

Document #2050453

Freedom House

Nations in Transit 2021 - Poland

SEMI-CONSOLIDATED DEMOCRACY

60

/ 100

Democracy Percentage 59.52 / 100

Democracy Score 4.57 / 7

LAST YEAR'S DEMOCRACY PERCENTAGE & STATUS

65 / 100 Semi-Consolidated Democracy

The ratings are based on a scale of 1 to 7, with 7 representing the highest level of democratic progress and 1 the lowest. The Democracy Score is an average of ratings for the categories tracked in a given year. The Democracy Percentage, introduced in 2020, is a translation of the Democracy Score to the 0-100 scale, where 0 equals least democratic and 100 equals most democratic.

Score changes in 2021

- National Democratic Governance rating declined from 4.00 to 3.75 due to the government's discriminatory rhetoric and policies against LGBT+ people and its instrumentalization of the Constitutional Tribunal in controversial changes to the abortion law.
- Electoral Process rating declined from 6.50 to 5.75 due to glaring problems administering the presidential elections, including abuse of state resources and biased media coverage by the public broadcaster that favored the incumbent.
- Independent Media rating declined from 5.00 to 4.25 due to the use of SLAPPs to silence government critics, physical attacks on journalists, and successful government efforts to “repolonize” the private media sector.
- Local Democratic Governance rating declined from 5.75 to 5.50 due to the central government's politicization of the disbursement of COVID-19 relief funds favoring municipalities controlled by the ruling coalition.
- Judicial Framework and Independence rating declined from 3.50 to 3.25 due to the continued sidelining and discipline of independent judges since the so-called muzzle law came into effect.
- Corruption rating declined from 4.25 to 4.00 due to the embezzlement and mismanagement of public funds used to procure medical supplies during the pandemic.

As a result, Poland's Democracy Score declined from 4.93 to 4.57.

Executive Summary

By Anna Wójcik and Miłosz Wiatrowski

The quality of democratic governance in Poland continued to deteriorate in 2020, marking the fifth consecutive year of decline in the country and its lowest score yet in *Nations in Transit*. The most negatively affected areas were Poland's electoral process, given the government's considerable shortcomings in administering the presidential election, and its media sphere, where Strategic Lawsuits Against Public Participation (SLAPPs) were widely used to silence government critics and a state-owned company acquired a dominant share of the local print and digital media market.

Over the past five years, the ruling coalition of right-wing political parties—under the umbrella alliance of *Zjednoczona Prawica* (United Right, ZP)—has systemically undermined the rule of law in Poland and established tight control over the country's institutions, including the Constitutional Tribunal (CT), the Supreme Court (SC), the National Council of the Judiciary (NCJ), management of common courts and the prosecution, and, crucially, the public broadcaster (TVP).¹ In 2020, none of these controversial changes—which threaten Poland's rule of law and democracy, according to independent domestic and international institutions, including the European Commission (EC) and the Council of Europe (CoE)—were reversed.

The year was dominated by COVID-19 and the state’s response to the pandemic. The government managed the public health emergency relatively well in the spring, ordering a strict lockdown from March until the end of May, while lifting major restrictions in June and July during the last weeks of the presidential election campaign. Ahead of the crucial vote, Prime Minister Mateusz Morawiecki declared Poland victorious over the virus. This enthusiasm was premature. In the fall, a dramatic increase in infections strained the public health system. A record number of deaths were recorded in October–December, compared to the same period previously. Throughout the year, the government introduced COVID-19 restrictions chaotically and often without any legal basis. Business owners complained that state aid, branded *Tarcza Antykryzysowa* (Anti-crisis Shield), was insufficient.

On October 22, the politically captured Constitutional Tribunal ruled that abortion on embryopathological grounds is unconstitutional, spurring the largest protests in Poland in three decades. In disregard of the law, the government withheld publishing this judgment in the official journal of laws, thus delaying its coming into force. The political unrest continued nationwide until the strict COVID-19 restrictions were reimposed in November. Poland entered a harsh lockdown at the end of December.

The main political event of the year was the presidential election. In Poland, elections are conducted freely, and voter participation has increased significantly in recent years. However, the ruling coalition, which controls state resources and the public broadcaster, gained an extraordinary advantage over the opposition in 2020, and several serious flaws in administering the election negatively affected the quality of the electoral process. The vote was originally scheduled for May 10, but following preparations that lacked a legal basis, the leaders of the coalition’s two governing parties—Jarosław Kaczyński, chairman of the right-wing *Prawo i Sprawiedliwość* (Law and Justice, PiS), and Jarosław Gowin, leader of the more moderate right-wing *Porozumienie* (Agreement)—reached an informal agreement to postpone the election to June 28. Gowin had earlier resigned from his post as deputy PM in protest against what were dubbed the “pandemic elections.” This critical decision to postpone the vote was made outside the bounds and scrutiny of any constitutional procedure.

Due to the COVID-19 restrictions, including on public assembly, the presidential candidates could not campaign on equal footing. The incumbent, Andrzej Duda, was able to meet with voters in his capacity as president, and the public broadcaster showed bias in his favor. A hybrid model of voting was introduced, including mail-in voting and in-person voting at polling stations. However, some Poles abroad were denied their right to vote because of various COVID-19 restrictions mandated in other locales. Consequently, concerns were raised that the elections were neither universal nor equal as the constitution requires.

