

Poland

by Anna Wójcik

Capital: Warsaw
Population: 37.95 million
GNI/capita, PPP: \$26,770

Source: World Bank *World Development Indicators*.

Nations in Transit Ratings and Averaged Scores

NIT Edition	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
National Democratic Governance	3.25	3.25	2.75	2.50	2.50	2.50	2.50	2.75	3.25	4.00
Electoral Process	2.00	1.75	1.50	1.25	1.25	1.25	1.50	1.50	1.50	1.50
Civil Society	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.75	2.00
Independent Media	2.00	2.25	2.25	2.25	2.50	2.50	2.50	2.75	3.00	3.00
Local Democratic Governance	2.00	1.75	1.75	1.75	1.75	1.50	1.50	1.50	1.75	2.00
Judicial Framework and Independence	2.25	2.50	2.50	2.50	2.50	2.50	2.50	2.75	3.25	4.25
Corruption	2.75	3.25	3.25	3.25	3.25	3.50	3.50	3.50	3.50	3.50
Democracy Score	2.25	2.32	2.21	2.14	2.18	2.18	2.21	2.32	2.57	2.89

NOTE: The ratings reflect the consensus of Freedom House, its academic advisers, and the author(s) of this report. The opinions expressed in this report are those of the author(s). The ratings are based on a scale of 1 to 7, with 1 representing the highest level of democratic progress and 7 the lowest. The Democracy Score is an average of ratings for the categories tracked in a given year.

EXECUTIVE SUMMARY

Poland's democracy faced unprecedented challenges in 2017. The governing Law and Justice (PiS) party used its popularity to put forward a reformist agenda that—if implemented—will change the character of democracy in Poland. After taking over and crippling the Constitutional Tribunal in 2015, PiS pushed through a judicial reform in 2017 that undermines separation of powers. Additionally, the ruling party proposed changes to the electoral law that could threaten the integrity of elections. While critics continue to worry about the direction Poland is taking, the party's leadership insists that it is enforcing an electoral program that envisaged far-reaching changes. PiS continues to have strong popular support for its political agenda and performs well in opinion polls, enjoying the benefits of a favorable economic environment and the lack of challenge from a weak and divided opposition.

The most important development of the year was the judicial reform. In July, PiS quickly passed three bills in parliament that intended to thoroughly reform the judiciary and threatened separation of powers. The laws, pushed through in haste following American president Donald Trump's visit to Warsaw and with PiS capitalizing on its popularity, received strong criticism from domestic and international actors. While many lawyers agreed that the system needed mending, most argued that the proposed changes were unconstitutional. Among others, the proposals included giving the parliamentary majority the possibility to handpick members of the National Council of the Judiciary (NCJ), a body responsible for guaranteeing the independence of the judiciary and the appointment of judges; replacing current Supreme Court justices, including the president of the court whose term is constitutionally fixed; and allowing for the Minister of Justice to replace the heads of regional courts.

After more than a week of countrywide protests, President Andrzej Duda—who had been voted into office on the PiS's ticket—vetoed two of the three bills, throwing the governing party into disarray. Months of discussions followed between the president's office and PiS party leader Jarosław Kaczyński—who holds no official position in the government but sets the direction—and eventually a compromise emerged. In December, the parliament adopted the two previously vetoed bills with a number of changes and additions. The Law on the Supreme Court (SC) will result in the removal of the court's president in 2018, before the end of her constitutionally fixed term of six years, while the lowering of the mandatory retirement age for SC judges will result in the dismissal of about 40 percent of the court's current members. The Law on the National Council of the Judiciary (NCJ)—contradicting the Constitution of the Republic of Poland—now grants the parliament power to elect NCJ members. A number of other changes allow for the reopening of final cases going back 20 years on vague grounds, such as “social justice,” and establish a new chamber in the Supreme Court responsible for disciplinary proceedings and overseeing electoral cases. Its members will be elected by the NCJ, that is, indirectly by the PiS-dominated parliament.

Following Duda's unexpected veto in July, Kaczyński sought to regain the upper hand. A cabinet reshuffle and change of prime ministers signaled a new opening in the making. The recalibration of the political setup was intended to get rid of PiS hardliners, like Minister of Defense Antoni Macierewicz, and promote party doves, including the newly appointed Prime Minister Mateusz Morawiecki and Minister of Higher Education Jarosław Gowin.

Protests abounded during the course of the year, but they were limited in their effects and public reach. Apart from demonstrations around the judicial reforms and outright anti-PiS activity (such as counterprotests during the monthly marches commemorating the Smolensk air crash), a hunger strike by young doctors and the second annual “black protest”—a demonstration for women's rights and the liberalization of Poland's strict anti-abortion laws—resonated loudest.

However, looking at the polls, Polish society seems to be predominantly happy with the direction the country is headed in. At the end of 2017, the economy was booming and registered over 4-percent growth in GDP (according to the World Bank forecast),¹ unemployment was falling, and the budget was balanced. The new prime minister, Mateusz Morawiecki, told a convincing story (backed by data) about Poland's economic clout and growing affluence. Record high tax income and a number of social reforms—

including raising the minimum wage, lowering the retirement age, and instituting a 500-zloty monthly family allowance per child after the second child—contribute to the perception of increased social justice.

In the year 2017, Poland's democratic institutions, under the virtually unchecked control of PiS party leader Kaczyński, came close to a point of no return in straying from democratic norms. Regardless of the momentary upset to Kaczyński's political plans in the middle of the year, PiS used its significant public support, which was still growing at year's end, to enforce a strong agenda clearly aimed at undermining pluralism in Poland. Changes to the electoral law, announced in December, look set to create chaos during the 2018 fall local elections. This, on top of controversial changes to the regulatory environment and the financing of independent civil society institutions, a weakening of local governments due to the centralization of powers, and strong pro-PiS propaganda in state-owned media add up to a rather bleak outlook for Poland's democracy.

