

# Poland

by Andrzej Krajewski

*Capital:* Warsaw  
*Population:* 38.1 million  
*GNI/capita:* US\$14,250

The social data above was taken from the European Bank for Reconstruction and Development's *Transition Report 2007: People in Transition*, and the economic data from the World Bank's *World Development Indicators 2008*.

## Nations in Transit Ratings and Averaged Scores

	1999	2001	2002	2003	2004	2005	2006	2007	2008
Electoral Process	1.25	1.25	1.25	1.50	1.50	1.75	1.75	2.00	<b>2.00</b>
Civil Society	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.50	<b>1.25</b>
Independent Media	1.50	1.50	1.50	1.75	1.75	1.50	1.75	2.25	<b>2.25</b>
Governance*	1.75	1.75	2.00	2.00	2.00	n/a	n/a	n/a	<b>n/a</b>
National Democratic Governance	n/a	n/a	n/a	n/a	n/a	2.50	2.75	3.25	<b>3.50</b>
Local Democratic Governance	n/a	n/a	n/a	n/a	n/a	2.00	2.00	2.25	<b>2.25</b>
Judicial Framework and Independence	1.50	1.50	1.50	1.50	1.50	2.00	2.25	2.25	<b>2.50</b>
Corruption	2.25	2.25	2.25	2.50	2.50	3.00	3.25	3.00	<b>3.00</b>
Democracy Score	<b>1.58</b>	<b>1.58</b>	<b>1.63</b>	<b>1.75</b>	<b>1.75</b>	<b>2.00</b>	<b>2.14</b>	<b>2.36</b>	<b>2.39</b>

\* With the 2005 edition, Freedom House introduced separate analysis and ratings for national democratic governance and local democratic governance to provide readers with more detailed and nuanced analysis of these two important subjects.

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

## EXECUTIVE SUMMARY

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With the Kaczyński twins, Lech and Jarosław, at the nation's helm for 10 months of the year—as president and prime minister, respectively—2007 marked the second (and final) year of Poland's Fourth Republic. Under the Kaczyńskis in 2007, there were 60 laws introduced in Parliament and 115 bills prepared by ministers. Driven by a leadership that looked backwards into the specter of the Communist past, the secret services investigated actively, prosecutors waited on call, and fervent journalists engaged in lustrating the nation's intellectuals. The Constitutional Court and private media resisted state pressure with some success. Early elections in October proved that the methods used by the Fourth Republic were unacceptable for many Poles.

The political situation, polarized throughout the year, was a roller coaster. It was initially affected by the pope's nomination for Warsaw archbishop, followed by a break-up in the government coalition that led to a search for a government "conspiracy" (the specter of which brought the Kaczyńskis to power) that ultimately failed to materialize. In October, the ruling duo and their Law and Justice Party (PiS) lost the early elections they had called for owing to the recent record high 54 percent turnout, thus bringing the opposition Civic Platform (PO) to power in a coalition government with the Peasant Party (PSL). The more affluent, educated, and mobile Poles (with some voting from abroad) rebelled via the ballot box against the changes instituted during the Fourth Republic.

**National Democratic Governance.** In essence, there were two distinctly different governments and styles of national democratic governance during 2007. PiS, the ruling party for the first 10 months, was obsessed with uncovering conspiracies of the past connected to the present among politicians, wealthy people, secret services, and the mafia. Few of the connections were discovered, and of those, mainly in the ruling party's own political camp. PiS relinquished power democratically after losing the early elections called on October 21, 2007. The new government (led by Donald Tusk) stopped inquiring about the past and focus returned to present-day issues. *Owing to PiS's overusing state power to hunt for political opponents and allies, and further concentration of power in the executive branch, Poland's national democratic governance rating worsens from 3.25 to 3.50.*

**Electoral Process.** Despite erratic governing during most of the year, Poland proved to be a stable democracy, solving its political problems by early parliamentary elections—scheduled two years in advance by a vote that garnered support from both the ruling party and the opposition. There were no attempts to change electoral law.

The elections were held in October with international observers present. *Poland's rating for electoral process remains at 2.00.*

**Civil Society.** An overbearing manner of governing invigorated NGOs and civic-minded citizens alike to fight for their beliefs: protecting the pristine valley of Rospuda from intrusive road planning, maintaining the rights of professionals obliged to report on themselves, and upholding the freedom of information on farm subsidies. *These undertakings combined with government's refusal to further curtail civil society and civil freedoms improved Poland's civil society rating from 1.50 to 1.25.*

**Independent Media.** The year 2007 saw a continuation of attacks by authorities on the media, which the prime minister accused of being owned by "oligarchs." Similarly, attacks by authorities on journalists continued as reporters and editors were pressed to sign declarations about their Communist-era security connections, which were then widely covered by the media. Despite the government's pressure in the first part of the year on limiting press freedom and partisan usage of public media, freedom of speech in Poland was secured and new media outlets appeared in the market. The new government installed in November stopped pressuring the media and declared its will to depoliticize the public media. *Poland's independent media rating remains at 2.25.*

**Local Democratic Governance.** After the 2006 elections, local government work included applying for and using EU budgets, a process that was sometimes hampered by Warsaw's centrally-driven government. *Owing to the restricted scale of these hampering efforts and the stability of local governance, the rating for local democratic governance remains at 2.25.*

**Judicial Framework and Independence.** Administrative restrictions on courts' independence, steering of prosecutors' work by their superiors and the minister of justice, verbal attacks, and formal threats to the Constitutional Court were realities of 2007. Ruling politicians spent much of the year attempting to control the judiciary. *Administrative restrictions on the judiciary during much of the year worsens Poland's rating for judicial framework and independence from 2.25 to 2.50.*