In order to increase turnout, the presidential campaign employed polarizing rhetoric. Governing coalition politicians, public and private progovernment media, and President Duda himself led an unprecedentedly vicious campaign against LGBT+ people. Some high-level figures in the Roman Catholic Church continued to use strong anti-LGBT+ language under the banner of fighting off “neo-Marxist LGBT and gender ideologies.” This occurred against the backdrop of numerous reports on pedophilia and other forms of sexual abuse by clergy in Poland, as well as coverups by Polish Catholic Church leaders and their failure to address the problem over the years.

In a high-turnout runoff on July 12, Andrzej Duda (formally independent, PiS-aligned) narrowly won over his liberal challenger Rafał Trzaskowski (*Koalicja Obywatelska*, Civic Coalition, KO). Duda’s victory further consolidated PiS control over the country’s institutions. Still, the outcome reflected the deep polarization of Polish society.

After the presidential elections, a period of uncertainty ensued due to conflicts between PiS, the extreme right-wing United Poland (*Solidarna Polska*, SP), and the more moderate right-wing Agreement. In September, following the government reshuffle, Jarosław Kaczyński, PiS chairman and member of Parliament (MP), officially entered PM Morawiecki’s third government as Deputy PM with oversight of the defense, justice, and interior ministries. In actuality, Kaczyński has de facto governed Poland since 2015. Yet, by assuming an official position in the cabinet, he may in the future be held accountable for his political decisions. Kaczyński’s choice to officially join the government was a tactical bid to strengthen PM Morawiecki’s position as well as to moderate the ambitions of Justice Minister and Prosecutor General Zbigniew Ziobro, an architect of the controversial changes in the justice system with an eye toward leading the country’s political right-wing himself.

During the second half of the year, the political landscape was reconfigured to some extent. PiS saw a fall in support and was challenged by the extreme right-wing *Konfederacja* (Confederation) and by its own coalition partner, SP. This led PiS to give up on a cherished animal protection bill, and give in to the longtime demands of the two other right-wing parties for further restrictions on reproductive rights. At the same time, presidential hopeful, author, and former TV host Szymon Hołownia’s new center-right party “*Polska 2050*” became a major opposition force alongside the center-right KO, led by Borys Budka, and the Left.

The political scene and public opinion in Poland are deeply polarized. This split is exacerbated by the political bias in both state-controlled and privately owned media. Media freedoms also continued to deteriorate in 2020. TVP, the public broadcaster, was heavily involved in the presidential campaign in favor of the incumbent Duda. According to the OSCE observer mission, the broadcaster failed to fulfill its legally regulated obligation to inform objectively and impartially during the campaign, functioned as a tool for the incumbent president, and presented his rival solely in a negative light. Following President Duda’s reelection, the ruling camp repeatedly announced preparations for a new media legislation package that would aim to “deconcentrate” and “repolonize” the media sector. In line with these plans, the state-owned gasoline retailer PKN Orlen announced the takeover of Polska Press from the German Verlagsgruppe Passau in December. Polska Press owns 20 of the 24 largest Polish regional newspapers and reaches

more than 17 million users online. Meanwhile, private media critical of the government were subjected to legal and financial pressures as well as verbal intimidation during the year. Additionally, there has been a worrying trend of attacks on journalists during protests.

While civil society remained vibrant and diverse throughout the year, the governing coalition politicians and progovernment media denounced LGBT+ rights activism and scapegoated LGBT+ people, often under the pretext of protecting families and children. Some prominent Catholic Church leaders also supported such fearmongering. More than a hundred local councils adopted resolutions discriminating against LGBT+ people; these acts were often officially called Pro-Family Charters. Administrative courts overruled some of the resolutions as discriminatory. In August, public opinion split over the LGBT+ community's responses to the anti-LGBT+ smear campaign and the arrest of the queer activist Margot. During a protest in central Warsaw in solidarity with the activist, and LGBT+ people more broadly, dozens of protesters and even passersby were detained, spurring debate over the proportionality of the police response.

Mass protests and mobilizations nationwide after the Constitutional Tribunal's October ruling prohibiting most legal abortions in Poland were decentralized and organized locally, although a women's rights initiative, *Ogólnopolski Strajk Kobiet* (All-Poland Women's Strike, OSK), played an important role. The demonstrations attracted diverse groups of protesters who expressed various grievances against the ruling coalition's policies. Public opinion was polarized over some protesters peacefully entering Catholic churches with political slogans, accusing priests and bishops of interfering in politics and influencing the restrictive policy. In a televised speech, Jarosław Kaczyński—at the time deputy PM and minister responsible for state security—called on civil society to defend churches at all cost and accused demonstrators, protesting despite COVID-19 restrictions, of committing a serious crime. Outsized police forces were used to protect Kaczyński's private residence in Warsaw during weeks of protests. There were instances of police pepper-spraying peaceful demonstrators, including MPs, and detaining protesters and a photojournalist covering the events.

