

Poland

by Piotr Arak, Andrzej Bobiński

Capital: Warsaw
Population: 38 million
GNI/capita, PPP: \$25,930

Source: World Bank *World Development Indicators*.

Nations in Transit Ratings and Averaged Scores

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
National Democratic Governance	3.50	3.25	3.25	2.75	2.50	2.50	2.50	2.50	2.75	3.25
Electoral Process	2.00	2.00	1.75	1.50	1.25	1.25	1.25	1.50	1.50	1.50
Civil Society	1.25	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.75
Independent Media	2.25	2.00	2.25	2.25	2.25	2.50	2.50	2.50	2.75	3.00
Local Democratic Governance	2.25	2.00	1.75	1.75	1.75	1.75	1.50	1.50	1.50	1.75
Judicial Framework and Independence	2.50	2.25	2.50	2.50	2.50	2.50	2.50	2.50	2.75	3.25
Corruption	3.00	2.75	3.25	3.25	3.25	3.25	3.50	3.50	3.50	3.50
Democracy Score	2.39	2.25	2.32	2.21	2.14	2.18	2.18	2.21	2.32	2.57

NOTE: The ratings reflect the consensus of Freedom House, its academic advisers, and the author(s) of this report. If consensus cannot be reached, Freedom House is responsible for the final ratings. 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. The opinions expressed in this report are those of the author(s).

EXECUTIVE SUMMARY

The year 2016 saw the conservative, populist Law and Justice (PiS) party increasingly dominate Poland's democratic institutions, most importantly its main constitutional arbiter, the Constitutional Tribunal. PiS, which had won a clear majority in both parliamentary and presidential elections in 2015 (a first for any Polish party since 1989), was free to rule without forming a coalition. While President Andrzej Duda—formally independent but a loyal former member of PiS—shared power with Prime Minister Beata Szydło on paper, the real power was in the hands of PiS leader Jarosław Kaczyński, who asserted and strengthened his unchallenged control over Poland throughout 2016.

The year was dominated by a tug-of-war over the Constitutional Tribunal (CT).¹ The government passed seven amendments on the functioning of the tribunal, including changes to its composition and procedures. While the CT ruled the amendments unconstitutional, the government refused to publish the rulings, thereby preventing them from coming into effect. The CT president, Andrzej Rzepliński, ended his term at the close of the year, and a PiS-affiliated judge, Julia Przyłębska, was appointed in his place despite procedural irregularities surrounding her appointment. During the year, the increasing dominance of PiS over the CT triggered protests and the start of disciplinary proceedings against the government by the European Union (EU).

Demonstrations and marches abounded. In the second half of 2016, as the CT controversy lost traction, a bill in the Sejm advanced by the “Stop Abortion” civic committee aimed to further tighten Poland's already strict abortion regulations. The bill sparked a wave of protests among a new political demographic: younger people and women. Earlier, several other protests were organized by the grassroots civic movement called the Committee for the Defense of Democracy (KOD). KOD became an official registered association in March but failed to extend its base during the year and was threatened with marginalization at year's end.

The opposition failed to capitalize on the growing street protests in part due to infighting between center-right Civic Platform (PO) and liberal newcomer Nowoczesna (Modern).² Opposition parties also frequently found themselves the target of strong rhetoric from the public media, increasingly dominated by PiS. Following a series of reforms aimed at strengthening its influence over the public media through the appointment of loyal acolytes, the government has effectively transformed the public broadcaster into a mouthpiece of the ruling party,³ with both major news outlets praising the government and denigrating the opposition. The new, PiS-affiliated leader of the public television (TVP), Jacek Kurski, fired most on-air staff and was then subject to strong criticisms from his political allies, who believed the changes were too subtle.

The ruling party's popularity was sustained by a wide platform of social spending. The “Family500+” program—a monthly allowance of PLN 500 (\$125) per children after the second—proved very popular among its beneficiaries. Additionally, a growth strategy drafted by Deputy Prime Minister Mateusz Morawiecki, along with hikes in minimum wages, changes to the labor law, and a tax wedge reform helped the government stay popular and shielded the ruling party from opposition attacks. Morawiecki, a former banker and head of the Spanish Santander Group's BZ WBK, was named as a possible successor to Szydło, whose political position seemed uncertain at year's end.⁴

Six years after the airplane crash in Smolensk, PiS was still looking to keep the tragedy in the spotlight during 2016. In February, the Minister of Justice appointed a team of nine prosecutors and the Minister of Defense to set up an extraordinary subcommittee to reassess the causes of the crash. The Prosecutor's Office also decided on the exhumation of 83 victims.⁵ These measures were used to reignite emotions around the tragedy, accusing the opposition PO, in power at the time, of being responsible for the events.