**Corruption.** Last year's trumpeted war on corruption did not bring measurable progress. The secret services disregarded citizens' rights while looking for instances of corruption in former politicians—but found some within their own ranks. *Owing to the ineffectiveness of anticorruption measures and investigations, Poland's corruption rating remains at 3.00.*

**Outlook for 2008.** The early elections in October 2007, which brought the main opposition party to power with a strong, but not exclusive government, will set the tone for Polish politics in 2008. Cohabitation with the remaining brother, President

Lech Kaczyński, may be difficult, but it is unlikely that the newly opposition PiS could re-take power. PO will take a conciliatory stance toward improving Poland's relations with the rest of the EU; inside the country, PO will likely stop the lustration hunt and change the general political focus from one of looking backward to moving forward. The two currently active parliamentary investigative commissions may yet discover hidden illegal practices of the former PiS government. Public media should recover from their earlier PiS political dependency, attacks on the judiciary are likely to stop, and tolerance in public life and discourse should begin to make a comeback. But too much liberalism may cost PO support from voters, as two years of Kaczyński demagoguery has revitalized the right, awakened nationalism, and strengthened populism. There will be no easy way out from the Fourth Republic, especially with the new role of the Kaczyński duo: Lech the president refusing cohabitation with the government of the new prime minister, Donald Tusk, and Jarosław as the new opposition leader, criticizing every action and lack of action by his successor.

# MAIN REPORT

## National Democratic Governance

1999	2001	2002	2003	2004	2005	2006	2007	2008
n/a	n/a	n/a	n/a	n/a	2.50	2.75	3.25	3.50

The year 2007 began with a lustration scandal as the media accused conservative archbishop Stanisław Wielgus, appointed to run the Warsaw diocese, of collaboration with the Communist secret police. Although church officials are excluded from the Law on Lustration, the Vatican asked Wielgus to resign on the day of his inauguration, under unclear but obvious pressure from Warsaw. He did so despite loud protests, thus becoming the highest-ranking victim of the country's unchecked lustration. The lustration program began in earnest in 2005 when right-wing journalists published 170,000 suspected names taken from the Institute of National Remembrance (which was formed to archive and lustrate the Communist past). In Wielgus' case, the lustration by the media supposedly received support from the Kaczyński twins' state apparatus, opening speculation that it could influence even the Vatican. This was only the beginning of the 2007 political roller coaster, which ended abruptly with the October 21 early elections and change of government.

Poland is a parliamentary democracy. Its Constitution provides a balance among executive, legislative, and judicial powers. Broad changes to the nation's legislation were introduced in 2004 to meet requirements for European Union (EU) accession. Additional harmonization continued post-accession. Notably, in 2006, the Constitution was changed to accommodate the European Arrest Warrant Act, which allows for the deportation of Polish nationals who break laws abroad on the condition that the same crimes are punishable under Polish law.

The government is confirmed by a majority of the 460-member *Sejm*. Both chambers of Parliament—the *Sejm* (the lower house) and the *Senat* (the upper house)—work on new legislation and must agree on it, with the president then signing or vetoing it. The president's veto may be overridden by a two-thirds majority of the *Sejm*. The president may also send legislation to the Constitutional Court, whose 15 members are elected by the *Sejm* for a single nine-year term. The Constitutional Court can declare laws or parts of laws unconstitutional; its decisions are final and obligatory. The Parliament can form investigative commissions and impeach the president.

Following a vigorously contested campaign—one of the most heated and divisive since the Polish transition—the October 2007 early elections delivered a victory (42 percent) for the opposition Civic Platform (PO), which formed a coalition government with the Peasant Party (PSL; 9 percent). The *Senat* was divided between the PO (60 seats) and the Law and Justice Party (PiS; 39 seats), with a single independent, the left-wing former prime minister. Before the elections, the

government was headed by PiS, which won 27 percent of votes in 2005 and formed a minority government under Kazimierz Marcinkiewicz. The populist Self-Defense League (Samobrona) and the right-wing League of Polish Families (LPR) soon joined, as well. In mid-2006, Jarosław Kaczyński, the twin brother of President Lech Kaczyński, became prime minister, breaking his pre-election promise not to assume the post if his brother was elected president.

The most powerful political office in Poland is the prime minister, who can be recalled only by a constructive no-confidence vote. President Lech Wałęsa (1990–1995) greatly influenced the choice of ministers of defense, the interior, and foreign affairs, which led to restrictions on presidential powers in the Constitution adopted in 1997. His successor, Aleksander Kwaśniewski, who held the office from 1995 to 2005, had a lesser mandate and was more active abroad, garnering support for Poland's NATO membership in 1999 and EU membership in 2004. In October 2005, Lech Kaczyński (PiS) succeeded President Kwaśniewski with 54 percent of the popular vote, beating Donald Tusk (PO) and swinging Poland's political pendulum significantly to the right. Lech Kaczyński was internationally known for his anti-European and illiberal views.

All legislation is published in the *Official Gazette* and on the *Sejm*, *Senat*, and president's Web sites. *Sejm* proceedings and parliamentary investigative commissions are broadcast live on public television TVP Info and on TVN24, a private channel. Thanks to the Law on Freedom of Information, adopted in 2001, there is access to a significant amount of government, self-government, and other public documents. The law did not replace all earlier legislation dealing with this topic, however, and many items are still inaccessible.

Members of Parliament and all government officials must post their property annually. The Central Anticorruption Bureau (CBA), with 500 officers, is empowered to fight corruption at the highest levels by acting undercover and performing investigative and control functions. One of its duties is to review the property statements of politicians and officials.