The pandemic did not interrupt the ruling coalition's moves to limit judicial independence and capture courts. In January, thousands of judges, attorneys-at-law, and prosecutors from Poland and other European countries joined an unprecedented "Thousand Robes March" in Warsaw, protesting policies against judicial independence and demolishing the rule of law. In mid-February, the so-called muzzle law, which introduced a harsher model for disciplining judges, entered into force. This exacerbated the Polish government's conflict with institutions of the European Union (EU) over the rule of law. In April, the EC (the EU's executive body) launched a law infringement procedure against the Polish government in relation to the "muzzle law."

Disciplinary measures and other forms of harassment were used against judges who openly criticized the government's judicial policies, including against the president of a leading association of judges. In April, the Court of Justice of the European Union (CJEU) ordered that the Disciplinary Chamber in the Supreme Court, created by the PiS, may not act in disciplinary cases against judges until the court delivers its final judgment in a case the EC brought against the Polish government in 2019. In October and November, the Disciplinary Chamber waived the immunity of well-known judges Igor Tuleya and Beata Morawiec, thereby allowing criminal proceedings against them. Poland's Commissioner for Human Rights, the CJEU judge Marek Safjan, and independent legal experts all considered such actions to be in violation of the CJEU order. However, the new First President of the Supreme Court, appointed in May, considered a literal and narrow interpretation of the order by the EU's top court to be appropriate. Courts in the Netherlands and Germany flagged their concerns about the country's eroding judicial independence by halting the execution of European Arrest Warrants (EWAs) to Poland.

The Constitutional Tribunal is composed of 15 judges, out of which 14 were nominated by the current governing majority. The current CT president, Julia Przyłębska, is a friend and ally to Deputy PM Kaczyński. In 2020, as in previous years, the CT ruled on politically important cases in line with PiS's desired policies. For instance, in April, on the PM's motion, the CT ruled the Supreme Court's resolution against the Disciplinary Chamber invalid. And after failed attempts to restrict abortion law through legislative procedure in the past,² the CT was used in October to introduce the unpopular policy.

In 2020, local governments were under unprecedented financial duress from a combination of pandemic-related budget constraints and the central government's policy of limiting their income while nevertheless shifting new tasks and associated expenditures to the local level. The center bypassed local governments in managing and counteracting the COVID-19 crisis, and the increasing trend of allocating financial subsidies based on local authorities' party affiliations was well documented.

As part of the special law to combat the COVID-19 pandemic, the government introduced a rule exonerating public officials from responsibility for abusing their administrative power or causing a financial loss in business transactions. Most of the pandemic-related medical procurement was handled without transparent procedures or public tenders, and instead relied on murky transactions based on the personal connections of government members. In fact, the pandemic was instrumentalized to push back against various types of government accountability.

In summary, COVID-19 accelerated executive aggrandizement but also weakened the governing coalition due to the disproportionately large number of deaths in Poland in the last quarter of 2020, an economic downturn, the haphazard and confusing restrictions on individual liberties, and the evidently insufficient condition of the country's public healthcare and education systems, among other negative impacts. Moreover, the majority of Poles opposed the government's efforts to veto the conditional linking of EU budget and pandemic recovery funds with respect for rule of law. Public opinion was divided over LGBT+ rights, yet the ongoing smear campaign against non-

heterosexual people in Poland led to better organizing, networking, and more visibility for LGBT+ activists, organizations, and causes. In the fall, waves of protests engulfed the country in response to the pushback on reproductive rights, and Poland entered an economic recession for the first time since 1989. At year’s end, a certain disenchantment was visible in the population, even among PiS voters, creating opportunities for the opposition.

National Democratic Governance 1.00-7.00 pts

Considers the democratic character of the governmental system; and the independence, 3.75 / effectiveness, and accountability of the legislative and executive branches. 7.00