Score Changes:

- **National Democratic Governance rating declined from 3.25 to 4.00** due to the government's irregular practices of passing legislation and overwriting judicial decisions, the informal power wielded by Jarosław Kaczyński, and the antidemocratic intent behind multiple reforms passed during the year.
- **Civil Society rating declined from 1.75 to 2.0** due to a vicious smear campaign against nongovernmental organizations (NGOs), occasional harassment of civic activists, and the centralization of funding under a new government agency.
- **Local Democratic Governance rating declined from 1.75 to 2.00** due to various moves by the government that reduce the power of local administrators.
- **Judicial Framework and Independence rating declined from 3.25 to 4.25** due to judicial reforms that seriously undermine the independence of judges and abolish separation of powers.

As a result, Poland's Democracy Score declines from 2.57 to 2.89.

Outlook for 2018: The November 2018 regional elections will provide many answers to questions regarding the country's political future. PiS's approval ratings look set to stay high, as Poland's economic outlook is positive and no political movement was able, at the end of 2017, to challenge the ruling party. However, since local representation is one of the weaknesses of the party, PiS will have to mobilize significant resources to translate national polls into votes—or risk losing and then needing to explain its failure. Moreover, a substantially worse result could trigger conflict within the party or, possibly, its coming apart at the seams. In a worst-case scenario, a feeble outcome for PiS could trigger some party officials to tamper with the election results, thrusting Poland into a severe political crisis.

That said, unless polls change, PiS is looking at a relatively calm year. Newly appointed Prime Minister Morawiecki is the party's best shot at a successful electoral campaign and at reversing the bad press PiS has been getting in Europe and the United States. If he gets his way and enforces a more moderate political agenda, focused on dialogue and compromise at home and abroad, he could prepare the party for a very strong bid ahead of the 2019 parliamentary elections.

However, Jarosław Kaczyński likes to surprise both opponents and followers, with many of his grand schemes defying rudimentary logic—only time will tell if exchanging the widely popular former prime minister Beata Szydło for PiS outsider Morawiecki will be deemed as a stroke of genius or a shot in the foot. In the meantime, internal party conflicts could and will most probably escalate. Morawiecki's

“dauphin” status is a cause for severe dislike among the other candidates for Kaczyński’s post. The economic situation could also deteriorate due to external factors, and the parliamentary and nonparliamentary opposition could unite and start building a common platform against PiS. These factors could all develop into game changers in a situation that, for the time being, seems to be rock solid.

The year 2018, in which the 100th anniversary of Polish independence will be celebrated, should prove more interesting than most political observers expect.

MAIN REPORT

National Democratic Governance

2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
3.25	3.25	2.75	2.50	2.50	2.50	2.50	2.75	3.25	4.00

- Following its victory in the 2015 elections, the nationalist conservative Law and Justice (PiS) party initiated sweeping reforms to Poland’s democratic institutions, including the judiciary, the prosecution, and the media sphere. Developments in 2017 clearly demonstrated that the ruling party is veering off the democratic path. Most worrisome is the reform to the judiciary (see “Judicial Framework and Independence”), yet proposed changes to the electoral laws, increased control over the media, and profound hostility towards civil society critical of the government all serve to undermine pluralism and damage the very fabric of Polish democracy.
- Despite this, PiS consolidated its lead in the polls and was looking strong at year’s end. Polls put the party’s support at around 40 percent² and—apart from a slight slump in March³ due to PiS’s failure to block the candidacy of former prime minister Donald Tusk for president of the Council of the European Union⁴—the party’s domination was practically unchallenged.
- During the year, PiS itself was dominated by one man, member of parliament (MP) and party leader Jarosław Kaczyński, who continued to pull the strings. In December, Kaczyński initiated a swap in the position of prime minister—Beata Szydło, a politician widely popular with the party base, was replaced by the technocrat deputy prime minister Mateusz Morawiecki. The move appeared to be the beginning of a recalibration of the government and, after a difficult year with a number of controversial and (in some cases) undemocratic reforms, a slow move towards the center of the political scene.
- One of the main developments leading to the change was the battle over judicial reform, fought out over the course of the summer. In July, President Andrzej Duda vetoed two controversial bills on the judiciary. This move was perceived as a turning point, as Duda had previously seemed completely dependent⁵ on PiS leader Kaczyński and seldom (if ever) willing to do anything against his will. Yet, in a sign of increasing independence, the president launched consultations on a new constitution in early May, announcing plans for a referendum in 2018. The referendum would ask Poles about drafting a new constitution and would coincide with the centennial anniversary of the country’s independence.⁶ Another sign of Duda’s increasing independence was his veto of the law on Regional Chambers of Audit in July. In the end, although Duda had prepared his own legislative amendments over the fall, the final version he signed into law in December barely resembled his original proposals (see “Judicial Framework and Independence”).
- Ever since the vetoes, a number of fissures in the PiS camp, previously just a topic of political gossip, became more visible. Minister of Justice Zbigniew Ziobro openly attacked Duda in July,⁷ prompting a reaction from the president’s spokesperson.⁸ The president also engaged in a conflict with Minister of Defense Antoni Macierewicz.⁹
- A divided government with a weak Prime Minister Beata Szydło, who hardly controlled her ministers,¹⁰ finally led to a reshuffle.¹¹ Paradoxically, the cabinet and Szydło herself had very high approval ratings.¹² Still, Jarosław Kaczyński decided to hand the reins to Morawiecki, who seemed intent on building a new cabinet and ridding the government of the most controversial or least popular ministers. These included Minister of Health Konstanty Radziwiłł, Minister of Foreign Affairs Witold Waszczykowski, and Minister of the Environment Jan Szyszko. Morawiecki also considered dismissing the ultra-right-wing powerhouse politician Macierewicz. Such a move would be perceived as a success for Duda and political payback for his signing into life the December bills on the judiciary.