The year ended with a highly charged political clash between the ruling PiS and the opposition and tensions outside the parliament. On 16 December, the opposition parties accused PiS of violating the constitution after the Sejm speaker, Marek Kuchciński, moved a key vote on next year's budget to a location outside the main chamber of the parliament. Media were blocked from recording the vote,

fueling speculations that the budget was not legally passed. Following the vote, the opposition organized a sit-in at the main chamber of the Sejm while protesters rallied outside.

Score Changes:

- **National Democratic Governance rating declined from 2.75 to 3.25** due to Poland's descent into total political polarization and lack of consensual decision-making, as well as passing laws without adequate consultation with civil society or the parliament and informal control over political processes.
- **Civil Society rating declined from 1.50 to 1.75** due to smear campaigns against nongovernmental organizations (NGOs) in the public media and the worrying trend of far-right groups gaining tacit or, in some cases, explicit support from the government.
- **Independent Media rating declined from 2.75 to 3.00** due to the transformation of public media into a government propaganda machine, with further concerns about manipulation of the advertising market influencing private media.
- **Local Democratic Governance rating declined from 1.50 to 1.75** due to increasing centralization of school oversight and the paralysis of the Joint Central and Local Government Commission.
- **Judicial Framework and Independence rating declined from 2.75 to 3.25** due to the far-reaching reform of the Constitutional Tribunal that curbed its ability to function as an effective oversight body, thereby threatening rule of law in Poland.

As a result, Poland's Democracy Score declined from 2.32 to 2.57.

Outlook for 2017:

PiS will try to strengthen the central government's powers over local authorities ahead of the upcoming local elections in 2018. The opposition will likely position itself as the defender of local government—but to do that successfully, it will first have to sort out its own problems and not disappear in the process. Strong political polarization is expected to further intensify in 2017.

The planned education reform will likely be the main source of political conflict during the year. The budget deficit is expected to grow, with the widely awaited effects of the "Morawiecki plan" failing to materialize. This will cause more squabbling in the government and even more pressure on Morawiecki, who will have to manage a balancing act between expenditures and income. This could possibly result in a cabinet reshuffle, which may find Jarosław Kaczyński in the prime minister's seat.

Some commentators fear that the ruling party could use public hostility toward migrants to create a climate of fear and adopt more hardline policies. This scenario could easily be hastened by various potential crises, such as an escalation of hostilities in neighboring Ukraine or other forms of Russian aggression. The EU's crises and the repercussions of Brexit, which, among other things, could result in restrictions on freedom of movement and limit Polish emigration, could make the EU a target of criticism for the ruling party.

MAIN REPORT

National Democratic Governance

2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
3.50	3.25	3.25	2.75	2.50	2.50	2.50	2.50	2.75	3.25