- In 2020, PiS chairman Jarosław Kaczyński, who de facto has governed Poland since 2015, formally entered the government in September, overseeing the defense, justice, and interior ministries.³ The governing alliance *Zjednoczona Prawica* (United Right, ZP)—a coalition of political parties composed of the right-wing *Prawo i Sprawiedliwość* (Law and Justice, PiS), extreme right-wing *Solidarna Polska* (United Poland, SP), and the moderate right-wing *Porozumienie* (Agreement)—was challenged by the COVID-19 crisis and internal divisions, yet it maintained a strong grip on power throughout the year.
- In July, the incumbent Andrzej Duda (formally independent, PiS-aligned) narrowly won the presidential election over liberal challenger Rafał Trzaskowski of *Koalicja Obywatelska* (Civic Coalition, KO) after a polarizing campaign aimed at increasing turnout.⁴ Two months of intense coalition talks followed Duda’s victory. SP, the party of Justice Minister and Prosecutor General Zbigniew Ziobro, pushed an extreme right-wing agenda and did not back Kaczyński’s pet project, the animal welfare bill, which almost led to the coalition’s collapse.⁵ The vote on the bill highlighted divisions within the government ranks.⁶
- Changes implemented in previous years that had weakened Poland’s system of checks and balances remained in place. Throughout the year, President Duda continued signing bills crucial for PiS,⁷ and swearing in candidates supported by the new PiS-appointed National Council of the Judiciary (NCJ) as judges of the Supreme Court, common courts, and administrative courts. He did so in spite of a January resolution by three chambers of the Supreme Court that said judges appointed on recommendations by the politically controlled NCJ should not adjudicate.⁸
- On October 22, a ruling by the Constitutional Tribunal (CT) further restricted the country’s already strict abortion laws, which ignited weeks of mass protests nationwide on a scale unprecedented in Poland since 1989.⁹ The CT ruling was perceived as directed by Kaczyński in order to prove PiS’s right-wing credentials and crush potential competition from its coalition partner SP as well as the opposition extreme right-wing *Konfederacja* (Confederation).¹⁰ The government withheld publishing the judgment to delay its coming into force.¹¹
- Similar to previous years, the governing coalition targeted vulnerable groups to score political points.¹² During the protests, Kaczyński addressed the nation, condemning the demonstrators for committing “a serious crime” and urging nationalist groups to “defend” churches.¹³ as public opinion divided over some protesters peacefully entering Catholic churches with posters and slogans.
- For most of the year, PiS centralized government power while continuing to limit political space for the opposition. However, the opposition-controlled Senate slowed down the legislative process on key bills, notably, an amendment introducing all-mail voting for the presidential election initially planned for May.¹⁴
- Parliament failed to appoint a new Commissioner for Human Rights (CHR) during the year. The five-year term of Adam Bodnar expired on September 9; however, he continued to fulfill the function until the end of the year. The new CHR must be approved by the Sejm (PiS-controlled) and the Senate. PiS did not propose a candidate, and an independent candidate, Zuzanna Rudzińska-Bluszcz, supported by several hundred civil society organizations, was repeatedly rejected by the governing majority.¹⁵ In September, a group of PiS MPs petitioned the CT to verify whether a provision allowing the CHR to continue their work until a new CHR may be appointed is constitutional.¹⁶
- Due to the COVID-19 pandemic and restrictions for operating businesses in 2020, Poland entered an economic recession for the first time since 1989.¹⁷ At the end of the year, the governing majority was weakened by nationwide protests and a dramatic surge in coronavirus cases and related deaths (a disproportionately high number compared to the same period in past years).¹⁸
- Cumulatively, these factors contributed to a significant weakening in PiS’s public opinion polling over several weeks.¹⁹ This multidimensional backlash against the government provided opportunities for the opposition. One presidential hopeful, former TV host and author Szymon Hołownia’s center-right *Polska 2050* party, registered in 2020, became the second opposition force after the center-right KO.²⁰ The opposition *Konfederacja* flanks PiS on the extreme right.

Electoral Process 1.00-7.00 pts

Examines national executive and legislative elections, the electoral framework, the functioning of 5.75 / multiparty systems, and popular participation in the political process. 7.00

- The 2020 presidential elections took place on a significantly tilted playing field that provided the incumbent with undue advantage. The elections were marred by unequal access to campaigning and public-broadcaster bias. On July 12, 2020, the incumbent, President Andrzej Duda (formally independent, PiS-supported), was reelected by a small margin over liberal challenger Rafał Trzaskowski (KO) after a polarizing campaign.²¹
- Initially, the presidential vote was planned for May 10.²² The governing PiS pushed for all-mail voting after officials ordered a COVID-19 lockdown.²³ Importantly, the government refused to declare a state of natural disaster that would have allowed for sweeping restrictions—according to the constitution, no election may

take place until 90 days after such an emergency state is revoked.²⁴ In the spring, Duda had a wide lead in the polls.²⁵ At that time, the government was managing the COVID-19 crisis relatively well.²⁶