- Throughout the year, PiS tended to bypass the executive branch and parliamentary control by fast-tracking legislation via Private Members Bills (PMB). Since PMBs do not need to be consulted with organizations and ministries, they can be adopted more quickly. PMBs included the controversial law on the Supreme Court and the amendments to the electoral law. Altogether, between November 2016 and November 2017, 12.5 percent of adopted laws were passed in this manner.¹³ This rather high percentage is still much lower than the year before, when almost 40 percent of all legislation was passed through PMBs. At the same time, the new Law on Transparency in Public Life, which increased the catalog of civil servants obliged to disclose annual financial declarations, was strongly criticized by nongovernmental organizations (NGOs)¹⁴ for introducing new procedural obstacles for citizens who seek public information.
- The opposition remained weak and divided throughout the year.¹⁵ The Civic Platform (PO) trailed PiS in the polls, barely reaching 20 percent.¹⁶ PO was unable to capitalize on the various protests, while its leader, Grzegorz Schetyna, was mainly occupied with keeping order in the ranks of his party.¹⁷ Liberal-minded Nowoczesna (.N) was at around the 5-percent electoral threshold for most of the year, losing much of its public support. Finally, the moderately populist Paweł Kukiz (of the Kukiz Movement) bled MPs to PiS in 2017¹⁸ and—having waived the right to receive financing for his political party—will have a hard time running a campaign for the 2018 local elections.
- At the same time, the economic situation in Poland remained very good. GDP growth was at 4 percent in 2017,¹⁹ while unemployment was at an all-time low: 4.8 percent according to International Labour Organization (ILO) and Eurostat readings, and 6.8 percent according to official Polish GUS data. The country’s economic prospects also looked positive at year’s end,²⁰ including a change from consumption-led to investment-led growth and stable levels of consumption thanks to wage hikes.²¹ Coupled with the positive consumer sentiment, this will support an increase in household spending. Investment grew in the second half of the year, especially in infrastructure projects such as new roads, buildings, and railway maintenance, with an additional increase coming in 2018 due to the lag between signing a European Union (EU) funding contract and the disbursement of related funds.
- Nevertheless, the judicial reforms set Poland on a collision course with Brussels and led to the launching of the Article 7 procedure—a sanction mechanism that could, if taken to its extreme, result in the stripping of Poland’s voting rights in the EU. At year’s end, Warsaw was preparing a “white paper” to explain and underline the government’s position on the reforms. Poland was also being tried before the European Court of Justice (ECJ) for cutting down trees in the primeval Białowieża Forest. These cases significantly contributed to Poland’s negative image as the EU’s problem child.
- Relations with Germany deteriorated throughout the year due to official requests by PiS officials to provide war reparations for the losses suffered during World War II. With French president Emmanuel Macron becoming one of Poland’s fiercest critics, the once fairly uniform Visegrad Four (the group consisting of Poland, Hungary, the Czech Republic, and Slovakia) failed to protect its members’ interests. This was demonstrated during negotiations over the Posted Workers Directive in October, when Slovakia and the Czech Republic voted alongside the majority, headed by France, leaving Poland and Hungary out in the cold.

Electoral Process

2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
2.00	1.75	1.50	1.25	1.25	1.25	1.50	1.50	1.50	1.50

- Poland’s electoral framework guarantees free and fair elections and the independence of electoral bodies. No elections took place in 2017. However, PiS introduced an amendment²² to Poland’s electoral laws pertaining to local elections that will result in a sweeping transformation if adopted. The changes, which look set to be adopted in early 2018, will politicize the appointment process at the National

Electoral Commission (NEC) and weaken the role of certain nonaffiliated local committees and politicians.

- According to the amendment, starting with the 2018 local elections, the appointment of voits (heads of the smallest units of local government) and mayors will be limited to two terms. The terms of local government politicians, however, have been extended from four to five years.²³ The changes would make it impossible to simultaneously run for head of a local unit (voit or mayor) and local constituency (poviat council or voivodeship sejm). According to the draft bill, the National Electoral Commission (PKW) will replace all voivodeship commissioners,²⁴ people responsible for overseeing the enforcement of electoral laws during elections, with appointments countersigned by the minister of interior. Additionally, professional requirements to become a voivodeship commissioner will be lowered, while their powers will be extended to include deciding on the number of mandates to be distributed and the size of electoral districts in local elections.
- The bill will also politicize appointments to the PKW.²⁵ Today, the commission is composed of three judges appointed by the presidents of three institutions: the Constitutional Tribunal (CT), Supreme Court (SC), and Supreme Administrative Court (SAC). Starting from 2019, the body will be made up of one member of the CT, one SAC judge, and seven members elected by the Sejm. Changes to the appointment procedure will also affect the National Electoral Office, a body that supports the PKW, centralizing more power in the hands of the executive. While the chair of the PKW will continue to appoint its head, the new appointee will be chosen from among three candidates presented by the minister of the interior.
- The bill also aims to change certain procedural rules, in some cases instituting stricter control. It replaces voting by mail (except for people with disabilities)²⁶ with proxy voting. It also requires the installment of 24-hour cameras in polling stations.
- Finally, the amendments aim to change validity requirements for votes cast. While up till now valid votes were those marked with an “x” in only one box and nothing else on the ballot, going forward voters would be able to write, draw, and scribble on the ballots. This has caused some unease among PKW members. According to its head, Wojciech Hermeliński, the new rules could “cause chaos in the electoral process.”²⁷