Under the 1997 Law on Lustration, all public representatives, high-ranking government officials, and attorneys were required to declare if they had worked for Communist-era secret police or intelligence. Those who hid this information were punished with a 10-year ban on public service after trials in the lustration court initiated by the public interest prosecutor. These procedures often took years and were criticized as being too lenient. According to the new 2006 Law on Lustration, the Institute of National Remembrance (IPN) replaced the lustration court, the public interest prosecutor ceased to exist, and IPN files of all public officials were to be opened. About 700,000 people, including journalists, teachers, and university professors, would be required to declare past activities in accordance with the information contained in the files.

President Kaczyński signed the new law in 2006 but three months later introduced IPN-prepared amendments, eliminating the Information Sources Register (the roster of all persons enlisted as Communist secret police informants) but maintaining the declaration policy. The opposition brought the law to the Constitutional Court, while many well-known journalists, teachers, and academics,

at risk of losing their jobs, announced that they would not sign the declarations. The rift between the country's elite and PiS became widened. In May 2007, on the final date for collection of declarations, a Constitutional Court verdict voided all of the declarations. The Catholic Church formed its own investigation commissions in dioceses, judging agents found among clergy. All churches were officially excluded from the Law on Lustration. A report on the military intelligence service, published in February 2007, listed names of alleged agents, including several well-known journalists. In autumn, IPN began publishing the first files of senior officials.

The shaky coalition of PiS, Samoobrona, and LPR finally collapsed in July, after a clandestine action against Deputy Prime Minister Andrzej Lepper. Two of his associates were arrested, allegedly for taking a bribe in a CBA-sting operation and Lepper was dismissed. The government lost its majority status under challenges from the opposition, including a PO motion to recall all ministers. This motion was unprecedented and legally dubious, made in lieu of a proposal from the new prime minister, which would result in a no-confidence vote. Jarosław Kaczyński's response was no less complex: He asked his brother to recall all 15 ministers and to nominate them again, whereby the first portfolio was returned the same evening. Constitutional Court chief Jerzy Stępień deemed this action illegal, stating that the ministerial vow must be taken personally in front of the president.<sup>1</sup>

Before the first autumn session of Parliament, the recalled minister of internal affairs, Janusz Kaczmarek, was accused of warning the Samoobrona leader about the CBA operation. Prosecutors showed a videotape of Kaczmarek, caught by a hotel security camera waiting for businessman Ryszard Krauze, who avoided arrest only by staying abroad.<sup>2</sup> "In their hunt for a conspiracy, PiS politicians found only the one established by themselves," ridiculed the opposition,<sup>3</sup> but soon it voted with PiS (377 out of 460) to dissolve the *Sejm* and the *Senat*.

The Supreme Chamber of Control audits all government institutions. Its head is nominated by the *Sejm* and approved by the *Senat* for a six-year term, which keeps the office less prone to political influence. The chamber audits institutional legality, efficacy, economic sense, and diligence at all levels of the central administration, the Polish National Bank, and state and local administrations. In 2007, Mirosław Sekuła, elected by the center-right Solidarity Electoral Action (AWS) coalition, was replaced by its former deputy Jacek Jezierski. Also, the head of the Polish National Bank was changed; Leszek Balcerowicz, author of the "shock therapy" approach for Poland's economy in the early 1990s, was exchanged for a low-level PiS official, Sławomir Skrzypek.

The early 1990s goal of creating a depoliticized, high-quality corps of civil servants throughout government was finally abandoned. In 2006, the State Cadres Reserve was formed; in 2007, all people holding the advanced academic degree of Ph.D. (about 120,000 people)—no matter the type or source of degree—were included, forcing former civil servants into lower positions. The law establishing the State Cadres Reserve has been challenged in the Constitutional Court. Meanwhile, younger, educated, alienated, entrepreneurial Poles have been immigrating to other European Union (EU) countries.<sup>4</sup>

The Polish economy is now mostly composed of private companies, but despite 18 years of privatization, the state still holds majority shares in 1,641 companies and owns 38 percent of Poland’s territory.<sup>5</sup> In 2007, the process of changing management at the largest state companies was completed, though not without raising political questions. For instance: When the head of the national insurance company PZU, Jaromir Netzel, was dismissed in connection with the Kaczmarek affair, the media revived information about his murky past revealed a year earlier, which was ignored at the time by PiS. The extent to which the private sector is vulnerable to political maneuvering is exemplified by the business troubles of Ryszard Krauze, whose enterprises overnight lost over 600 million złoty (US\$230 million) in stock value after news of his possible arrest.

The past successes of the *Sejm* investigative commissions, which toppled the left-wing (liberal) government of Leszek Miller in 2004, were not repeated in 2007. Likewise, the Investigative Commission to Study State Organs’ Inaccuracies in the Process of Transformation of Certain Banks (Bank Commission) failed to conduct any important investigations during the year after the Constitutional Court found its prerogatives too vague.

Electoral Process

1999	2001	2002	2003	2004	2005	2006	2007	2008
1.25	1.25	1.25	1.50	1.50	1.75	1.75	2.00	2.00

In summer 2007, the ruling party PiS lost majority in the Parliament by dissolving its coalition with minor partners Samoobrona and LPR. Deputy Prime Minister Andrzej Lepper (leader of Samoobrona) was accused of involvement in bribe taking, which was the result of an investigation by the CBA. The opposition refused to form a government, and a majority of parliamentarians voted for earlier elections. The election results again followed the pattern that every election brings the opposition to power. This time, it happened after only two years. PO won with 42 percent of the votes, while the ruling PiS was second with 31 percent. Its former allies, LPR and Samoobrona, received less than 2 percent and were thus removed from the Parliament as well as excluded from the system of state subsidies for political parties.