- In April, the Sejm (lower house of Parliament) passed an amendment introducing all-mail voting.²⁷ Before the amendment’s approval in the Senate (upper house of Parliament), Deputy PM Jacek Sasin ordered the printing of ballots, even though this move lacked a legal basis at the time.²⁸ Indeed, in May, the opposition-controlled Senate rejected the amendment.²⁹ Subsequently, Sasin and Minister of Science and Higher Education Jarosław Gowin, leader of PiS’s coalition partner Agreement, persuaded PiS chairman Jarosław Kaczyński to postpone the vote until June 28.³⁰ This critical decision was made outside the legal system, an informal political compromise reached by two leaders of the ruling coalition. The election, therefore, legally went ahead on May 10 as called, but no voting took place on that day.³¹
- The main opposition party, the center-right KO, used this opportunity to replace its candidate; Małgorzata Kidawa-Błońska, who had called for a boycott of the all-mail vote and was polling low, bowed out.³² The liberal mayor of Warsaw, Rafał Trzaskowski (KO), entered the race in her place and ran an energetic campaign.³³ In total, 11 candidates stood for the presidential election. Other noteworthy contenders included Robert Biedroń (Left), center-right Szymon Hołownia (*Polska 2050*), right-wing Władysław Kosiniak-Kamysz (*Polskie Stronnictwo Ludowe*, Polish People’s Party, PSL; Kukiz’15), and extreme right-wing candidate Krzysztof Bosak (*Konfederacja*).
- Some COVID-19 restrictions were eased on May 29, including freedom of assembly, thereby enabling the candidates to campaign. Duda and leading PiS politicians³⁴ used polarizing, incendiary, homophobic rhetoric in the campaign.³⁵ The incumbent relied heavily on public-broadcaster support³⁶ and criticized foreign media for their reporting.³⁷ The OSCE/ODIHR electoral monitoring report highlighted that “candidates were able to campaign freely in a competitive run-off, but hostility, threats against the media, intolerant rhetoric and cases of misuse of state resources detracted from the process. The polarized media environment, and particularly the biased coverage by the public broadcaster, remained a serious concern.”³⁸
- A hybrid model of mail-in and in-person voting was introduced for the postponed election,³⁹ which eventually took place on June 28, 2020, with a high turnout at 64.51 percent.⁴⁰ After the first round, Duda (43.50 percent) and Trzaskowski (30.46 percent) advanced to a runoff. Hołownia received 13.87 percent; Bosak, 6.78 percent; Kosiniak-Kamysz, 2.36 percent; and Biedroń, 2.22 percent.⁴¹
- No televised debate between the contenders took place before the runoff, but both candidates held televised “debates” with their own voters, which was a manifestation of the growing divide and crisis in the public sphere.⁴² The public broadcaster TVP favored Duda and provided highly biased coverage, especially in the campaign before the runoff, when Duda and Trzaskowski were close in the polls. However, private TV channels were more supportive of the opposition candidate.⁴³
- In addition to polarizing language, diverse incentives were used to increase turnout. PM Morawiecki encouraged the elderly to vote, declaring victory over COVID-19.⁴⁴ A day ahead of the runoff, the Government Security Center, which typically warns citizens about weather emergencies, sent a text message to all cellphones in Poland reminding that the elderly, pregnant persons, and persons with disabilities may skip the queue at voting stations.⁴⁵ According to an Ipsos poll, Duda was favored among those over 50.⁴⁶
- The constitution states that presidential elections must be universal, equal, direct, and held by secret ballot. Yet significant concerns arose about the electoral process’s conformity with the equality and universality requirements. All candidates did not have an equal opportunity to present their candidacy to voters due to the COVID-19 restrictions, while the incumbent Duda met with voters in his capacity as president. Some Poles abroad were denied their right to vote due to various COVID-19 restrictions in the locale where they wanted to cast their vote.⁴⁷
- In the presidential runoff on July 12, 2020, Duda won 51.03 percent (10,440,648 votes) to Trzaskowski’s 48.97 percent (10,018,263 votes).⁴⁸ The turnout at 68.18 percent was the second highest after Poland’s transition to democracy in 1989.

Civil Society 1.00-7.00 pts

Assesses the organizational capacity and financial sustainability of the civic sector; the legal and political environment in which it operates; the functioning of trade unions; interest group participation in the policy process; and the threat posed by antidemocratic extremist groups.

5.50 /
7.00

- Several mass demonstrations occurred in 2020, despite COVID-19 restrictions on freedom of assembly. The protests drew diverse groups who channeled their various grievances against the government, including over the dismantling of rule of law standards, the economic downturn, the handling of the pandemic, and the scapegoating of LGBT+ people.⁴⁹
- The year was marked by intense anti-LGBT+ rhetoric, especially during the presidential campaign. According to OSCE/ODIHR, “The incumbent’s campaign and coverage by the public broadcaster were marked by homophobic, xenophobic and anti-Semitic rhetoric.”⁵⁰ In June, President Duda stated that “LGBT ideology” is worse than communism.⁵¹ PiS MP Przemysław Czarnek, who later became Science and Higher Education Minister, suggested on TVP that LGBT+ people are “not equal to normal people.”⁵²
- In August, Polish society was polarized over the arrest of Margot, a queer activist who faced criminal charges for attacking a driver and van emblazoned with slogans defamatory of LGBT+ people;⁵³ 48 people were detained during a spontaneous protest against her arrest and, more broadly, the ongoing smear campaign against non-heterosexual people.⁵⁴ The detentions raised concerns of international human rights monitoring

bodies⁵⁵ and the international community.⁵⁶ The activist was released on court order after three weeks of arrest, and her case was pending at year's end.⁵⁷

- In 2020, Polish courts overruled discriminatory local-government orders such as the “Regional Charters of Family Rights” and “Anti-LGBT ideology” resolutions.⁵⁸ Since 2019, on roughly a third of Poland's territory, local authorities have endorsed some form of such declaratory, non-legally binding, but symbolically important acts.⁵⁹ In July, the European Commission (EC) refused to grant funding to some local governments that introduced such resolutions.⁶⁰ In August, the Ministry of Justice compensated them with grants.⁶¹
- In July, Justice Minister Zbigniew Ziobro submitted a motion to withdraw Poland from The Council of Europe Convention on preventing and combating violence against women and domestic violence (aka, the Istanbul Convention).⁶² Later that month, PM Morawiecki filed a motion to the CT to examine the compatibility of the convention, ratified in 2015, with the Polish constitution.⁶³
- In August, Ziobro called for banning “LGBT ideology” from schools and universities.⁶⁴ In October, Science and Higher Education Minister Czarnek warned that universities may not receive state research funding as a result of enabling students to participate in protests over the CT's controversial abortion law ruling.⁶⁵ The minister and many members of the ruling party argued that freedom of speech is apparently restricted at Polish universities for scholars with a radically conservative outlook. Subsequently, he proposed controversial legislation aimed at “protecting free speech at universities.”⁶⁶
- Despite COVID-19 restrictions to freedom of assembly, various social groups, including entrepreneurs⁶⁷ and farmers,⁶⁸ protested government policies during the year. After the CT's ruling of October 22 that further tightened Poland's abortion law, two weeks of protests ensued nationwide.⁶⁹ On October 29, according to the police, 400,000 people participated in antigovernment protests in 410 locations.⁷⁰ The next day, 100,000 marched in Warsaw, the biggest single antigovernment protest since 1989.⁷¹
- No substantial legal changes were introduced in 2020 regarding nongovernmental organizations (NGOs). The government announced plans for a law obliging NGOs to report foreign financing, but no draft act was presented for review by year's end.⁷²