- National democratic governance deteriorated in 2016 as Poland continued to be steered by an informal head of state. Jarosław Kaczyński, chairman of the ruling Law and Justice (PiS) party, has no constitutional accountability yet exercises power virtually unchecked through his influence over the executive and legislative branches of government.⁶ Although not holding a formal government position, Kaczyński met with a number of foreign leaders in 2016, including the UK’s then–prime minister, David Cameron,⁷ and Hungary’s prime minister, Viktor Orbán.⁸ Kaczyński’s role as the “power behind the throne” is reflected in opinion polls: 65 percent of Poles consider Kaczyński as Poland’s effective ruler; the Polish prime minister, Beata Szydło, and president, Andrzej Duda, were considered to occupy this role by only 18 and 14 percent, respectively, of those surveyed.⁹
- Almost half of new legislation introduced in 2016 was adopted without public consultation. Government bills are ordinarily subject to obligatory public consultation; PiS bypassed this requirement by preparing legislation in caucus and then introducing the proposed laws via independent members of parliament (MPs). Since PiS assumed office in November 2015, Poland’s parliament—the Sejm—approved 157 new laws; 78 of these were introduced by PiS. Of those 78 bills, 72 (over 90 percent) were prepared by the PiS caucus and introduced by individual MPs without consulting nongovernmental organizations (NGOs) or special interest groups. This marked a significant break from previous practice: in the two preceding parliamentary terms, only 26 and 13 percent of bills, respectively, were introduced without prior public consultation.¹⁰
- One of the last parliamentary sessions for the year, held on 16 December, was marred by allegations of procedural abuse and illegality. The speaker of the Sejm, Marek Kuchciński, excluded opposition Civic Platform (PO) MP Michał Szczerba from a session deliberating the 2017 national budget.¹¹ This sparked protests from the opposition, who considered Szczerba’s removal to be illegal, and opposition MPs blocked the podium. In response, Kuchciński proceeded to move the session to a different room, where PiS MPs approved the budget. While PiS maintained that the budget vote was held in accordance with Sejm rules, the result had to be determined through the Sejm’s electronic monitoring system and photographs posted on social media. Opposition parties refused to recognize the legality of the vote, and from 16 December until the end of the year, PO and Nowoczesna MPs held a sit-in protest at the debating chamber while supporters of KOD rallied in front of the parliament.¹² The 16 December parliamentary session was the first time since 1989 that a sitting of Poland’s lower house of parliament was conducted outside the main chamber.¹³
- The ruling PiS employed harsh rhetoric against “the elites.” In a July party convention speech, Jarosław Kaczyński laid out plans for societal transformation, including his government’s goals and processes enacted thus far. He advocated for the transition of power from elites caught up in their own self-interest to those who want to benefit Poland.¹⁴ Kaczyński also called for the destruction of the “archipelago of small kingdoms or principalities, small dictatorships in municipalities, workplaces, and universities, where people are afraid to express their views.”¹⁵ Concrete actions during the year included staff changes in state-owned enterprises, progovernment journalists in the public media, a purge of the civil service, a shakeup of the Constitutional Tribunal, and discussion of electoral law reforms limiting the reelection of city presidents.¹⁶
- In February, the government started an investigation into the 2010 airplane crash in Smolensk that resulted in the death of 96 people, including Jarosław Kaczyński’s twin brother and Poland’s then-

president, Lech Kaczyński. As part of the investigation, the Prosecutor’s Office also decided on the exhumation of 83 victims.¹⁷ During the year, government officials fueled allegations that the Russians were behind the crash and the former government led by Donald Tusk was complicit in the tragedy.¹⁸

- Following terrorist attacks in Brussels in March 2016, PiS introduced antiterrorism legislation expanding the powers of the Internal Security Agency (ABW). The new laws allow the ABW to surveil Polish citizens and foreigners residing in Poland, including the wiretapping of foreign citizens’ devices for up to three months without prior court approval. The security organ’s head is empowered under the new legislation to deport foreigners suspected of posing a terrorist threat, and the deported may only appeal the decision once they have been removed from Polish territory. The sweeping new legislation also permits suspects to be held without charges for up to 14 days. The ABW’s Anti-Terrorism Center—a unit within the agency responsible for the prevention of terrorist attacks—was given access to “all relevant” state databases under the new legislation, where previously it could only access some. The perceived threat of terrorist activity also precipitated the announcement of “specific alarm levels”; once an alert is declared, public events and gatherings may be suspended.¹⁹
- The government introduced or announced many structural reforms designed to implement its plan for societal transformation and benefit its primary voter base. Concerned with Poland’s declining fertility rate, the government rolled out the “Family500+” program in April. This scheme distributed payments of PLN 500 (\$125) per child to parents with two or more children, provided that the monthly income per household member was below PLN 800 (\$200). The overall cost of the “Family500+” program equated to 1.3 percent of Poland’s GDP.²⁰ The government also introduced the hourly minimum wage starting in 2017,²¹ introduced a higher tax-free bracket for low-income earners,²² and in November passed reforms lowering the pension age for men to 65 and for women to 60.²³ Additionally, the government promised to introduce universal healthcare in 2018 and make deep changes to the system’s financing.²⁴
- There were more than a million Ukrainians working in Poland in 2016. During the year, 1.3 million temporary work permits were granted to Ukrainians, a significant increase from the 750,000 issued in 2015.²⁵ At the same time, political tensions between Poland and Ukraine emerged following a declaration by the Sejm proclaiming that the Volhynian massacres during World War II amounted to a Ukrainian genocide against Poles. In both Poland and Ukraine, this declaration fed nationalist sentiments.²⁶

Electoral Process

2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
2.00	2.00	1.75	1.50	1.25	1.25	1.25	1.50	1.50	1.50

- With an eye toward major reforms in electoral law, PiS commissioned research in 2016 on possible changes to the electoral system.²⁷ Presently, Poland has a multiparty parliamentary system: its parliament and president are chosen through popular elections. In one proposed model, Poland would adopt a German-style proportional mixed system. Under this proposal, PiS envisages that the Sejm’s 460 seats would be equally divided between single-member districts and 16 constituencies overlapping with voivodeship boundaries.²⁸ The proposed reform does not allow for independent candidates to run in the single-member districts, while the order of candidates on party lists would be decided by party leaders, thus strengthening their positions. The opposition widely criticized the proposed reforms, viewing them as a possible instance of wide-reaching gerrymandering designed to strengthen the ruling party.