Poland’s multiparty parliamentary system with proportional representation was introduced in 1993. The electoral thresholds are 5 percent for parties and 8 percent for coalitions. These do not apply to national minorities; for example, the German community won one seat in the *Sejm* in 2007, although its voting power is less than 0.5 percent. The *Sejm* has 460 members, elected for four-year terms. The *Senat* has 100 members elected by majority vote on a provincial basis, also for four-year terms. Ahead of the 2007 fall elections, there was no attempt to make last minute changes in the electoral legislation (as had occurred in 2006). However, before the next elections there may be some changes to the law, because the PO promised to expand the majority vote and eliminate the *Senat*.



Poland's electoral system is considered free and fair. There are no instances of significant voting fraud or use of coercion, and complaints may be effectively filed with the Supreme Court. Perhaps this is why when former president of the Czech Republic Vaclav Havel proposed international monitoring of the 2007 elections, he was heavily criticized by Polish politicians and media alike.<sup>6</sup> Yet, Warsaw is home to the human rights office of the OSCE, which provides electoral oversight (through the Office for Democratic Institutions and Human Rights), and observers were quietly invited to monitor the early elections. ODIHR noted "occasional partisan interventions by institutions of the State."<sup>7</sup> Regarding the media, ODIHR drew attention to deficiencies in the structure and partisan composition and of the National Broadcasting Council, and expressed concern over: "a lack of qualitative balance by public television [and] ...the absence of effective mechanisms of oversight."<sup>8</sup>

Low voter turnout has been characteristic for all elections since the beginning of the Third Republic in 1989, when a record 62 percent voted. Subsequently, the rate has decreased steadily, from 52 percent in 1993 to 41 percent in 2005. The all-time low was 21 percent in 2004 in the European Parliament election. Given the 46 percent turnout in local elections in 2006 and the 54 percent turnout in the 2007 early elections, it would appear there may be a reversal in the trend. Or these recent higher numbers may simply reflect the high emotions caused by the Kaczyński's administration.

#### Civil Society

1999	2001	2002	2003	2004	2005	2006	2007	2008
1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.50	1.25

The most successful, widespread, and spontaneous civil society action in 2007 was the protest against a highway construction project in the Rospuda valley peat bogs near Augustów, in northeastern Poland. For years ecologists had been fighting this project, even offering an alternative route, but local and central authorities insisted, with support from Augustów residents frustrated by the heavy truck traffic through the city center. After marches and volunteer sit-ins, actors and TV anchors wearing green "Save Rospuda" ribbons, and huge media support, especially by *Gazeta Wyborcza*, the European Commission asked the European Tribunal of Justice to halt construction on the site while it reviews the case.

Poland's civil society is based on the traditions of the Solidarity trade union and other anti-Communist opposition movements of the 1970s and 1980s, as well as social activity by the religiously dominant Catholic Church. Frequent changes of government in the 1990s helped to establish civil society structures: foundations, think tanks, and analytical centers which support the current opposition until the political pendulum replaces the incumbent with the opposition. Since 2004, the Law on Public Benefit Activities and Volunteering has given nongovernmental organizations (NGOs) the option to register as "public benefit organizations,"

allowing tax breaks and 1 percent personal income tax donations, but also imposing stricter rules on salaries and an obligatory annual audit.

More than 50,000 associations and 7,000 foundations are registered as active in sports, recreation, tourism, culture and art, education, social help, and health protection. In total, these organizations report eight million members, and one million are noted as volunteers. The main sources of financing are member dues, self-government donations, private donations, and funding from institutions. Some of the major donors to the sector are the Polish American Freedom Foundation, Stefan Batory Foundation, Agora Foundation, and Kronenberg Foundation. This and other information supporting Poland's third sector is available on the Klon/Jawor Association's NGO information portal, which supports the third sector (<http://english.ngo.pl>).

Freedom of association is secured in Article 58 of the Polish Constitution and the Law on Associations. There are prohibitions against groups promoting Nazi, Fascist, and Communist ideology, racial and national hatred, secret membership, or the use of power to overthrow the authorities. However, the government itself has not fully supported these freedoms.

In May 2007, the European Court of Human Rights (ECHR) in Strasbourg decided the case of *Bączkouski and Others v. Poland*, dealing with the Warsaw ban on a Lesbian, Gay, Bisexual, and Transgender Pride Parade two years earlier. Poland was reprimanded for violating several articles of the Human Rights Convention, and Lech Kaczyński, then mayor of Warsaw, was personally criticized for his homophobic remarks. "Public officials should be restrained in expressing their opinions, realizing that their words may be treated as instructions by their subordinates," wrote ECHR judges.<sup>9</sup> Their criticism did not influence public officials, however. In an education bill prepared by Minister of Education Roman Giertych, schools are obliged to protect students against the "promotion of homosexuality," defined as "presentation of homosexual relationship in a form convincing to have one," arguing that teens may change their sexual preferences under this influence. "Such ignorance proves that this bill was filled with homophobia and intolerance, therefore being outright discriminatory," wrote Professor Wojciech Sadurski in an Institute of Public Affairs (Instytut Spraw Publicznych: ISP) report on the state of democracy in Poland.<sup>10</sup>

Poland lost another strategic case in the ECHR during the year, that of Alicja Tysiąc, who was denied the right to an abortion. In September 2007, she was granted compensation of €25,000 (US\$39,000), and the Polish government was instructed by the ECHR to construct a mechanism to decide whether abortion is available when permitted by law. It was Deputy Prime Minister and Minister of Education Roman Giertych again who talked about the overturned verdict as running against the rules upon which Polish society is built and demanded Poland's withdrawal from the European Convention on Human Rights. On a more positive note, in July the government quietly gave in to the request to disclose farm subsidies data, which the Helsinki Foundation for Human Rights had been requesting in the administrative and civil courts. After two years of legal battles, when the ruling coalition collapsed in late 2007, the agency handling farm subsidies promptly published the names of 1.5 million beneficiaries on its Web page.