Independent Media 1.00-7.00 pts

Examines the current state of press freedom, including libel laws, harassment of journalists, and editorial independence; the operation of a financially viable and independent private press; and the functioning of the public media. 4.25 / 7.00

- In May, the state-owned radio broadcaster Channel Three annulled the results of its song chart after a track that criticized PiS chairman Jarosław Kaczyński reached number one. The broadcaster's director accused the speaker hosting the chart of vote tampering, and in response multiple journalists offered their resignations.⁷³
- During the presidential campaign, Andrzej Duda accused the daily *Fakt*, owned by the Swiss-German media conglomerate Ringier Axel Springer, of participating in a “German attack during the election.”⁷⁴ His words came after *Fakt* published an article criticizing Duda's decision to pardon a pedophile. The president also alluded that “Germans want to pick the next Polish president.”⁷⁵ Kaczyński alleged that Duda's victory was achieved “despite an extremely tough campaign, one in which all the rules were often broken. The assault on us was coordinated by a powerful media front, also inspired from the outside.”⁷⁶ In the months following the elections, several journalists, including from *Gazeta Wyborcza* and *Fakt*, had their press passes revoked by Duda's administration.⁷⁷
- Following Duda's reelection, the ruling camp repeatedly announced that it was preparing a new package of media legislation that would be aimed at “deconcentrating” and “repolonizing” the media sector.⁷⁸ In line with these plans, on December 7, the state-owned gasoline retailer PKN Orlen announced a takeover of Polska Press from the German Verlagsgruppe Passau. Polska Press owns 20 of the 24 largest Polish regional newspapers as well as more than 150 local weeklies, and it reaches more than 17 million users online.⁷⁹ In November, PKN Orlen also purchased Ruch, Poland's second largest press distributor and second largest newsstand chain.⁸⁰
- The ruling camp also uses its economic power to influence the media sector through selective funding. In January, online media outlet OKO.press revealed that the largest online news portal in Poland, WP.pl, was receiving funding from the Ministry of Justice in return for positive coverage. The website's editor-in-chief was demoted as a result of the scandal.⁸¹ The funding came from the ministry's Justice Fund, which was created to support crime victims but has also sponsored homophobic articles in the progovernment weekly *Do Rzeczy*.⁸²
- Most media outlets suffered during the COVID-19 crisis due to cuts in advertising, which amounted to 30–40 percent of advertising revenue. Conversely, state-owned companies increased their public relations budgets in the early months of the pandemic—in the case of PKN Orlen, by as much as 100 percent—to bolster the financing of progovernment newspapers and magazines.⁸³
- The ruling camp resorted to litigation to silence criticism of the government. In 2020, *Gazeta Wyborcza* was battling 55 strategic lawsuits against public participation (SLAPPs) brought by the government, PiS MPs, state-owned companies, and institutions connected to the ruling majority. The newspaper was granted financial support from the EU's Media Freedom Rapid Response mechanism.⁸⁴
- There were multiple physical assaults on media professionals during the year. In June and August, two journalists were harmed during progovernment and far-right rallies.⁸⁵ In October, at least three journalists

were assaulted by far-right aggressors after PiS chairman Kaczyński pleaded with "all individuals who care for Poland" to stand against the women's rights protesters, which resulted in large groups of radical nationalists organizing militias on the streets of Polish cities.⁸⁶

- In November, multiple journalists were beaten by the police while covering the far-right Independence March, and one was struck in the head by a police rubber bullet.⁸⁷ Also in November, a photojournalist was detained by the police for photographing an officer during a protest despite presenting her press ID.⁸⁸

Local Democratic Governance 1.00-7.00 pts

Considers the decentralization of power; the responsibilities, election, and capacity of local governmental bodies; and the transparency and accountability of local authorities.