Civil Society

2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.75	2.00

- Similar to the previous year, significant parts of Poland’s civil society mobilized and took to the streets in 2017. Protesters opposed government reforms, including reform of the judiciary, restrictions on women’s rights, and substantial changes to the distribution of public funds for NGOs. Smear campaigns against civil society organizations also continued, while 2016 restrictions on freedom of assembly remained on the books. Protesters taking part in politicized demonstrations and sit-ins against the government’s actions faced investigations and court proceedings, resulting in a chilling effect on the sector. On the flipside, prominent networks of conservative political orientation continued to grow.
- During the year, the grassroots civic movement Obywatele RP (Citizens of the Republic) staged further counterprotests at the monthly commemorations of the 2010 Smolensk air crash. The processions, organized in front of the Presidential Palace in Warsaw and supported by government officials and PiS chairman Kaczyński, brought onto the streets thousands of demonstrators. The government cited Obywatele RP’s activities as a reason for introducing restrictions to the Law on Assemblies in 2016, notably the law on “cyclical demonstrations,” which stipulates that an event held several times a year in a given place is registered—no other demonstrations or spontaneous gatherings may be organized within 100 meters of the reserved venue, a restriction to counterdemonstrations.²⁸

- Some of the protests by Obywatele RP occasionally seemed staged to provoke the police primarily, in order to win over the media and increase the number of people in the streets. This tactic was successful, and the group rose from the margins to the center of civil society protest movements.²⁹
- The biggest such protest took place on 10 July, where the counterdemonstrators were protected by 2,500 police, exceeding the number of protesters.³⁰ The cost of securing the Smolensk commemoration in July amounted to 758,000 zlotys (around 180,000 euros), according to data provided by the police.³¹ Following the July demonstration, the Interior Ministry exercised pressure on the organization, issuing a letter to Fundacja Wolni Obywatele RP (Foundation Free Citizens of the Republic) in which it threatened to suspend the association's board and introduce compulsory administration.³² In a case dealing with the group's intrusion on Sejm premises earlier in January, the courts acquitted the Obywatele RP leaders.³³
- However, interrogations and arrests of protesters continued throughout 2017. According to a report prepared by Obywatele RP's center for legal intervention, between April and December police interrogated 395 people as suspects or witnesses in protest activities, and courts sentenced 210 people for minor offenses.³⁴
- Another prominent social movement has organized against increased logging activity, approved by the environment ministry, in the primeval Białowieża Forest. The main groups in the movement included the informal association "Obóz dla Puszczy" (Camp for the Forest)³⁵ and a coalition of NGOs called "Kocham Puszcze" ("I love the Forest").³⁶ Sit-ins staged by activists at the site of the logging activity³⁷ and at the Directorate General of the National Forests were interrupted by police and led to the arrest of several protesters.³⁸ In the first sentence related to the case, the court found guilty seven activists who blocked the logging in Hajnówka in June 2017.³⁹ The court additionally acquitted 10 activists, concluding that they had not committed an offense but were acting "in a state of necessity."⁴⁰ At year's end, 70 more cases were pending.
- In July, the planned reform of the judiciary, including PiS proposed bills on the National Council of the Judiciary (NCJ), the Supreme Court (SC), and common courts, prompted large nationwide protests. Demonstrations started on 18 July and continued after the presidential vetoes of 24 July.⁴¹ The predominantly nonpartisan and peaceful protests were organized by civil society groups, including "Akcja Demokracja"⁴² (Action Democracy) and Obywatele RP. The Association of Polish Judges "Iustitia" called for a show of solidarity with the judiciary in a "chain of lights" candlelit protest.⁴³ Unlike political protests organized in the previous years by the opposition movement KOD (Committee for the Defense of Democracy), the July 2017 protests attracted a younger generation of Poles.⁴⁴ Polish officials knowingly underestimated the scale and importance of the July protests in state media⁴⁵ and implied that the demonstrations were an orchestrated "sponsored action" targeted at the government.⁴⁶ According to a CBOS poll from September, while only 3 percent of respondents actively participated in protests against the judicial reforms, 42 percent declared their support for the cause.⁴⁷
- Far-right elements also played an increased role during the year. On 11 November, the annual gathering of those celebrating Poland's Independence Day ("Marsz Niepodległości"—The Independence March)⁴⁸ took place. The march, which has been organized since 2009 in Warsaw by right-wing groups, has attracted a considerable number of extreme political groups in recent years. Ruch Narodowy (National Movement), a far-right political party inspired by the interwar political movement Radical-National Camp (ONR), was among the organizers. In 2017, according to estimates by the Polish police, around 60,000 people marched in the center of Warsaw, including peaceful protesters celebrating Poland and far-right elements.⁴⁹ Among the marchers, there were participants displaying emblems referring to Polish fascist and anti-Semitic groups from the interwar period (such as the *falanga* and Celtic cross), while slogans included "White Europe of brotherly nations" and "Death to enemies of the Nation" and chants featured anti-Muslim, anti-Semitic, anti-Ukrainian, antirefugee, and anticommunist undertones. Yet, in contrast to previous years when the marches had often ended in clashes between participants and counterprotesters, the 2017 march was mostly peaceful. President Andrzej Duda and Deputy Prime Minister and Minister of Culture Piotr Gliński⁵⁰ condemned the racist

and xenophobic slogans displayed during the march, and Duda warned of the dangers of “a sick nationalism.”⁵¹ The Prosecutor’s Office in Warsaw launched investigations into alleged offenses of propagating ideas of fascist or other totalitarian regimes.⁵² However, the government’s attempts at distancing itself from the most offensive slogans and organizers was done in a clumsy and self-contradictory manner so as not to alienate the party’s most radical electorate.