- Talk of further PiS plans to change the electoral processes—including proposed term limits for local government officeholders—caused additional stir in 2016.²⁹ The opposition accused PiS of trying to create a new governing system in certain local governments, and changing the borders and structures of self-government in Warsaw.³⁰ In 2014, PiS itself took aim at local electoral processes, claiming that 18 percent of the votes cast in the local elections were invalid,³¹ an allegation that caused protests at the time. The NGO Batory Foundation has advised that voting irregularities in the 2014 local elections resulted from the layout of the ballots, and recommended that a supervisory body design ballots for the next election cycle in 2018. It further advocated for the introduction of nonpartisan election observers and separate counting of blank and void votes (in 2014, both types were categorized as invalid).³²
- There was only one major by-election in 2016.³³ Senator Bohdan Paszkowski was appointed voivode of Podlasie, and elections were conducted in March for his senate seat. Anna Maria Anders—a PiS candidate and daughter of Polish World War II hero Władysław Anders—took the seat with 47 percent of the vote. Her opponent, Mieczysław Bagiński of PSL, who was backed by PO and Nowoczesna, claimed 41 percent. Anders also serves as the plenipotentiary for international dialogue in the prime minister’s office.
- In September, the Supreme Court upheld the decision of the National Electoral Commission (PKW) that the opposition Nowoczesna party committed procedural errors in its campaign finances.³⁴ It was found that Nowoczesna had unlawfully transferred money from the party’s account directly to the PKW; under the Electoral Code, money must first be transferred through each party’s electoral committee. Accordingly, the party will have to return 75 percent of the funds it annually receives from the state, which are crucial to financing its day-to-day activities. The party is anticipating a loss of up to PLN 6.2 million (\$1.48 million) yearly. The leftist Razem party, which won just over 3 percent of the vote, will receive a one-time payment of PLN 3 million (\$72,000) for also failing to keep its books accurate. Other parties who follow correct procedure receive funding annually.³⁵

Civil Society

2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
1.25	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.50	1.75

- Legal protections for the right of free assembly were eroded in 2016. In November, the government adopted a new law on “cyclical demonstrations” restricting assembly rights and essentially banning counter-demonstrations.³⁶ According to the law, once a so-called cyclical manifestation—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.³⁷ The provisions also proposed that cyclical assemblies organized by the state would take priority over those planned by other organizations, including civil society groups.³⁸ PiS faced opposition regarding this proposal from watchdog groups, the Supreme Court, the Council of Europe, and OSCE, and some of the less important articles were dropped from the final bill.³⁹ After its adoption, President Duda referred the law to the Constitutional Tribunal for an assessment of its constitutionality, making this the first bill adopted by the PiS-run Sejm that he did not sign.⁴⁰
- Throughout the year there were several demonstrations, and in the fall, large-scale protests stopped a restrictive abortion bill from becoming law. On 22 September, the Sejm supported a proposal further limiting the already restrictive Polish legislation and seeking to ban abortion in almost all circumstances. The proposal, originally prepared by the “Stop Abortion” committee, sparked protests around the country. The “Save The Women” civic committee organized demonstrations in

front of the Sejm on 1 October, and two days later, about 30,000 women protested in Warsaw with 100,000 more across the country in the so-called Black Protest. On 6 October, with only 32 PiS deputies supporting it, the Sejm rejected the proposal, signaling the first time the government had listened to civil society concerns.⁴¹ In the same month, PiS introduced a bill giving financial help to women who elect not to terminate a pregnancy where the fetus is known to have birth defects.⁴²

