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Freedom House

Freedom in the World 2019 - Poland

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Key Developments:

Key Developments in 2018:

- Amendments to the electoral code endangered the independence of the National Electoral Commission (PKW), which manages elections and oversees party finances, by shifting responsibility for many of its nominations to PiS-controlled institutions. The reform underwent no public consultation, and was criticized by the PKW head and opposition lawmakers.
- A second reform that came into effect in 2018 gave authority to validate or reject election and referendum results to a new Supreme Court chamber that is vulnerable to politicization.
- In October, European Court of Justice (ECJ) ruled that Poland must suspend a law mandating a new, lower retirement age for Supreme Court justices, which had required 27 out of 73 judges to retire. President Andrzej Duda signed legislation reinstating the retired judges in December.
- In February 2018, parliament passed a law criminalizing claims of Polish complicity in crimes committed during the Holocaust, carrying a potential prison sentence of up to three years. The government walked back the law following an international outcry, making it a civil offense punishable by fines.

Political Rights and Civil Liberties:

POLITICAL RIGHTS: 35 / 40 (–1)

A. ELECTORAL PROCESS: 11 / 12 (–1)

A1. Was the current head of government or other chief national authority elected through free and fair elections? 4 / 4

The president of Poland is directly elected for up to two five-year terms. The president's appointment of a prime minister must be confirmed by the Sejm, the lower house of parliament. While the prime minister holds most executive power under the constitution, the president is also meant to have influence, particularly over defense and foreign policy matters.

Andrzej Duda of PiS won the second round of Poland's May 2015 presidential election with 52 percent of the vote, defeating incumbent Bronisław Komorowski in a process that was held in accordance with democratic standards. Komorowski was supported by the centrist Civic Platform (PO), which at that time had led the government since 2007.

The current prime minister, Mateusz Morawiecki, was appointed and confirmed in December 2017 with the approval of the PiS majority in parliament, although he does not hold a seat in parliament or any other elected position. In practice, PiS party chairman Jarosław Kaczyński, who retains no formal state position other than being a member of parliament, has vast influence over the government.

A2. Were the current national legislative representatives elected through free and fair elections? 4 / 4

Members of the bicameral National Assembly are elected to four-year terms. The 460-seat Sejm is elected by proportional representation and holds most legislative authority. The 100 members of the Senate, the upper house, are elected in single-member constituencies. The Senate can delay and amend legislation, but has few other powers.

PiS won 37.5 percent of the vote in the October 2015 parliamentary elections, increasing its representation in the Sejm to 235 seats. This made it the first party in postcommunist Poland to win an outright parliamentary majority, allowing it to rule without coalition partners. PO came in second with slightly more than 24 percent of the vote and 138 seats. Third and fourth place both went to new parties: Kukiz'15, a right-wing, antiestablishment party led by former rock musician Paweł Kukiz, which took 42 seats; and the liberal probusiness party Modern, which won 28. The agrarian Polish People's Party (PSL) won 5 percent of the vote and 16 seats. A representative of the ethnic German minority received the remaining seat.

In the Senate, PiS took 61 seats, PO 34, and PSL 1. International observers deemed the election competitive and credible.

A3. Are the electoral laws and framework fair, and are they implemented impartially by the relevant election management bodies? 3 / 4 (-1)

While Poland's electoral framework and its implementation have generally ensured free and fair elections, recent legal changes threaten to increase political control over election administration. Amendments to the electoral code signed by President Duda in January 2018 endangered the independence of the PKW, which manages elections and oversees party finances. Previously, all nine members of the PKW were nominated by courts. Under the amendments, seven members are chosen by parliament, and only two members are selected by courts. The largest parliamentary group is allowed to pick

no more than three members, but PiS can exert influence over the member selected by the Constitutional Tribunal (TK), which is currently led by PiS-installed judges. The reform—which will require the replacement of current PKW members under the new nomination system after 2019 legislative elections—underwent no public consultation, and the PKW head and opposition figures in the Sejm warned ahead of its approval that it endangered the body’s ability to oversee credible elections.

Additionally, a judicial reform that came into force in 2018 gave authority to validate or reject election and referendum results to a newly created chamber of the Supreme Court, the Chamber of Extraordinary Control and Public Affairs, whose members are appointed by the newly politicized National Council of the Judiciary. (Under a law that took effect in 2018, parliament appoints the majority of members to the National Council of the Judiciary.) The chamber’s substantial power, along with its vulnerability to politicization, could further threaten the integrity of electoral oversight.