In the autumn, Leszek Balcerowicz, former Polish National Bank president, started the Citizens' Development Forum, a new watchdog NGO aimed at verifying politician declarations and promises. The Stefan Batory Foundation also ran several watchdog projects in public education, access to information, ecology, and other areas. There was even an initiative to recall President Kaczyński in a call for a national referendum that collected half a million signatures.

The most high-profile Polish charity action was the annual New Year's telethon of the Wielka Orkiestra Świątecznej Pomocy (the Great Orchestra of Christmas Charity); 120,000 youth volunteers collected 29 million złoty (US\$9.7 million) from street donations and auctions, and the proceeds went to purchase medical equipment for handicapped children. However, the minister of education was directed to verify whether the action was, in fact, voluntarily supported by youth, and public TV downgraded its coverage of the event. Polish Humanitarian Action continued to help victims of natural disasters and armed conflicts in Chechnya, Palestine, Iraq, Sri Lanka, and other countries, as well as indigent children and refugees in Poland. The largest charity organization in Poland is Caritas, which feeds the poor and shelters the homeless on behalf of the Catholic Church.

The trade union movement has good standing in Poland thanks to the tradition of *Solidarność* (Solidarity), which in 1981 boasted 10 million members. Today's Independent and Self-Governing Trade Union Solidarity, while still one of the two largest trade unions in Poland, is only a shadow of its former strength, with fewer than 1 million members. The largest trade union is the All-Poland Trade Unions Agreement, with about 1.5 million members. The majority of both unions' members are from state-owned factories, steel mills, mines, railways, and budget-funded health care and education facilities. In March 2007, the two unions launched a campaign to protest a minimum monthly wage of 936 złoty (US\$424) and to secure higher wages. In the state-run health care system, the year was marred by strikes of doctors and other health care personnel over low pay, resulting in some cases in the evacuation of patients. During a two-month protest, nurses set up tents in front of the Office of the Prime Minister, who took an early summer holiday and avoided the protesters. There was some movement toward a resolution between the Trilateral Social Commission and the unions before the dissolution of Parliament late in the year.<sup>11</sup>

#### Independent Media

1999	2001	2002	2003	2004	2005	2006	2007	2008
1.50	1.50	1.50	1.75	1.75	1.50	1.75	2.25	2.25

Prime Minister Jarosław Kaczyński's intolerance towards the media outlets that were critical of the PiS-led government continued throughout 2007, especially in the lustration of journalists. Kaczyński stated that the "majority of media are under oligarchs' control,"<sup>12</sup> comparing *Gazeta Wyborcza* to the Communist Party daily

*Trybuna Ludu* of 1953. Agora, the publisher of *Gazeta Wyborcza*, took the prime minister to court for the remark. In the Reporters Without Borders 2007 survey of world press freedom, Poland for the second year was ranked 56, last among EU countries. Poland's low ranking was attributed to the pressuring of private media by the government, attempts to control media by the secret services, and a proposed work ban on journalists under the Law on Lustration. During the year, public media were under the political control of PiS and its allies, and private media were increasingly politicized and divided, with tabloids frequently supporting the authorities.

The importance of free media is well understood in Poland, where fighting censorship and a tradition of an underground free press go back to the nineteenth century. According to the Constitution, the state "shall ensure freedom of the press and other means of social communication,"<sup>13</sup> but other legal acts still contain traces of authoritarian rule that threaten this basic freedom.

Article 133 of the penal code provides up to three years' imprisonment for persons who "publicly insult the Polish Nation or the state," though the statute has not been used in recent years. In 2007, a new form of "insulting the Polish Nation" was added as Article 132a: "Anyone publicly insulting the Polish Nation for participating in, organizing of, or responsibility for Nazi or Communist crimes may be punished up to three years in jail." The dangers to free speech presented by this article prompted the ombudsman to challenge it in the Constitutional Court. The prosecutor in Kraków initiated an investigation but dropped it in a short time.<sup>14</sup>

Libeling the president can carry a sentence of up to three years in jail. Libeling members of Parliament or government ministers is punishable by two years in jail and libeling other public officials by one year.

Libel suits against media professionals are common, but those found guilty are usually only fined. The Constitutional Court upheld the constitutionality of the penal code article that penalizes 'defamation' in the media (even if determined to be an expression of facts and opinions) with up to two years in prison; however, three justices, including the chair, wrote dissenting opinions, emphasizing that the truth of questioned statements protects the journalist against the defamation charge only if it safeguards "a socially protected interest." In addition, they pointed out, the article runs counter to the verdict of the ECHR in Strasbourg, which ruled that a requirement of truth concerning opinions is an impossibility and therefore an infringement of the freedom of speech.<sup>15</sup>

In 2007, further changes occurred in the state media (that is, Polish Television TVP, Polskie Radio PR, state news agency PAP, and *Rzeczpospolita* daily, half-owned by the state). The TVP presidency, held from April 2006 by right-wing journalist Bronisław Wildstein, was transferred in February 2007 to Andrzej Urbański, former journalist and President Lech Kaczyński's first chief of staff. On the closely controlled news program *Wiadomości*, 80 percent of the political reporters were changed. In the last week before the elections, TVP twice changed its program to repeat accusations brought by the CBA against opposition parliamentarians. In other public media, close control by PiS became the rule during the year.