- Other forms of organized opposition failed to gain much support during 2016. While in March the National Court Register approved the request of the Committee for the Defense of Democracy (KOD)—a grassroots movement arising after the 2015 constitutional crisis—to form an association, the organization barely had a thousand members at year’s end.⁴³ KOD expanded its activities to include organizing debates and discussions and launched koduj24.pl, a new information service, in June. Although the organization successfully raised PLN 1,000,000 (\$250,000) in public donations, its activities were hampered by internal disagreements, and elections to regional deputy positions, scheduled for autumn 2016, were postponed by the group’s central leadership.⁴⁴ Attendance at KOD-organized demonstrations against PiS also declined, threatening the organization with marginalization.
- Progovernment journalists and the public media launched a smear campaign aimed at NGOs and civil society activists. In August, the public broadcaster’s news program, TVP-1, started publishing allegations about the relationship between NGOs and Poland’s opposition party, PO, implicating a number of prominent activists and public figures, including daughters of the Constitutional Tribunal’s president and the former Polish president, Bronisław Komorowski.⁴⁵ During the next months, the broadcaster presented materials supposedly highlighting the links between various organizations and family members of PO politicians, and alleged that a large proportion of NGO budgets were allotted to board members’ salaries.⁴⁶ Those accused and prominent civil society members protested the claims.⁴⁷ Moreover, Piotr Gliński—the deputy prime minister and minister of culture—accused the station of spreading propaganda during a live interview on TVP Info.⁴⁸ Other PiS politicians were quick to distance themselves from Gliński’s comments, noting that his views were influenced by his wife, a board member for one of the NGOs mentioned by the public broadcaster.⁴⁹
- Far-right ideas gained more prominence during the year, and Poland’s new political leadership, at times, appeared to offer tacit endorsement to Polish nationalists.⁵⁰ In 2015, five members of the far-right Nationalist Movement (RN) were elected to the Sejm on the Kukiz’15 ticket. Since the election, Kukiz’15 has focused its efforts toward petitioning for a referendum to stop entry of Muslim refugees and immigration. During the year, the National Radical Camp (ONR)—named for a radical anti-Semitic group banned in Poland in the 1930s and one of the most active far-right Polish groups—held a series of fascist-style marches protesting Muslim immigration and the EU.⁵¹ At one such event in Białystok in April, which began with a mass celebrating the anniversary of the formation of the original ONR, the priest told the flag-wielding, black-shirted crowd that Poland was infected by a “cancer” that could only be cured by “uncompromising national-Catholic radicalism.”⁵² In August, during a funeral, scuffles broke out between ONR and KOD activists, including KOD leader Mateusz Kijowski.⁵³ High-ranking government politicians also present failed to condemn ONR’s actions. Earlier, the minister of defense suggested that ONR activists could be included in the formation of new “territorial defense” militias, and the organization’s “Falange” symbol was dropped from police training manuals on xenophobia.⁵⁴ In September, four PO deputies requested that the prosecutor general submit a motion to dissolve ONR (which is a legally functioning association) as it promotes fascist and anti-Semitic ideology prohibited under the Polish constitution.⁵⁵