Score Change: The score declined from 4 to 3 due to the implementation of reforms that increase political control over the electoral commission, and establish a powerful new Supreme Court chamber that is vulnerable to politicization.

B. POLITICAL PLURALISM AND PARTICIPATION: 16 / 16

B1. Do the people have the right to organize in different political parties or other competitive political groupings of their choice, and is the system free of undue obstacles to the rise and fall of these competing parties or groupings? 4 / 4

Poland’s political parties are able to organize and operate freely.

B2. Is there a realistic opportunity for the opposition to increase its support or gain power through elections? 4 / 4

There have been multiple rotations of power among rival parties since the transition from communist rule, and the PiS victory in the last national elections ended a lengthy period of rule by the PO, now the largest opposition party. However, opposition parties are currently weak and divided, and they face potential long-term obstacles that could impact their ability to gain power in parliament. Propaganda by PiS-controlled public media amplifies the ruling party’s message, while attempting to discredit opposition voices. The changes to the electoral framework that took effect in 2018 could permit PiS to consolidate control over the electoral process, with negative consequences for the opposition.

B3. Are the people’s political choices free from domination by the military, foreign powers, religious hierarchies, economic oligarchies, or any other powerful group that is not democratically accountable? 4 / 4

Voters and politicians are generally free from undue interference by outside groups, though there are some concerns that the personnel changes associated with the PiS government's assertion of control over various state institutions could be exploited to mobilize political support among public employees ahead of future local and national elections.

The Roman Catholic Church remains politically influential. The Church strongly supported legislation introducing a Sunday trading ban, which mandated the closure of supermarkets and other retail operations on many Sundays, and took effect in March 2018. Powerful priest Tadeusz Rydzyk, an ally of the PiS, uses his media outlets to support the government's message, and has received generous state grants for organizations under his control, as well as access to high-level decision-makers.

B4. Do various segments of the population (including ethnic, religious, gender, LGBT, and other relevant groups) have full political rights and electoral opportunities? 4 / 4

Women have equal political rights and hold senior positions in government, including about 28 percent of the seats in the Sejm. Both PO and PiS fielded female candidates for prime minister in the 2015 elections.

Ethnic, religious, and other minority groups enjoy full political rights and electoral opportunities. Electoral lists representing recognized national minorities are not subject to the minimum vote threshold for parliamentary representation.

C. FUNCTIONING OF GOVERNMENT: 8 / 12

C1. Do the freely elected head of government and national legislative representatives determine the policies of the government? 3 / 4

Freely elected officials generally determine and implement laws and policies without interference, but PiS chairman Kaczyński continues to play a dominant role in the government despite not holding any official executive position. PiS has also, throughout its time in power, sought to limit parliamentary scrutiny of legislation through various means, including by introducing legislation unexpectedly, sometimes in the middle of the night, giving legislators inadequate time for review, and limiting opportunities for the opposition to question or amend legislation.

C2. Are safeguards against official corruption strong and effective? 3 / 4

Cronyism, a problem under all previous Polish governments, appears widespread under PiS. The government has altered, lowered, or simply removed many criteria for staffing of public institutions, allowing for appointments based on party loyalty and personal connections.

The Supreme Audit Office (NIK), a state watchdog, has raised concerns about the mishandling or misuse of public funds. In June 2018, the NIK accused the Justice Ministry of illegally transferring \$6.7 million from a fund intended for victims of crimes

to the Central Anticorruption Bureau (CBA). The NIK also published research showing that in 2017, the government awarded bonuses to senior officials that were 12 times higher than those awarded under the previous administration. Public outrage over the bonuses led Kaczyński to order ministers to return the money in April 2018—though to a charity run by the Catholic Church, rather than back into the state coffers.

Although corruption remains a problem, the CBA robustly pursued several high-profile cases in 2018. Most notably, in November, the CBA arrested Marek Chrzanowski, the former head of the Financial Supervision Authority (KNF), and charged him with corruption for allegedly demanding that a bank owner hire a particular lawyer and pay him \$10.5 million in exchange for "support" and "protection" for the bank. (Chrzanowski had stepped down just a week earlier after media outlets broke news of the allegations.) Some opposition members have linked the scandal to powerful Central Bank Governor Adam Glapiński, a close friend and ally of Prime Minister Morawiecki, and have called for his resignation. Glapiński denied the allegations.