- State media presented NGO activities sponsored by the Hungarian-American philanthropist George Soros⁵³ in a negative light, accusing Soros of trying to create “societies without nationality and religion.”⁵⁴ In the spring, an aggressive smear campaign ensued against the Batory Foundation, a liberal organization sponsored by George Soros’ Open Society Foundations, featuring accusations directed at the foundations’ management role in distributing funds from the European Economic Area (EEA) and the Norway Grants.⁵⁵ In May 2017, the Norwegian government entered into talks with its Polish counterpart, leading to an October agreement. In a concession to the Polish government, a joint Norwegian-Polish committee will select the groups overseeing the disbursement of the 53 million euros⁵⁶ in grants in the future.
- During 2017, the government adopted legislation that centralized public funding, negatively affecting civic space and the health of the sector for years to come. In October, the president signed the Law on the National Institute of Freedom—Center for Development of Civil Society,⁵⁷ establishing a new executive agency responsible for the development of civil society. The law centralizes the distribution of public funds for NGOs under the authority of this new body attached to the prime minister’s office and led by former deputy minister for civil society Wojciech Kaczmarczyk. Domestic and international organizations, including the Polish Ombudsman,⁵⁸ NGOs in Poland,⁵⁹ and the OSCE Office for Democratic institutions and Human Rights⁶⁰ all criticized the law, arguing that it provides the government extensive influence over the institute’s governance and operations.
- Civil society actively participated in Poland’s debate over women’s reproductive rights. Pro-choice activists from the initiative “Save Women,” helmed by Barbara Nowacka, collected almost five hundred thousand signatures under the proposal for liberalizing abortion,⁶¹ whereas the project for increasing restrictions on abortion, proposed by Kaja Godek of the “Life and Family” foundation, gathered more than six hundred thousand signatures.⁶² In October, large protests took place on the anniversary of the 2016 “Black Protest”—a massive demonstration that had earlier forced the government to change course on restricting abortion rights. A day after the 2017 protest, police raided the offices of the Center for Women’s Rights, an NGO working on reproductive rights, over fraud allegations related to a Ministry of Justice civil servant and confiscated computers and documents.⁶³ On 30 October, the Prosecutor’s Office sent a letter from the conservative legal think tank Institute for the Legal Culture (“Ordo Iuris”) to regional prosecutors’ offices,⁶⁴ urging prosecutors to investigate cases of abetting women in terminating pregnancies contrary to the law—a call to activate the rarely used criminal law provision, presumably against pro-choice activists. In Poland, abortion has been illegal since 1993. Women who terminate their own pregnancy are not criminally liable. A person who performs an abortion or abets a woman in terminating a pregnancy against the law may face up to three years in prison.⁶⁵ There are three exceptions to punishment for performing or abetting an abortion: when a pregnancy threatens a woman’s life or health, when the fetus is seriously malformed, or when a pregnancy results from a criminal act.
- At the same time, Polish women’s rights groups, including NGOs helping victims of domestic violence such as the Centrum Praw Kobiet (Center for Women’s Rights), did not receive state funding from the Ministry of Justice for the second consecutive year.⁶⁶

Independent Media

2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
<u>2.00</u>	<u>2.25</u>	<u>2.25</u>	<u>2.25</u>	<u>2.50</u>	2.50	2.50	2.75	3.00	3.00

- The independent media sector in Poland, while in comparatively good shape for the region, is growing weaker as advertising revenues move online. Few media outlets have managed a business-oriented digital transformation. At the same time, the ruling party is looking for ways to curtail foreign ownership in the market—a move that would lead to the erosion of press freedoms. In 2017, criticism of the public media’s lack of objectivity, bordering on propaganda, also continued.
- The most controversial development of the year was a large fine handed down to the American-owned television station TVN for its coverage of the parliamentary crisis at the end of 2016. The National Broadcasting Council (NBC) fined TVN 1.5 million zloty⁶⁷ in December for allegedly “encouraging illegal activities and behavior that threatened public security” with its coverage. The fine sparked domestic and international outrage and prompted a statement from the U.S. Department of State. However, at year’s end the NBC seemed to backtrack from its previous position, making the repeal of the fine likely in 2018.
- PiS toyed throughout the year with the idea of an overarching media reform. Kaczyński claimed in a speech at the party’s July convention that Poland is experiencing an “unhealthy” concentration of media ownership.⁶⁸ According to the latest statistics, a fair portion of print media (especially local newspapers) is in foreign hands.⁶⁹ While the Ministry of Culture prepared a bill that would have limited foreign ownership in the market—resulting in sweeping changes for regional media—newly elected Prime Minister Morawiecki suggested moving away from such controversial plans of de-concentration⁷⁰ in order not to annoy Western European politicians and businesses.
- Poles remained fairly critical of public media throughout the year, which nevertheless ratcheted up progovernment propaganda to a previously unimaginable extent. According to the state-owned polling firm CBOS, in April, 55 percent of Poles had a positive attitude towards public television TVP, a decline of 27 percentage points compared to 2014. The same can be said, if to a lesser extent, of TVP’s competitors. TVN was praised by 64 percent (down by 16 points) and Polsat by 67 percent (down by 12 points).⁷¹ According to an SW Research poll commissioned by the daily broadsheet *Rzeczpospolita*, 55 percent of Poles believed that the quality of TVP’s flagship news program “Wiadomości” had deteriorated.⁷² TVP’s market share was likewise falling; the channel finished second with 10.14 percent of total viewers after the privately owned Polsat (11.14 percent),⁷³ and its revenues declined, partly due to falling advertising.⁷⁴ In August, its board asked for financial help and was granted a loan from the state budget amounting to 800 million zloty.⁷⁵
- Despite TVP’s increasing problems, the ruling party preferred the channel, appearing on its programs more often than the opposition. According to the internet portal *Wirtualnemedial.pl*, in September, PiS politicians had been on air for around 35 hours out of the total 58 hours dedicated to politicians. This is significantly more than the liberal *Nowoczesna* (around 4 hours) or the previously governing PO (roughly 3 hours).⁷⁶ In September, the critical portal *okopress.pl* published a survey reporting that *Info*, the prime-time talk show on TVP, featured representatives of the ruling party and its supporters 82 percent of the time.⁷⁷
- Besides targeting media owners, the government went after journalists in 2017. In June, reporter Tomasz Piątek published a book titled “Macierewicz and His Secrets” about Minister of Defense Antoni Macierewicz and his contacts with people linked to the Russian secret services. In July, Macierewicz submitted a notice to the military prosecutor’s office, in which he accused Piątek of “using violence or threats against a public official to take or refrain from official duties.”⁷⁸ Macierewicz decided to pursue a military case, even though the civil process would have allowed him to ask for a correction in the book. In November, Piątek received the Reporters Without Borders prize for freedom of the press.
- At year’s end, the Ministry of Culture prepared a draft law that will liberalize regulation related to the use and authorization of reported material. After the changes come into effect, an interviewed person will no longer be able to block the publication of an article. The changes comply with the 2011 ruling of the European Court of Human Rights.⁷⁹