Independent Media

2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
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2.25	2.00	2.25	2.25	2.25	2.50	2.50	2.50	2.75	3.00
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- Legislation passed at the close of 2015 foreshadowed the transformation of the public media into a government mouthpiece. On 30 December, PiS adopted an amendment to the media law allowing the ruling party to terminate the contracts of the heads of public television and radio.⁵⁶ This was followed in June 2016 by the creation of the National Media Council (RNM), a new state organ usurping the prerogatives of the constitutionally mandated National Broadcasting Council (KRRiT). The RNM consists of five members: three, including its head Krzysztof Czabański, are PiS nominees; the remaining two were nominated by Kukiz'15 and the opposition PO party. The five-person body is tasked with choosing the management of public radio and television. The RNM is also responsible for coordinating the work of all public media outlets.⁵⁷ On 12 December, the Constitutional Tribunal ruled that the transfer of powers from KRRiT to the RNM was unconstitutional, but the government disregarded the judgment.⁵⁸ The RNM is reportedly working on a reform of the financial model of public broadcasters, although the details were unknown at year's end.
- In January, Jacek Kurski, a former PiS politician, became head of public broadcaster TVP. His leadership was characterized by divergent views with RNM chief Krzysztof Czabański as to how deeply the public media should be reformed. Czabański advocated for far-reaching reforms, arguing that practically everyone working under the previous government should be fired. Although Kurski terminated a number of on-air staff contracts, he stopped short of removing all prior employees and retained technical staff.⁵⁹ These divergent views led to the RNM terminating Kurski's contract in August.⁶⁰ However, Kurski subsequently escalated the situation to Jarosław Kaczyński, who allegedly strong-armed the council into revoking its decision.⁶¹ The latter reinstated Kurski as a temporary CEO of TVP, a position that became permanent in October.
- The decline of the public media's editorial independence is observed in the increasing favoritism afforded to PiS. KRRiT found that in the first quarter of 2016, PiS was provided 52 percent of airtime devoted to political parties, whereas the main opposition parties—PO and Nowoczesna—were allotted 23 and 8 percent, respectively.⁶² The gap widened in the second quarter: PiS was afforded 59 percent of airtime, whereas PO fell to 16 percent. Under the previous PO-led government, the airtime difference between the opposition and ruling parties was 40 hours; in 2016 this discrepancy was more than 100 hours. KRRiT received many complaints in 2016, and its former head, Jan Dworak, called on TVP to cease violating official rules pertaining to unbalanced reporting.⁶³
- By May, according to the opposition and some media reports, over 130 journalists working for the public radio and television broadcasters⁶⁴ had been fired or left of their own accord. Those fired were most often terminated for work performed under the previous management, whereas those who left voluntarily usually attributed their move to the public broadcasters' becoming too politicized and serving a propagandistic cause. In perhaps the most exemplary termination, a Polish Radio Three journalist was fired despite being the leader of the trade union at the company and, in theory, protected by labor law.⁶⁵
- Funding for magazines that are ideologically sympathetic to a given government is frequently cited as a problem affecting editorial independence, and 2016 was no exception.⁶⁶ Every year, the Ministry of Culture grants approximately PLN 3.5 million (\$1 million) to nonprofit organizations that publish cultural and political magazines. Following Culture Minister Piotr Gliński's declaration in March that he would "divide the pie differently this year," funding was predominantly allocated for right-wing magazines.⁶⁷ Gliński further stated that he wanted to finance publications building national identity; in this vein, the conservative *Kronos* magazine was allocated the largest share of funding in 2016—PLN 135,000 (\$33,000), up from PLN 70,000 (\$17,000) the previous year. Contrary to previous years, no funding went to the leading liberal magazines *Liberte!*, *Przegląd Polityczny* (Political Review), *Respublica Nova*, or the leftist *Krytyka Polityczna* (Political Critique). Conservative magazines also benefited from government advertising, much of it coming from state-owned

enterprises. In the first half of 2016, *Gazeta Polska* earned PLN 4.1 million (287 percent increase over the first six months of 2015), while *W Sieci* earned PLN 18 million (33 percent increase).⁶⁸ During the same time, the centrist, pro-opposition media outlet *Gazeta Wyborcza* saw revenues decline by 2 percent over the previous year with a 21.5 percent decrease in advertising.⁶⁹

Local Democratic Governance

2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
2.25	2.00	1.75	1.75	1.75	1.75	1.50	1.50	1.50	1.75

- In 2016, the government began to strip local authorities of certain powers and funding, leading to accusations that the ruling party was not consulting with local authorities about the scope of its reform plans, thereby paralyzing the Joint Central and Local Government Commission.⁷⁰ In late December 2015, the Ministry of Education had overhauled guidelines on the functioning of regional school superintendents, who are now directly nominated by the government.⁷¹ Moreover, the Ministry announced the creation of eight-grade common schools to replace primary and junior-high schools. According to trade unions, the new education system would see half of the heads of primary schools replaced under the direction of PiS-appointed superintendents. In March, the Ministry of Environment made changes to the Water Law, according to which a new central institution, Polish Waters, will manage the inland waterway economy beginning in 2017. The revenues from water use will go to the central, rather than the local, budget.⁷² Also in March, the Ministry of Interior amended the law on regional tax chambers that audit municipality finances in order to increase its power over local governments.⁷³
- The first restitution law of land nationalized under the Communist regime came into force in 2016.⁷⁴ The so-called Small Law on Restitution was signed in 2015 but remained pending in front of the Constitutional Tribunal until July 2016. The law requires a notarized deed when selling restitution claims to property in Warsaw and grants the city preemption rights. It also allows for the transfer of property in the case of public institutions, such as schools and hospitals. In recent years, compensation payouts for previously nationalized land rose steeply, amounting to several hundred million PLN a year. The new law could limit the number of proceedings for restitution against the city of Warsaw.
- The restitution process has been marred by corruption for the last 20 years. In August, *Gazeta Wyborcza* published allegations of corruption against municipal officials responsible for overseeing the process.⁷⁵ The following month, Warsaw's PO mayor, Hanna Gronkiewicz-Waltz, dismissed two deputy mayors, dissolved the Office for Property Management, and suspended the return of property. The issue of restitutions had fallen victim to political conflict between the PiS government and the PO-led city hall. During the year, Minister of Justice and Prosecutor General Zbigniew Ziobro launched several probes, including into property owned by the mayor's husband.⁷⁶
- According to a survey from March 2016, most Poles have a positive opinion of local government performance. Seventy-two percent of respondents assessed the work of local offices positively—the highest level of support for local governance in Poland since 1997.⁷⁷ In a poll from 2015, less than half of all respondents said they have influence on matters in their city or neighborhood; when asked about their control over matters on the national level, only 24 percent felt that they were influential.⁷⁸

