Italia) regroup in Italy, the third-largest EU member state after Brexit. Their rise was temporarily checked at the beginning of September by the new pro-European government, but its internal divisions make it highly unstable (in recent decades, the average term of office for an Italian government is just over one year). National populists’ ratings (exceeding 45% in opinion polls in summer 2019) have started to recover in recent weeks. Currently, Lega enjoys the support of 33% of voters, around 8% of whom say they will vote for Fratelli d’Italia, which

means they could win snap elections and form a government that embarks upon ‘reforms’ that ultimately dismantle the rule of law. Indeed, Matteo Salvini, the leader of Lega, has often said that he would like to have Budapest in Rome.

### American connections and European credibility

The boldness of this ‘enemies of the rule of law’ coalition will increase considerably if President Trump is re-elected in November 2020. The Trump administration established close relations with ANO (the populists in Czechia), Lega, PiS, and Fidesz based on ideological affinity. The US president and his officials have met politicians from these parties frequently in recent years and endorsed their policies. It is worth recalling that Donald Trump is the first US president in history to openly contest European integration; he has praised Brexit and called for further exits. In his second term he may aspire to undermine EU unity more vigorously by cooperating closely with Babiš, Kaczyński, Orbán and Salvini (as new prime minister of Italy). This scenario would constitute an existential challenge to a post-Brexit EU that may not survive in the long term with four member states (representing almost 30% of the EU population) rejecting the rule of law – the basic foundation of the European integration.

On the other hand, if Trump loses the election, his defeat may change the game for Poland’s democracy and national populists in the EU generally. The US occupies a central place in Polish foreign policy, especially on security matters – all the more so since Russia’s aggression against Ukraine. In Poland, the US also enjoys one of highest levels of ‘social sympathy’ in the EU. Consequently, a victory for a candidate from the Democrats, which are highly critical of dismantling the rule of law in Poland and Hungary, is likely to stymie some of the more radical Law and Justice ‘reforms’. Unquestionably, however, any reversal of authoritarianism in Poland will depend on the ability of opposition parties to win over the Polish electorate.

Since the national elections in Poland, there is a view that the EU mainstream should learn to live with Kaczyński because he won a second term and enjoys huge popular support. The truth is that Polish society is even more divided than ever, into two more or less equally antagonistic camps.

European governments should recognise that a policy of ‘appeasement’ will only encourage PiS to step up its dismantling of the rule of law. And a weak reaction on the part of EU states and institutions to the de-democratisation of Poland will only inspire other populists in Europe. The credibility of the EU’s response to negative internal developments in Poland will also depend on a consistent stance towards Orbán’s Hungary, where democratic backsliding is more advanced than in Poland. Yet Fidesz was only suspended, not expelled, from the EPP in spring 2019.

Current developments in Italy – after all an EU founding member state – show that the rise of national populism is not only a concern in Poland and Hungary. The *de facto* or *de jure* comeback of Fidesz to the EPP, as suggested by certain members of that political group, will substantially undermine the EU’s ability to react towards authoritarian trends, not only in Poland but also in other member states.