Local Democratic Governance

2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
2.00	1.75	1.75	1.75	1.75	1.50	1.50	1.50	1.75	2.00

- The government has been transferring a number of powers to the central level, undoing some of the achievements of Poland’s well-functioning and decentralized local governance. PiS controls only 1 out of 16 regional assemblies and 10 out of 107 local governments in large towns.⁸⁰ Throughout the year, the party pushed for reforms that will allow for increased influence over these entities without a change in power.
- In July, the Sejm adopted a new water law that will enter into force in 2018. A new institution, Wody Polskie (Polish Waters), will manage the whole inland waterways economy, previously managed by local governments.⁸¹ The Sejm also passed a law that will give voivodes (supervised by the minister of interior and administration) control over regional operational programs involving European funds, previously managed by the regional marshals’ offices.⁸² Regional marshals are heads of regional assemblies, chosen directly in local elections. At year’s end, the government was also working on a draft law that will transfer oversight of construction inspection to the Ministry of Infrastructure. Previously, it had been overseen by local authorities.⁸³
- The government instituted a large-scale reform of the education system in 2017 without providing additional financial resources to local authorities to make the necessary adjustments. As of September, the government reinstated the eight-year-long elementary school system, abolishing middle schools. Local authorities had to present plans for adjusting the school networks to the new system and cover the costs of making changes to school buildings.⁸⁴ Many local officials—who often operate on tight budgets and high loans necessary to qualify for EU matching grants—argued that the reforms stretched their resources too thin and criticized the government⁸⁵ for failing to provide additional financial support.
- In June, PiS passed an amendment to the Law on Regional Chambers of Audit (RIO),⁸⁶ which audit local authorities’ finances. The change would have increased the powers of the prime minister and government in selecting the chambers’ management and would have made it easier to dismiss local politicians under investigation. Yet, after both the Sejm and the Senate adopted the law, President Duda vetoed it in July.
- Corruption continued to be present at the local level. A number of prosecutions during the year, however, raised concerns about politicization. The Prosecutor’s Office and the Central Anticorruption Bureau (CBA) investigated officials at different levels in 2017. Three prominent and locally popular politicians from PO—the mayors of Radom (Radosław Witkowski),⁸⁷ Łódź (Hanna Zdanowska),⁸⁸ and Lublin (Krzysztof Żuk)⁸⁹—claimed that the charges against them were trumped up or exaggerated, serving as fodder for PiS in its political feud with PO.

Judicial Framework and Independence

2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
2.25	2.50	2.50	2.50	2.50	2.50	2.50	2.75	3.25	4.25

- Following its takeover of the Constitutional Tribunal (CT) in 2016, and amidst criticism over failing to resolve controversies around the CT’s functioning and composition, PiS reformed the remaining parts of the judiciary in 2017. The amendments went against Poland’s constitution and increased the political

grip over the appointment of judges and court presidents, many of whom were dismissed by the end of the year. While the president vetoed in July the original two PiS proposals⁹⁰ on the Supreme Court (SC) and the National Council of the Judiciary (NCJ) due to mass protests across the country, the power struggle between the president, justice minister (who is also the Prosecutor General), and PiS leadership ended with a victory for the party. President Duda made concessions and signed the amended laws on the SC and NCJ ahead of the December government reshuffle.