Judicial Framework and Independence

2008	2009	2010	2011	2012	2013	2014	2015	2016	2017

2.50	2.25	2.50	2.50	2.50	2.50	2.50	2.50	3.00	3.25
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- Controversies surrounding the Constitutional Tribunal (CT), which began in October 2015 with the appointment of five judges by PO, escalated in 2016 and showed that PiS intended to take over the court as soon as possible.⁷⁹ During the year, PiS changed the law on the CT seven times, out of which only one change (concerning the transparency of judge’s incomes) was found constitutional. Among other changes, the CT ruled in March that amendments passed at the end of 2015, essentially marginalizing the institution, are unconstitutional. The reforms would have mandated a two-thirds majority for CT cases and required that 13 judges must be present for controversial cases.⁸⁰ The government, however, refused to publish the decision—a binding condition of legal validity—arguing it did not conform to the amendments that it declared unconstitutional.⁸¹ In August, the Supreme Administrative Court issued a ruling, also applying the unpublished judgment of the CT.⁸² While the government decided a few days later to publish 21 CT decisions, it still did not publish the CT’s ruling on the changes to the tribunal’s composition.⁸³ The conflicting legal judgments and executive acts resulted in a high level of legal uncertainty.
- CT president Andrzej Rzepliński’s term ended in December 2016. The ordinary mechanism for replacing the court president involves the selection of 3 candidates by CT judges, from which the Polish president appoints his or her choice. However, at the close of Rzepliński’s term, only 9 judges from the total of 15 participated in the selection of presidential candidates; 3 PiS-elected judges were on sick leave.⁸⁴ Since the relevant legislation required a quorum of 10 judges, the government and President Duda dismissed the candidates and chose Julia Przyłębska, a PiS-nominee judge, for the position.⁸⁵ Only 6 CT judges attended Przyłębska’s confirmation on 20 December; those appointed to the court by the Sejm in previous terms refused to attend. While her confirmation was ostensibly held under the provisions of a law that did not establish a quorum requirement, Przyłębska’s colleagues asserted that she should be legally appointed to the CT, a process requiring a quorum. At year’s end, the CT was waiting for a decision by the Supreme Court on the issue.⁸⁶
- In January, the constitutional crisis led to Poland becoming the first EU member state to be scrutinized by the European Commission (EC) with regard to upholding rule of law. The deteriorating situation in Poland obligated the EC to activate the so-called rule of law mechanism, a process of dialogue with offending member states, potentially resulting in sanctions under Article 7 of the Treaty of Lisbon.⁸⁷ In July, following an opinion from the Venice Commission that the steps violated international norms, the EC handed down five recommendations aimed at settling the crisis. These included executing the CT’s ruling from December 2015 and reinstating the three judges appointed by the previous Sejm; publishing the CT’s March decision that struck down PiS’s judicial reforms; and restraining from further undermining the legitimacy and effectiveness of the tribunal.⁸⁸ The EC advised the Polish government that it had three months to implement the ruling or risk sanctions, including suspension of the country’s voting rights in the EU, but the deadline was extended by another three months in October. However, given a deal between Poland and Hungary, sanctions are an improbable option as they need unanimity.⁸⁹ By year’s end, the Polish government, growing tired of the Venice Commission proceedings, stopped any dialogue with its representatives.⁹⁰
- Minister of Justice and Prosecutor General Zbigniew Ziobro spearheaded a new draft law allowing for the extended confiscation of assets allegedly obtained through organized crime or VAT fraud. The proposed reform strengthens the powers of Prosecutor General Ziobro and the special services headed by Mariusz Kamiński, and grants various law enforcement organs—including the police, the Central Anti-Corruption Bureau (CBA), fiscal control, border guards, and military police—permission to record the contents of telephone conversations. Under the draft law, courts would be empowered to seize all proceeds from criminal activity, including real estate,⁹¹ while placing the onus on the defendant to establish that his or her assets were acquired through legal means. In cases of organized crime, a presumption of felonious acquisition will extend retroactively to five years before the alleged