Money from large state-owned companies is increasingly used to support the ruling party's initiatives, such as an advertising campaign in 2017 to promote the government's judicial reforms that was paid for with funds from state firms ostensibly intended for promoting Poland abroad.

C3. Does the government operate with openness and transparency? 2 / 4

The right to public information is guaranteed by the constitution and by the 2001 Act on Access to Public Information, but obtaining records and data from public institutions can be slow and difficult. The courts' ability to uphold transparency laws has been uneven. However, in June 2018, after a two-year legal battle, the Supreme Administrative Court ordered the Education Ministry to comply with a request from a nongovernmental organization (NGO) to reveal the names of experts hired to advise on the new school curriculum.

The government avoids consulting outside experts or civil society organizations on policy ideas, and tends to introduce and pass legislation rapidly, with little opportunity for debate or amendment. The PiS government is also openly hostile to critical or independent media outlets and engages almost exclusively with state-run and progovernment outlets. Reporters from *Gazeta Wyborcza*, the country's largest non-tabloid newspaper, have difficulty gaining access to officials. Nevertheless, reporting on government activities and corruption remains fairly robust.

CIVIL LIBERTIES: 49 / 60

D. FREEDOM OF EXPRESSION AND BELIEF: 14 / 16

D1. Are there free and independent media? 3 / 4

The constitution guarantees freedom of expression and forbids censorship. Libel remains a criminal offense, though a 2009 amendment to the criminal code eased penalties. In addition, Poland has a suite of "insult laws," for example against blasphemy

(punishable by up to two years in prison) and insulting the president (up to three years). In February 2018, parliament passed a law criminalizing claims of Polish complicity in crimes committed during the Holocaust, carrying a potential prison sentence of up to three years. Following an international outcry, the government softened the law, making it a civil offense punishable by fine but not incarceration.

Poland's media is pluralistic and most outlets are privately owned. However, the public media and their governing bodies have been purged of dissenting voices since PiS came to power in 2015. TVP, the public television broadcaster, promotes the government's message on topics ranging from peaceful antigovernment protests, which it depicts as attempted coups, to critical NGOs, which are portrayed as agents of the opposition or foreign forces. In 2018, news broadcasts on public television were used to openly support the ruling party's local election campaign and to discredit opposition campaigns.

Since 2015, state-controlled companies have shifted their advertising to private media outlets that support the PiS government. More critical outlets have suffered a corresponding drop in advertising revenue, as well as a sharp decline in subscriptions from government ministries.

Independent media outlets have faced regulatory pressure and investigations for their reporting. In January 2018, the National Broadcasting Council (KRRiT) withdrew the fine of nearly 1.5 million złoty (\$415,000) it had issued against private television station TVN24 in 2017 for "promoting illegal activities and inciting violence" through its coverage of antigovernment protests. However, in a statement on the decision that could be perceived as a warning, KRRiT implored the media to behave responsibly, and urged journalists to self-regulate. Also in January, however, prosecutors opened an investigation into the news channel TVN24 over a documentary it had aired that included undercover reporting on the activities of Polish neo-Nazis. Government ministers and PiS-linked media suggested that some of the events depicted in the documentary were staged. In November, authorities briefly opened an investigation into the documentary's cameraperson for propagating fascism, and visited his home.

The PiS leadership continues to express its desire to pass a long-planned law to "deconcentrate" and "repolonize" private media by reducing foreign ownership, a move that would disproportionately affect the outlets that most vigorously seek to hold the current government to account. The government often blames the presence of German and other foreign owners in the Polish media market for negative coverage of its activities.

D2. Are individuals free to practice and express their religious faith or nonbelief in public and private? 4 / 4

The state generally respects freedom of religion. The PiS government is aligned with the Roman Catholic Church, which wields significant influence in the country. Some prominent clergy members have distanced themselves from the ruling party, especially

on its strong opposition to the settlement of Muslim refugees in Poland. However, others endorse the government's nativist and socially conservative policies, particularly its ongoing efforts to further restrict access to abortion.

Religious groups are not required to register with the authorities but receive tax benefits if they do. Minority faiths are generally able to obtain registration in practice. There is a formal ban on state funding for church construction, but a church can obtain Culture Ministry funding in practice if, like the Temple of Divine Providence in Warsaw, it includes a museum.