According to the Stefan Batory Foundation, TVP's 2006 local elections coverage strongly favored PiS, and TVP devoted more attention to the government than to the opposition. In local TVP programs, the incumbents were shown preferentially, but only if they were from PiS. In towns with mayors from other parties, their TVP presence was less than those with PiS-connected mayors. In Warsaw, governed by a PiS mayor, the coverage of the incumbent was overwhelming.

Polish electronic media are controlled by the National Broadcasting Council (KRRiT), a body elected by the Parliament and the president. Before the 2005 elections, the KRRiT was composed almost completely of left-wing nominees. The new Law on Radio and Television, signed by President Kaczyński in 2005, reduced the KRRiT from nine to five members (two nominated by the *Sejm*, one by the *Senat*, and two by the president). KRRiT was again politicized, but this time by PiS and its allies; the KRRiT chair resigned to become a PiS parliamentarian following the 2007 early elections.

TVP, the public station, has a dominant position with both viewers and advertising markets with its three ground channels (TVP1, TVP2, and TVP Info with 16 local branches), satellite channels (TVP Polonia, TVP Kultura, TVP Sport, TVP History), and potentially more with digital Webcasting. TVP's strong position comes at the price of commercialization and political influence on programming, formerly from the Left and since 2006 from the Right. The extent to which TVP's supervisory board has become political was made obvious in January 2007, when the election of its two new members by KRRiT was tied directly to the minority coalition parties' approval of the new Polish National Bank president. TVP's executive board has also been composed along party lines.

Two-thirds of TVP's income comes from advertising, the rest from license fees. TVP looks in prime time exactly like its private competitors (movies, soap operas, and talk shows), while documentaries, education, and cultural programs are shown late at night. The new ruling PO proposes to stop the collection of license fees, unpaid by 20 percent of households and 95 percent of enterprises, and to eliminate KRRiT, which requires a change in the Constitution.<sup>16</sup>

TVP's main private television competitors include Polsat TV, TVN holding (which includes TVN24), the Canal+ cable channel, and Father Tadeusz Rydzyk's Trwam TV, a religious satellite channel broadcast from Toruń.<sup>17</sup> TV digital platforms are Cyfra+, Cyfrowy Polsat, and N. The ITI Group owns N and TVN. News Corporation, owned by Rupert Murdoch, bought 24.5 percent of TV Puls, which launched new commercial programming in the fall of 2007 after KRRiT agreed to allow the station to change its religious character (which had been largely devoted to Catholic issues).

Among radio stations, the public Polskie Radio—with 6 Warsaw-based channels and 17 local radio stations—has a strong position, but private competitors Radio ZET and Radio RMF FM are leaders in audience and advertising revenues. Radio Maryja, founded by Father Rydzyk in 1991 together with Trwam TV, has been the favorite government outlet, despite occasional rifts between PiS and Father Rydzyk caused by his anti-presidential and anti-Semitic remarks. The president

refused interviews with Rydzyk media during the year, but his brother, the prime minister, defended Rydzyk against criticism from Roman Catholic bishops, arguing that “there would be no Radio Maryja without its founder.”

Major newspapers *Gazeta Wyborcza* (circulation 419,000 copies; owner Polish Agora), *Rzeczpospolita* (144,000; owner British Mecom), and *Dziennik* (176,000; owner Axel Springer) gained a fourth competitor in October 2007: *Polska* (owner Neue Passauer Presse). The largest press circulation is maintained by tabloids *Fakt* (512,000 copies; owner Axel Springer) and *Super Express* (197,000; owner Bonnier with Polish capital).

There are three major opinion weeklies: the left-wing *Polityka* (172,000 copies; owned by a journalist co-op), the center *Newsweek Polska* (132,000; owner Axel Springer), and the right-wing *Wprost* (177,000; owner Agencja Reklamowa Wprost). *Nasz Dziennik*, a conservative nationalist daily, is part of the Father Rydzyk media empire. The Catholic liberal *Tygodnik Powszechny* has a strong intellectual reputation as the only independent (though censored) paper of the former Communist Poland. *Przekrój*, published by Edipresse, moved from Kraków to Warsaw and has skillfully become a voice of the younger generation. The private Polish weekly *Nie*, run by Jerzy Urban, former spokesman for President Wojciech Jaruzelski, is anticlerical, left-wing, and often provocative.<sup>18</sup> Two English weeklies (*Warsaw Voice* and *Warsaw Business Journal*) and a Russian weekly are also in publication.

The local press produces 3,000 titles, but media concentration has become a threat. The major press companies include Axel Springer, Agora, Mecom, and Polskapresse (Neue Passauer Presse). Media cross-ownership has not been regulated, but when Axel Springer attempted to buy 25.1 percent of Polsat TV in 2006, the purchase was stopped by the antimonopoly office, which argued that Springer already owned the tabloid *Fakt*, opinion daily *Dziennik*, and weekly *Newsweek Polska*. According to a leading journalist critical of the Kaczyński brothers, his dismissal from Polsat TV was demanded by the prime minister in order to facilitate the deal.<sup>19</sup>

Over 50 percent of Polish households have a computer and use the Internet. Child pornography is the only prosecuted Web offense. Naukowa Akademicka Sieć Komputerowa (Research and Academic Computer Network), a research and development organization, leading Polish data networks operator keeps a registry of sites, but there are no address restrictions. Print media have Web sites, and the number of personal and public Web sites, blogs, and video blogs has increased rapidly.