crime. Seized assets would become state property even if they are in the hands of a third party unless the interested parties proved the legality of the holdings' origins. The bill's focus on VAT fraud has triggered fears in the business community (where such fraud is common) that the government will use this power to confiscate assets even in cases where fraud was committed by independent contractors.⁹² Furthermore, the new law will possibly result in multiple probes, investigations, and arrests, and may bring public awareness to the scale of corruption by shining light on a number of cases.

- Anxious about the government reforms, the National Judiciary Council (KRS) and various associations organized an extraordinary convention of the Polish judiciary in September. Earlier, that month, President Duda refused to appoint 10 judges to the KRS, overstepping his constitutional prerogatives.⁹³ Approximately one tenth of Poland's judges convened to debate the courts' independence as well as upcoming drafts to the Law on Common Courts.⁹⁴ Under the proposed amendments, one layer of the judicial hierarchy of courts—possibly the regional courts—might be removed, creating a new, two-tier judicial system in place of the present three-tier system. At the same time, more judges were retiring in 2016. Between January and May, 122 judges filed for retirement; only 140 judges retired in the whole of 2015.⁹⁵ This increase is partly the result of updated regulations allowing early retirement by the end of 2017 but also due to ministry announcements of lowering the maximum age of service and a potential vetting process.⁹⁶

Corruption

2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
3.00	2.75	3.25	3.25	3.25	3.25	3.50	3.50	3.50	3.50

- In May, Prime Minister Beata Szydło and her ministers released a lengthy audit of the eight years of PO-PSL rule, accusing the previous government of offenses ranging from mismanagement to outright corruption.⁹⁷ Following the prime minister's report, police arrested the former head of the National Center for Research and Development (a subsidiary of the Ministry of Science and Higher Education) and charged him with bribery.⁹⁸ However, despite the PiS dossier, there have been few investigations or arrests, particularly concerning the biggest political figures implicated in the report. The former Deputy Minister of the Treasury, Jan Bury (PSL), implicated in the so-called Podkarpacie case and accused of bribery and influence peddling, was waiting for his trial to start;⁹⁹ while the head of the National Audit Office, a friend of Bury accused of similar crimes, had yet to have his immunity revoked at the end of 2016.¹⁰⁰
- In September, Prime Minister Szydło dismissed Minister of the Treasury Dawid Jackiewicz.¹⁰¹ The ministry is to be dissolved in 2017,¹⁰² and while the prime minister congratulated Jackiewicz on a job well done, most commentators and analysts agreed that the actual reason for his dismissal was nepotism and corruption in state-owned enterprises (SOEs) under his control.¹⁰³ Jackiewicz and his team had replaced almost all management and supervisory boards with acolytes. On the eve of Jackiewicz's dismissal, Jarosław Kaczyński and his second in command, Joachim Brudziński, both criticized the way the companies were run, and shortly after the minister's dismissal, the CBA launched probes into 66 SOEs.¹⁰⁴
- ¹⁰⁵The opposition vocally criticized the government for corruption and nepotism in SOEs. In a successful campaign, the opposition—with the help of the media—published the names and affiliations of PiS members and their cohort of SOE hires.¹⁰⁶ The opposition was able to compile 202 names, partly by using the hashtag #Misiewicz, as well as through Nowoczesna's website, where the public could report new and allegedly unqualified appointments to SOEs.¹⁰⁷ The hashtag derives from Bartłomiej Misiewicz, a spokesperson and advisor to the Minister of Defense, who was appointed to

the supervisory board of the Polish Armaments Group (PGZ) despite a statutory requirement that board members must hold university degrees. Misiewicz, who did not attend university, had previously worked in a pharmacy before securing employment with a PiS politician and was later appointed to the PGZ as the “direct representative” of the Minister of Defense.¹

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The views expressed in this report are those of the authors and do not necessarily reflect the opinion of their employer.

¹ For more information about the nature of the conflict please read the Nations in Transit 2016 report: <https://freedomhouse.org/report/nations-transit/2016/poland>.

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