5.50 / 7.00

- The estimated total loss in local government income tax revenue due to COVID-19 was in the range of PLN 5.3–6.9 billion, amounting to 2.5–3 percent of total revenue.⁸⁹ According to municipalities' own data, 90 cities were on track to lose financial liquidity before the end of 2020.⁹⁰ Meanwhile, new corporate tax regulations aimed at boosting investment would result in a decrease of local government resources by another PLN 2.7 billion per year. The Union of Rural Municipalities of the Republic of Poland pointed out that, according to assumptions in the new law on corporate tax cuts, these losses may be balanced by an influx in other tax revenues that would, however, flow to the central budget. As such, the bill introduces a net revenue transfer away from the local and into central government coffers.⁹¹
- The education sector, which accounts for over half of all municipal spending in Poland and in some cities reaches 80 percent of their budget,⁹² was burdened with a six-percent raise in teacher salaries⁹³ as well as additional costs in preparing schools to comply with the country's COVID-19 sanitary regime.
- The ruling camp's strategy for tackling the pandemic largely bypassed local authorities, who were not consulted about the majority of legislative and regulatory tools adopted by Parliament and the government in response to the crisis.⁹⁴ This approach was criticized for violating the subsidiarity principle.⁹⁵
- In July, however, the government announced that it had prepared a fund worth PLN 12 billion to help local authorities cope with the social and economic consequences of the pandemic. Half of the money was automatically assigned to municipalities based primarily on population size. The remaining PLN 6 billion would be available to local governments through a competitive grant procedure.⁹⁶
- Experts criticized this proposal due to the arbitrariness of the grant criteria, lack of proper mechanisms for legal or administrative recourse, and the fact that grant committees were to be composed solely of central government administrators. They pointed out that similar mechanisms have been used to determine distributions from the Local Roads Fund, and studies have shown that localities governed by PiS politicians have a much higher rate of success in obtaining those grants.⁹⁷ In the aftermath of the presidential election, Janusz Kowalski, deputy minister of state assets, remarked that it was "time to reform the local government and to tear down the big city fiefdoms of *Platforma Obywatelska*" (Civic Platform, PO), Poland's largest opposition party.⁹⁸

Judicial Framework and Independence 1.00-7.00 pts

Assesses constitutional and human rights protections, judicial independence, the status of ethnic minority rights, guarantees of equality before the law, treatment of suspects and prisoners, and compliance with judicial decisions.

3.25 / 7.00

- On February 14, a new act on the judiciary—the so-called muzzle law—entered into force, broadening the notion of disciplinary offenses and making the disciplinary system for judges harsher.⁹⁹ The act was adopted despite strong domestic, EU, and international criticism, and galvanized an unprecedented "Thousand Robes March" in Warsaw in January. Polish judges, prosecutors, attorneys-at-law, and legal advisors marched alongside colleagues from 22 EU countries and thousands of citizens to protest attacks on judicial independence.¹⁰⁰
- The EC had already considered the former model of disciplinary responsibility for judges in Poland incompatible with EU law. In 2019, the Commission referred a case to the Court of Justice of the EU (CJEU) against the Polish government.¹⁰¹ In April 2020, the CJEU asked for interim measures in the case, ordering a suspension of disciplinary proceedings against judges until the final ruling is announced.¹⁰²
- Also in April, the EC launched another EU law infringement procedure regarding the muzzle law specifically. The Commission argues that the provision of the act prevent courts in Poland from directly applying EU law protecting judicial independence and asking the CJEU for preliminary rulings on such matters.¹⁰³
- Poland's justice system further moved from integrity to duality as institutions established or taken over by the government continued to assert their power. In April, the Constitutional Tribunal (CT) ruled on the motion of the Prime Minister and the Marshal of the Sejm¹⁰⁴ and found that the January 23 resolution of the Supreme Court (SC) on judicial appointments was not legally binding.¹⁰⁵ In that resolution, the three "old" chambers of the SC, following criteria established by the CJEU, argued that the added Disciplinary Chamber in the SC is not an independent court under EU law.¹⁰⁶ Further, the SC ruled that the National Council of the Judiciary (NCJ), reestablished by the government in 2018, is not independent. Consequently, new SC judges selected by the NCJ and sworn in by the President of the Republic should not adjudicate. Despite the CT's ruling, the SC continued to apply the resolution; and the new NCJ continued to propose candidates as judges to the SC and common courts.¹⁰⁷
- The CT, presided over by Julia Przyłębska, an ally to PiS chairman Kaczyński, continued to rule on politically and socially sensitive issues. On October 22, the CT found a provision decriminalizing abortion in

cases of fetal malformation unconstitutional.¹⁰⁸ This decision sparked nationwide protest (see "Civil Society").