D3. Is there academic freedom, and is the educational system free from extensive political indoctrination? 3 / 4

The ruling party has sought to discredit academics who challenge its preferred historical narrative, particularly in regard to the events of World War II. The new "Holocaust law," though it includes a clause exempting academic work, was widely regarded within the academic community as an attempt to discourage research into and discussion of World War II-era Polish crimes against Jews. In March 2018, two PiS senators issued a statement criticizing the Museum of the History of Polish Jews in Warsaw after it held events marking the 50th anniversary of antisemitic purges in Poland, accusing the museum of making false claims about antisemitism.

D4. Are individuals free to express their personal views on political or other sensitive topics without fear of surveillance or retribution? 4 / 4

People are free to engage in private discussions on political and other matters without fear of harassment or retribution.

E. ASSOCIATIONAL AND ORGANIZATIONAL RIGHTS: 10 / 12

E1. Is there freedom of assembly? 3 / 4

Freedom of assembly is generally respected in law and in practice, but in recent years, protesters have increasingly risked surveillance, intimidation, physical attack by counterprotesters, use of force by authorities, arrest, and prosecution for their activities. Public demonstrations are held with some regularity, though local authorities can limit demonstrations in their districts on grounds of maintaining public order. A new registration law favoring regularly scheduled gatherings has been criticized for allowing authorities to amplify some forms of public speech and suppress others. Authorities have declined to intervene in or prosecute instances in which far-right protesters have assaulted counterdemonstrators.

A new round of largescale "black protests" by women in March 2018 again prompted the government to back away from attempts to pass a citizens' initiative to further tighten abortion laws.

E2. Is there freedom for nongovernmental organizations, particularly those that are engaged in human rights- and governance-related work? 3 / 4

Although NGOs have generally operated without government interference in Poland, public media and top government officials have systematically undermined the credibility of civil society in recent years, accusing many groups of lacking financial transparency and pursuing an opposition-led political agenda. In 2017, a new law centralized distribution of public NGO funding, including money from the EU and non-EU countries like Norway, through a new body attached to the prime minister's office. Critics of the new funding mechanism warned that it could be used to muzzle criticism of PiS and to deny money to projects that do not match the ruling party's perspective and priorities. The NGO law was widely condemned by domestic and international NGOs, as well as by Poland's human rights ombudsman.

NGO leaders have also been subjected to investigations by the police and other authorities in recent years. In August 2018, Lyudmyla Kozlovska, the Ukrainian head of a Warsaw-based human rights NGO, was expelled from the Schengen Area at Poland's request and deported back to Ukraine. Poland's Internal Security Agency, in a statement about the expulsion, raised doubts about the organization's funding sources without providing further information. Kozlovska claims that she was targeted due to her claims that PiS's reform agenda violates the rule of law.

E3. Is there freedom for trade unions and similar professional or labor organizations? 4 / 4

Poland has a robust labor movement, though certain groups—including the self-employed, private contractors, and those in essential services—cannot join unions. Complicated legal procedures hinder workers' ability to strike.

F. RULE OF LAW: 11 / 16

F1. Is there an independent judiciary? 1 / 4

Since taking power in 2015, the PiS government has moved aggressively to assert control over the judiciary. One of its first steps was to pass legislation designed to curb the powers of the TK, and it subsequently refused to publish TK decisions that it considered invalid. By the end of 2016, after a lengthy dispute over the tribunal's membership and authority, the TK was dominated by progovernment judges. In 2017, three new judicial reforms were adopted. The first gave the justice minister the power to appoint and dismiss presidents and deputy presidents of courts, a power he subsequently used several times.

The second and third reforms came into force in 2018 undermined the independence of the judiciary even further. Under one new law, parliament now appoints the majority of members to the National Council of the Judiciary (KRS), which is responsible for nominating judges. Previously, judges made most nominations to the body. Of the 15 new members appointed in March, many had links to the ruling party.

In July, a new, lower retirement age for Supreme Court justices came into force, which required 27 out of 73 judges to retire unless they received presidential approval to continue. The head of the Supreme Court, Małgorzata Gersdorf, who was among the

judges slated for retirement, refused to step down on the basis that Poland's constitution guaranteed that her six-year term could not be cut short. In October, the ECJ, following an infringement procedure initiated by the European Commission (EC), ordered Poland to suspend the retirement age mandate. Consequently, the Polish parliament passed legislation reinstating the retired judges, which was signed into law by President Duda in December. However, other troubling aspects of the recent reforms remain in place, including a measure that enlarged the Supreme Court to 120 judges and created two powerful new chambers, which will be filled with judges appointed by the newly politicized KRS and could further entrench PiS's dominance of the judiciary.