There are about 20,000 journalists working in Poland, but only a few hundred are members of the media trade unions (Journalists' Syndicate and a branch of Solidarity). Only a few thousand, mostly older professionals, are members of the Polish Journalists' Association or Republic of Poland Journalists' Association. These groups maintain ethics standards and lobby for new press legislation and changes in the penal code, but their authority is weak. There was no outcry when the telephones of several investigative journalists were tapped during 2007, which could have a chilling effect on the profession.<sup>20</sup> The majority of Polish journalists work without a collective agreement or wage bargaining, and publishers keep salaries secret. Media strikes and other union actions rarely if ever occur in Poland.

## Local Democratic Governance

1999	2001	2002	2003	2004	2005	2006	2007	2008
n/a	n/a	n/a	n/a	n/a	2.00	2.00	2.25	2.25

Self-government traditions are strong in Poland. This is especially true in the west and south, where more than a century ago, in the absence of a Polish state, local authorities worked with Catholic and Protestant clergy to maintain Polish schools and nurture Polish customs in choirs, folk dance, gymnastics groups, fire brigades, and credit unions. One of the first acts of the Solidarity government after 1989 was the restoration of local self-governance by re-creating the approximately 2,500 *gminas* (Poland's basic territorial division) that were canceled in the 1950s. Ninety thousand local officials were transferred from the state administration to local governments. In 1998, the number of regions was reduced from 49 to 16, and 314 counties and 65 cities with equal status were added.

According to the Constitution, local government is a permanent feature of the state based on the principle of subsidiarity. The powers and independence of local authorities are protected by the courts, and there is a presumption that *gmina* competences extend to all matters not reserved for other institutions of central administration. Local authorities are responsible for education, social welfare, local roads, health care, public transport, water and sewage systems, local culture, public order, and security. Municipalities are responsible for a majority of these tasks. Regional accounting chambers audit local authorities.

Local representatives are elected every four years. Mayors of cities and towns are elected directly, as are the members of local, county, and regional councils. County members elect the heads of *powiats* (*starosta*), and members of regional assemblies elect the heads of the *voivods*. In the 16 *voivods*, elected heads (marshals) must cooperate with government-nominated *voievodas*, the national authority representatives outside Warsaw who control *gmina* resolutions by suspending them within 30 days if they contradict the law. Appeals of *voivod* decisions are filed with the regional administrative courts.

Two-thirds of councillors—elected in the 2006 elections to two levels of local councils (*gmina* and *powiat*, or town councils) and the 16 regional (*voivod*) assemblies—have no party affiliation. The strongest party representation (10 percent) is held by PSL. Among the regional councils, PO and the Lewica i Demokraci (LiD) were stronger in the more affluent, western part of Poland, and the PiS led in the poorer east and south. In cities, the incumbent mayors won easily, no matter what their political affiliation was, proving that in local elections the candidates' past record and personality counts more than party affiliation.

PiS-empowered *voievodas* with veto power over the decisions of regional assemblies, where the opposition PO has a majority of deputies, drew protests from the European Commission. Prime Minister Kaczyński promised to ask the *voievodas* to abstain from using the law and to take decisions himself. In response, the EU



will not block funds allotted for Poland in the 2007–2013 timeframe (€67 billion [US\$104 billion]) but may slow down their payments.<sup>21</sup> The same arguments figured into Education Minister Roman Giertych’s decisions on EU education funds of €700 million (US\$1.1 billion).<sup>22</sup> The most publicized example of political patronage was the allotment of €15 million (US\$23.2 million) for a Torun media school run by Father Rydzyk, famous for his anti-European tirades.

The 1990 Law on Local Government introduced referenda as a tool of direct democracy on issues such as voluntary taxation for public purposes and the dismissal of local councils. At least 10 percent of voters must support the referendum motion, and it is valid with a minimum of 30 percent of voters participating. The majority of referenda, usually to recall local officials, have not rallied enough support to make it to a vote.

Municipalities are allowed to collect taxes on farms, properties, forests, pet registrations, and transportation. New taxes can be levied only via a referendum. Personal and corporate income taxes account for 75 percent of local government income. Taxes are redistributed from richer to poorer local governments.

The central government is obliged to consult local governments on every bill that may add costs to their budgets, but the time given to review budgets is often too short, and cost estimates are vague. Local self-governments must seek opinions from environmental organizations when granting building licenses, which may allow the blocking of some development plans.

Judicial Framework and Independence

1999	2001	2002	2003	2004	2005	2006	2007	2008
1.50	1.50	1.50	1.50	1.50	2.00	2.25	2.25	2.50

During 2007, the Constitutional Court repeatedly attempted to derail many of the laws already passed by the Parliament and signed by the president. In response, PiS frequently criticized the Constitutional Court as a body of political opposition, especially after the Law on Lustration decision, which the government fought to the end by slowing down the verdict’s publication in the *Official Gazette*. In an attempt to avoid the Court, President Kaczyński did not send the Law on Lustration and the Law on Court Organization to the Constitutional Court, despite his own declarations about their unconstitutionality. The prime minister speculated about future Court decisions, called its past verdicts “legal circus tricks,”<sup>23</sup> and threatened to weaken its role. By autumn more than 20 Constitutional Court decisions were not being implemented.

Judges nominated by a majority of the National Judicial Council are appointed by the president. In 2007, for the first time, the president did not sign some of the nominations, which caused an uproar among lawyers. The 2007 law obliges the National Judicial Council to lustrate the courts, to help unify sentencing, and to



prohibit all chief justices from being council members—which would eliminate 9 of its 23 members. The Constitutional Court rejected some of these changes.