- In July, PiS presented its proposals for reforming the SC and the NCJ. The changes, among other things, would have put the NCJ—a body guaranteeing judicial independence and nominating all judges in the country—under control of the party and dismissed all current SC members. Following large-scale protests and significant international condemnation, the president vetoed the laws and presented his own proposals in September.⁹¹ Both PiS’s and the president’s proposals included unconstitutional solutions. For example, both terminated current NCJ members, despite the constitutionally protected nature of their terms. PiS’s bill would have terminated all present NCJ judicial members within 30 days of entering into force, while the presidential proposal was not explicit about the timing.⁹² Both projects envisaged changes in the procedure of electing members to NCJ. Previously, 15 of the 25 members were elected by judges in the council. Whereas PiS’s proposal stipulated their appointment by an ordinary majority in the Sejm, the president’s proposal suggested a qualified majority. The presidential proposal on the SC also repeated many solutions from the vetoed PiS proposal, including the unconstitutional termination of the SC president’s term.
- On 8 December, the parliament adopted the laws on SC and NCJ, which were signed by the president on 20 December despite pressure from the EU, UN, and also 50 Polish and international NGOs, which issued an open letter to the president pleading for another veto.⁹³ On 22 December, the Supreme Court president Małgorzata Gersdorf, herself an object of severe scrutiny from progovernment media, published an open letter to “all citizens of the Republic of Poland” calling the adoption of the new SC legislation a coup d’état.⁹⁴ Domestic experts⁹⁵ and international institutions, including the UN Special Rapporteur on the Independence of Judges,⁹⁶ Council of Europe’s Venice Commission,⁹⁷ and the EU, argued that the new laws threaten judicial independence, separation of powers, and rule of law. Concerns were also raised over irregularities in the legislative procedure, as PiS’s proposals were presented and adopted by both houses of parliament in a short period of time without suitable consultation with key stakeholders, namely, the judiciary itself. In addition to these laws, the government adopted two others in May and July on lower-level courts.
- The four laws adopted during the year significantly increase political control over the judiciary. The Law on the National School of Judiciary and Public Prosecution, adopted in May, increases the power of assistant judges, appointed directly by the minister of justice with minimal involvement by the NCJ and therefore minimal oversight from professional judges.⁹⁸ The assistant judges’ short mandate makes them particularly vulnerable to external influences, including from the minister of justice/prosecutor general.⁹⁹
- The Law on the Organization of Common Courts, adopted in July, provides new rules for the appointment and dismissal of court presidents, granting the minister of justice arbitrary powers to appoint and dismiss them without established criteria or providing reasons, and in the case of a court president dismissal, with no possibility of judicial review. The minister additionally has discretion over prolonging the mandate of judges who have reached the newly lowered retirement age, 60 years for female judges and 65 years for male judges. The law resulted in the dismissal of dozens of ordinary court presidents—and between August and December, the minister replaced 62 judges.¹⁰⁰ In July, the European Commission (EC) referred the law to the EU Court of Justice for breach of EU law.
- The Law on the National Council of the Judiciary, adopted in December, stipulates that—contrary to the constitution—15 NCJ members will be selected by a simple majority in the parliament. The law introduces a new procedure according to which groups of citizens and judges can nominate candidates for the NCJ. In March 2018, current NCJ members will be removed from office despite constitutional

protection of their mandates.¹⁰¹ The association of judges and the council of judges in local courts pleaded with their colleagues to abstain from the selection procedure for new members.¹⁰²

- The Law on the Supreme Court, adopted in December, introduces changes to the SC's internal structure, including a new Disciplinary Chamber, and establishes a new system of disciplinary liability for judges. It lowers the retirement age from 70 to 65 years—a move that will change the composition of the SC. The law terminates the term in office of all present SC judges over this age limit and extends the powers of the president at the expense of the court's independence.¹⁰³ The law also introduces a new procedure of “extraordinary appeal,” which allows the newly constituted SC to review final judgments from the past 20 years.¹⁰⁴
- The EU reacted strongly to the changes and—following a number of statements and after some trepidation—launched an unprecedented sanctioning procedure against Poland. After the president signed the Law on the Organization of Common Courts, the EC issued its Third Recommendation in the Rule of Law Framework, following its 2016 recommendations. In it, the EC expressed concerns about the negative implications of the proposed and adopted laws on the independence of the judiciary, separation of powers, and rule of law.¹⁰⁵ After exhausting the rule-of-law dialogue procedure according to Article 2 of the Treaty on the EU (TEU), on 20 December the EC issued a complementary Fourth Rule of Law Recommendation, which addressed concerns raised by the new laws on the Supreme Court and the National Council for the Judiciary. Additionally, in an unprecedented move, the EU submitted a Reasoned Proposal for a Decision of the Council to determine the risk of a serious rule-of-law breach by Poland under Article 7(1) of the TEU.¹⁰⁶ The Article 7 procedure allows for sanctioning member states in question and ultimately stripping their voting rights in the EU.
- In addition to the negative coverage of protests against PiS's proposed reforms of state-owned media,¹⁰⁷ a state-sponsored smear campaign against the judiciary launched in September, including a website takjakbylo.pl (“How it was”), TV spots, and nationwide billboard campaign with statements about the functioning of the judiciary and the performance of individual judges.¹⁰⁸ All 49 accusations—including statements about corruption, nepotism, petty theft, gross negligence, and incompetence—were dismissed as falsehoods, inaccuracies, and propaganda in a statement issued by the NCJ.¹⁰⁹ The campaign was organized by the Polska Fundacja Narodowa (Polish National Foundation), an entity established in 2017 to promote Poland abroad, financed by 17 state treasury companies.¹¹⁰ At the end of December, newly sworn-in Prime Minister Morawiecki defended PiS's reforms in an op-ed in *The Washington Examiner* accusing Polish judges, among others, of graft and nepotism.¹¹¹
- The crisis around the composition and functioning of the Constitutional Tribunal (CT) remained unresolved during the year,¹¹² undermining the role of the CT as a guarantor of the constitution¹¹³ and preventing an effective, independent, and legitimate constitutional review in Poland. The three judges who had been admitted to the CT in 2015 without valid legal basis have not been constitutionally removed. The Polish government also failed to implement several CT judgments by refusing to publish them in the official gazette. Additionally, controversies over CT President Julia Przyłębska's appointment persisted and were subject to review by the Supreme Court (SC). In July, PiS MPs challenged the competence of civil courts for asserting the constitutional validity of the appointment of the CT president, posing a question to the CT. The SC decided to suspend the proceedings until the CT pronounces its verdict on the matter.¹¹⁴ In October, the critical daily *Gazeta Wyborcza* published an article implying that Przyłębska allows secret service influence over the CT.¹¹⁵ According to a survey from September, 28 percent of Poles assessed the functioning of the CT positively, a decline of 11 points from 2015.¹¹⁶
- There were a number of cases of pressure on the judiciary during the year. Warsaw District Court Vice-President Dariusz Drajewicz allegedly exercised pressure on a judge, Igor Tuleya, at the end of December after Tuleya reopened investigations into a highly political case concerning the legality of the parliamentary vote on 16 December 2016.¹¹⁷