Also retained under recent reforms is a system of "extraordinary appeals" that allows cases up to twenty years old to be reopened, which could allow for retroactive, politically motivated proceedings. During 2018, there were also a number of disciplinary proceedings initiated against judges who questioned the politicization of the justice system.

The judicial reforms have raised concerns among EU member states about the independence of Poland's judiciary and its adherence to the EU's values. Article 7 proceedings over the rule of law in Poland, launched by the EU in 2017, received the backing of a large majority in the European Parliament in March 2018.

F2. Does due process prevail in civil and criminal matters? 3 / 4

Defendants generally enjoy due process protections, though the law allows for extended pretrial detention, which can be lengthy in practice, and there is a large backlog of cases. A law passed in 2016, which merges the offices of the justice minister and prosecutor general, has led to concerns about potential abuse and politicization of the justice system.

Law enforcement agencies have broad authority to monitor citizens' communications activity, including the ability to access metadata without a court order and monitor the movements of foreign citizens without prior court approval. Terrorism suspects can be held without charge for up to two weeks.

F3. Is there protection from the illegitimate use of physical force and freedom from war and insurgencies? 4 / 4

Civilians are largely free from extralegal violence, though some incidents of abuse by police have been alleged in the context of antigovernment demonstrations. Human rights groups have reported inadequate medical care in prison facilities.

F4. Do laws, policies, and practices guarantee equal treatment of various segments of the population? 3 / 4

Women and ethnic minorities generally enjoy equality before the law. Some groups, particularly the Roma, experience discrimination in employment and housing, racially motivated insults, and occasional physical attacks. Members of the LGBT (lesbian, gay,

bisexual, transgender) community continue to face discrimination. Hate crimes, particularly against Muslims or people believed to be Muslim by their attackers, have risen significantly over the last few years. According to a 2018 survey of people who identify as Jewish, carried out and published by the EU Agency for Fundamental Rights, a large majority of respondents in Poland said antisemitism in public life was a significant, increasing problem.

Human rights NGOs have accused Poland of violating national and international law by turning away large numbers of asylum seekers at its border with Belarus. In August 2018, Poland deported a Chechen refugee to Russia, where he disappeared after being taken from his home in a raid by Russian security forces.

G. PERSONAL AUTONOMY AND INDIVIDUAL RIGHTS: 14 / 16

G1. Do individuals enjoy freedom of movement, including the ability to change their place of residence, employment, or education? 4 / 4

People in Poland typically enjoy freedom of travel and choice of residence, employment, and institution of higher education.

G2. Are individuals able to exercise the right to own property and establish private businesses without undue interference from state or nonstate actors? 4 / 4

Citizens have the right to own property and establish private businesses. However, onerous restrictions on the sale and ownership of agricultural land, ostensibly to protect small-scale farmers, limit property rights. State and religious institutions are not bound by the restrictions.

G3. Do individuals enjoy personal social freedoms, including choice of marriage partner and size of family, protection from domestic violence, and control over appearance? 3 / 4

Since PiS assumed power in 2015, the government has consistently pursued policies that undermine reproductive rights. Under Polish law, abortion is only permissible if a woman's health or life is in danger, if the pregnancy is the result of a criminal act such as rape, or if the fetus is severely damaged. A bill that would have removed most of these exceptions and imposed five-year prison terms for illegal abortions triggered mass protests and failed to pass in 2016. Another legislative effort in 2018 to tighten abortion laws prompted more protests, leading parliament to again back away. Nevertheless, senior PiS figures and the president have signaled that they will pursue laws that ban abortion in cases where the fetus has a congenital disorder.

Since 2017, emergency contraceptive pills have been available by prescription only, making Poland one of only two EU countries with this restriction, along with Hungary. In many rural areas, gynecologists are rare, limiting reliable and timely access to contraception and other reproductive health services.

Same-sex civil partnerships, marriage, and adoption are not permitted, and Poland's constitution defines marriage as between a man and a woman.

G4. Do individuals enjoy equality of opportunity and freedom from economic exploitation? 3 / 4

The law provides meaningful protections against abusive working conditions and child labor, especially in the formal sector. The authorities work to combat human trafficking, but women and children are still subjected to trafficking for sexual exploitation. Romany children are frequently engaged in forced begging, and foreign migrant workers are vulnerable to forced labor.

ecoi.net summary:

Annual report on political rights and civil liberties in 2018



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