- In May, Małgorzata Manowska become the new First President of the Supreme Court,¹⁰⁹ replacing Małgorzata Gersdorf, who held office until the end of her six-year constitutional term.¹¹⁰ According to the abovementioned SC resolution, Manowska, appointed to the SC on recommendation by the new NCJ, does not have power to adjudicate. However, she has been adjudicating and acting as the First President of the SC nonetheless.
- The model of disciplinary responsibility for judges, modified in 2018–20, was actively used during the year. In January, the Disciplinary Chamber of the SC suspended without pay Judge Paweł Juszczyszyn, known for challenging the government by applying CJEU rulings.¹¹¹ The UN Special Rapporteur on Independence of Judges and Lawyers and the European Association of Judges condemned the decision.¹¹² In October, the Disciplinary Chamber lifted the immunity of Judge Beata Morawiec, president of the THEMIS association of judges and a prominent critic of the judiciary changes implemented since 2015, in a criminal case brought against her.¹¹³
- The Article 7(1) TEU political dialogue procedure, launched by the EC in 2017 against the Polish government for rule of law violations, continued in 2020.¹¹⁴ In September, the European Parliament (EP) adopted a report and resolution urging the EC and the Council to broaden the scope of the procedure to also address the state of democracy and human rights in Poland.¹¹⁵
- Courts in other EU member states, including Germany¹¹⁶ and the Netherlands,¹¹⁷ questioned safeguards to judicial independence in Poland in the context of judicial cooperation within the EU and the European Arrest Warrant procedure, citing the muzzle law as one of the reasons.¹¹⁸ Since 2018, courts in several EU member states (including Ireland, Spain, Netherlands, Germany, and Slovakia) halted the execution of European Arrest Warrants (EAWs) requested by courts in Poland, citing changes in the judiciary and their impact on judicial independence and fair trial guarantees.¹¹⁹ In September, the Amsterdam Regional Court posed preliminary reference questions regarding an EAW to Poland to the CJEU and, making precedent in the EU, paused all extraditions from the Netherlands to Poland until the CJEU's ruling.¹²⁰
- The majority of Poles did not agree with plans by the Polish and Hungarian governments to veto the EU budget and pandemic recovery package; the two governments wanted to avoid linking the provision of EU funds to rule of law issues.¹²¹ After much back and forth, they approved the package in December, but both governments announced that they will challenge the rule of law conditionality mechanism at the CJEU.

Corruption 1.00-7.00 pts

Looks at public perceptions of corruption, the business interests of top policymakers, laws on 4.00 / financial disclosure and conflict of interest, and the efficacy of anticorruption initiatives. 7.00

- As part of the special law adopted in March to combat the COVID-19 pandemic, the government introduced a rule exonerating public officials from responsibility for abusing their administrative power or for causing a financial loss in business transactions.¹²² A number of procurement decisions undertaken by the government for personal protective equipment (PPE) raised serious doubts concerning mismanagement of public funds. The Ministry of Health purchased masks and visors from health minister Łukasz Szumowski's ski instructor, who had no previous experience selling medical equipment, and paid him more than three times the other offers sent to the ministry. Media reports revealed that the Central Anticorruption Bureau ran multiple inquiries about purchases of equipment during the pandemic.¹²³
- Besides masks, the Ministry of Health bought 1,200 ventilators for PLN 200 million from a company owned by an arms dealer, who also had no prior experience selling medical equipment. While the price was significantly above the market value, the ministry justified the higher cost by saying the contractor was the only one to guarantee expedited procurement of the equipment. However, the company never delivered the large majority of the ventilators, and the ministry is still owed PLN 70 million.¹²⁴
- Further press investigations found that while Łukasz Szumowski, who also served as deputy minister of science in 2016–18, had virtually no savings, the value of Szumowski Investments, a company founded by his brother, had grown over the last four years from PLN 40,000 to over PLN 40 million. Several years ago, Szumowski transferred his shares in Szumowski Investments, amounting to 30 percent of the total value of the company, to his wife. In 2017, as deputy minister, he was in charge of directly supervising the National Center for Research and Development for almost two months. Over that period alone, the center offered grants worth over PLN 50 million to a company partly owned by Szumowski Investments.¹²⁵
- Meanwhile, the state-owned copper giant KGHM purchased 1,300,000 masks from China at the direct order of PM Mateusz Morawiecki. The price paid by KGHM was four times the equipment's market value, and the masks' certificates were forged.¹²⁶ Further investigation showed that the transaction was coordinated by Polish secret service and its associates and served to funnel additional funding from the state-owned company to the service's operating budget.¹²⁷
- In August, the ruling majority MPs proposed a new amendment to the special law on combatting COVID-19 that would further expand the special leniency regime by exonerating anyone from any legal responsibility for breaking existing laws as long as it was necessary to counteract the pandemic. After receiving a positive recommendation from the parliamentary Public Finance Committee, the proposal was taken off the Sejm agenda at the last minute when the ruling camp temporarily lost its majority due to a conflict between the coalition parties in September.¹²⁸

- In January, government-controlled media claimed that during his career as a doctor, the President of the opposition-controlled Senate, Tomasz Grodzki, had accepted bribes for preferential medical treatment. No evidence of corruption was produced beyond the accusations of anonymous former patients.¹²⁹ In turn, Grodzki revealed that he was contacted by two of his former patients who were blackmailed with the purpose of offering damaging testimony against him. Another former patient claimed that he was approached by an unidentified man and offered PLN 5,000 to accuse Grodzki of demanding a bribe for performing surgery.¹³⁰ While politicians from the ruling camp pushed for Grodzki's dismissal, no follow-up actions were taken by the prosecutor's office concerning the accusations.

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Footnotes

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ecoi.net is run by the Austrian Red Cross (department ACCORD) in cooperation with Informationsverbund Asyl & Migration. ecoi.net is funded by the Asylum, Migration and Integration Fund, the Austrian Ministry of the Interior and Caritas Austria. ecoi.net is supported by ECRE & UNHCR.