As stated in the Constitution, the judiciary has full independence from the executive and legislative branches. The court system consists of the Supreme Court, 310 district courts, 43 regional courts, 11 appeals courts, 10 garrison courts plus 2 provincial military courts, 16 regional administrative courts, and the main administrative court. The Constitutional Court, elected by the lower chamber of Parliament, determines constitutional violations by the highest officials. The Constitutional Court analyzes the conformity of Polish and international laws to the Polish Constitution, adjudicates disputes of authority among central state bodies, and recognizes the temporary incapacity of the president to perform his or her office. Court decisions are final and applied directly. The *Sejm* elects Constitutional Court justices for a single nine-year term. In 2006, six vacancies were filled (all by coalition candidates).

Polish judges cannot be members of political parties or trade unions and cannot perform any public functions that might jeopardize their independence. They must be at least 29 years of age (27 for junior judges); there is no prerequisite of earlier work as prosecutors or lawyers. Judges cannot be arbitrarily dismissed or removed; however, the 2007 Law on Court Organization gives the minister of justice the right to reassign judges to different courts for six months, to arrest and strip judges of immunity in 24 hours, and to temporarily nominate a chief judge without soliciting the opinion of other judges. The head of the Supreme Court called these changes crazy and offensive; on his motion, the Constitutional Court will review the law.

Poles frequently appeal to the ECHR in Strasbourg: In January 2007, about 5,100 cases from Poland were pending in the ECHR, representing 5.7 percent of all 89,900 cases from the 46 countries of the Council of Europe to come before the Court.<sup>24</sup>

The computerization of Polish courts made advances in 2007. Protocols are being digitized, accessing criminal records takes two hours instead of two days, real estate records are being scanned, and courts have information pages on the Internet. In 800 halls, court procedures are audio recorded, and witness interrogations can be conducted via videoconference. However, judges are concerned about that the practice might make them susceptible to pressure from the Ministry of Justice.

Prosecutors are part of the executive branch. Experts argue that as long as the minister of justice is the attorney general, there is no chance for autonomous, non-politically motivated work by prosecutors. Before his arrest, former attorney general Janusz Kaczmarek revealed numerous examples of “hand steering” of attorneys by the minister of justice, Zbigniew Ziobro.

According to the penal procedures code, prosecutors have three months to present an indictment to the court; in practice, it takes three to four times longer than that. In the political case of lobbyist Marek Dochnal and heads of the “fuel mafia,” the process took three years. Prosecutors do not have terms of office; they may be advanced or removed at any time. In the first 10 months of 2007, the

minister of justice changed 10 out of 11 appeals prosecutors and half of the regional ones. Appeals by the Prosecutors’ Association to “not give in to political pressure” led to an interrogation of its head, Krzysztof Parulski. In response, the leading NGO Helsinki Foundation for Human Rights called for passage of a whistleblower’s protection law.<sup>25</sup>

The justice minister’s flagship program of 24-hour courts for petty crimes initiated in 2007 achieved little, except for costs. Other ministerial projects also failed to accomplish their goals—for instance, the attempted extradition from a Chicago prison of Edward Mazur, an American businessman of Polish descent accused of ordering the 2001 murder of a former Warsaw police chief; and Poland’s attempt to gain access to Swiss bank accounts of corrupt post-Communist officials—both initiatives proved fruitless.

Corruption

1999	2001	2002	2003	2004	2005	2006	2007	2008
2.25	2.25	2.25	2.50	2.50	3.00	3.25	3.00	3.00

According to Transparency International’s annual Corruption Perceptions Index (CPI), Poland is no longer the most corrupt country in the EU (following the entry of Bulgaria and Romania). In 2007, Poland’s CPI rating was 4.2, while in 2006 it was 3.7 and in 2005 it was 3.4 (on a scale of 0–10, where 0 indicates highly corrupt). Transparency International acknowledges the following conditions as contributing to the lowered level of corruption in Poland: one-mandate election precincts, government officials taking responsibility for wrong decisions and delays in the decision-making process, legal definitions for conflicts of interest, anticorruption procedures in central and local governments, better quality of laws, and more transparent administration and public institutions.

However, according to Warsaw University sociologist Grzegorz Makowski, corruption is a convenient enemy for politicians to attack. They like public opinion polls, in which 90 percent of people say that corruption is overwhelming, but when asked whether they personally have ever given a bribe, less than 10 percent confirm it.<sup>26</sup> In fighting corruption, politicians put such a tough requirement on local council officials to produce wealth declarations that over 700 did not file them on time in 2007 and only the Constitutional Court saved these officials from losing their newly acquired posts. A PiS-proposed law would require all self-government workers, teachers, doctors, and other government employees to refuse any additional jobs, paid or nonpaid, and reveal all their property and past earnings. “Under the corruption fight banner, the government strives to watch citizens, breaking constitutional protections of privacy and freedom of assembly,” notes Makowski.<sup>27</sup>

The much trumpeted bribery scheme involving Polish soccer tournaments, which started in 2005 and gained momentum in 2006, produced only a single

court case in 2007. The two most spectacular CBA anticorruption cases ended futilely: Owing to a leak, agents failed to hand a “controlled bribe” to the deputy prime minister, which led to the arrest of the interior minister and eventually to the early elections. The second case, publicized a few days before the elections, revealed the opposition’s main female member of Parliament taking a bribe from a CBA officer, which likely contributed to PiS’s electoral failure, as Polish voters have been shown to dislike sting operations against political rivals.

When the laws allowing government agencies to conduct such operations were adopted, foreign experts warned that the thin line between voluntarily taking a bribe and doing it under pressure might be easily blurred by secret agents. Anticorruption expert Grażyna Kopińska stated the following: “CBA’s priority should be corruption prevention, pointing out bribery-prone laws or positions in the administration, and not investigations. It does just the opposite.”<sup>28</sup>

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