Corruption

2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
2.75	3.25	3.25	3.25	3.25	3.50	3.50	3.50	3.50	3.50

- Corruption remains a concern for Poles, and the PiS government has capitalized on this sentiment by cracking down on tax fraud and introducing comprehensive and much-needed changes in the tax administration. At the same time, this legitimate fight against corruption has often been instrumentalized in a party competition and risks becoming a mechanism of retribution against the previously governing PO. In 2017, PiS focused its efforts on resolving the “restitution scandal” (afera reprzywazyzacyjna), which refers to the significant problems around returning property nationalized after World War II. While the root causes of the scandal go back to policy adopted in postwar Poland, after 1989 the judiciary and consecutive governments (including PiS and PO) turned a blind eye to the proliferation of mass-scale fraud and injustices.
- While most Poles (76 percent) consider corruption as a big challenge for Poland according to a CBOS poll from May 2017,¹¹⁸ this is a drop from 89 percent in 2009 and the lowest percentage since 1991.¹¹⁹ When it comes to the current government, 59 percent of respondents think that the political climate in Poland enables the fight against corruption. Transparency International’s 2017 Corruption Perceptions Index ranked Poland 36 out of 180 surveyed countries¹²⁰.
- Poles perceive politicians, as well as the medical and legal professions, as particularly prone to corruption and graft.¹²¹ PiS took advantage of this perception, founding its 2017 campaign against the judiciary on accusations of petty theft, corruption, and nepotism among its members.¹²² Likewise, during the October protests of junior doctors, state-controlled broadcaster TVP and its prime-time program Info reported on the hunger strike of doctors with headlines including, “They complain about wages, but eat caviar sandwiches.”¹²³
- A crackdown on corruption, including tax-fraud schemes and tax avoidance, was among PiS’s main electoral promises during the 2015 general elections campaign.¹²⁴ According to PwC, Poland faces one of the biggest tax gaps in Central Europe.¹²⁵ In 2017, Morawiecki (then as finance minister and later as prime minister) and Justice Minister/Prosecutor General Zbigniew Ziobro were instrumental in strengthening the framework for curbing and penalizing tax fraud and were vocal proponents of establishing a new investigative commission to assess the period between 2007 and 2015.¹²⁶ This time frame, covering only the two terms of the previous PO government, was obviously not a coincidence. The National Tax Authority was established in March, culminating the personnel and organizational changes in tax administration and reshuffling of the tax collection system.
- During the year, PiS also obliged companies to issue monthly tax receipts to the tax authority, previously sent on demand. According to estimates by the Finance Ministry, in the first quarter of 2017, tax revenue increased by 28 percent in relation to the same period in 2016. Amendments to the criminal code, which entered into force in March, additionally increased penalties for gross VAT fraud (above 5 billion zlotys) to up to 25 years in prison.¹²⁷ These changes are targeted at VAT carousel mafia, a type of fraud in which bogus companies fake transactions to obtain VAT returns unlawfully, pervasive in Poland and in the region. In August, the Prosecutor General issued guidelines concerning VAT fraud cases and encouraged prosecutors to request more severe punishments in cases of tax fraud and tax avoidance.¹²⁸ During the year, VAT revenue increased by 9.7 billion zlotys.¹²⁹
- The so-called restitution scandal dominated most of the year and will remain a heated topic in the run-up to the 2018 local elections. Following World War II, the Polish People’s Republic nationalized large parts of private land and property, including with the so-called Bierut Decree in Warsaw. After the transition to democracy in 1989, the restitution process was characterized by abuses, including allegedly in Warsaw under Mayor Hanna Gronkiewicz-Waltz (PO). While PiS is obviously using the scandal to its own advantage, it is quite clear that there have been many instances of wrongdoing and quite possibly corruption by city officials. PiS’s actions also meant the large-scale acceptance of a

social injustice, previously largely ignored by political elites. In March 2017, the Ministry of Justice established a verification commission for restitution in Warsaw,¹³⁰ a project of Deputy Justice Minister Patryk Jaki. Mayor Gronkiewicz-Waltz questioned the legality of the commission and submitted a case to the Supreme Administrative Court, arguing that the commission had usurped powers. The court, however, confirmed the legality of the commission in a decision on 5 October.¹³¹

- In 2017, accusations of nepotism continued against Defense Minister Antoni Macierewicz for promoting Bartłomiej Misiewicz, political cabinet chief and spokesperson for the Ministry of National Defense between 2015 and 2017, as well as a member of the board of state enterprise Polska Grupa Zbrojeniowa PGZ SA (Polish Armaments Group). The accusations eventually forced Misiewicz to step down from political functions in April—a move that was welcomed by more than 60 percent of those asked in a wp.pl poll.¹³²¹³³
- In December, the Prosecutor General requested to lift the parliamentary immunity of ruling-party Senator Stanisław Kogut accused on corruption charges. Subsequently, the lawmaker waived his own immunity in a graft probe led by the CBA.¹³⁴ The senator's PiS membership was also suspended. Kogut is suspected of bribery, allegedly accepting 170,000 zloty in return for influencing local and state authorities. His son is among five people detained in relation to the case.¹³⁵

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