



In Focus

Recent Developments in Poland

Following its election victory in October 2015, Poland's ruling [conservative and nationalist](#) Law and Justice party (PiS)—led by former Prime Minister, Jarosław Kaczyński—has attracted significant [domestic](#) and [international](#) criticism for a number of its [recent policies](#). The Government has sought to increase its [influence](#) over Poland's Constitutional Tribunal and has passed a law giving it [control over senior appointments](#) to the country's public broadcasters. These measures have led some commentators to argue that [democracy and the rule of law](#) in Poland is under threat, and has led to [comparisons](#) with the “illiberal” reforms of Hungarian Prime Minister, Viktor Orbán. On 13 January 2016, the European Commission launched an [investigation](#) into whether the country's new laws violate EU democracy rules under the EU's '[Rule of Law Framework](#)'.

Background

The PiS Government won an outright majority in [Poland's Parliamentary elections](#) in October 2015, and it also controls the Presidency after PiS candidate Andrzej Duda was elected President in May 2015. Shortly after taking office, in mid-November 2015 the Government came into [conflict](#) with Poland's 15-member Constitutional Tribunal, which has the power to [declare laws unconstitutional](#). This dispute stems from a [controversial decision](#) by the previous liberal Civic Platform (PO)-controlled Government to appoint replacements for five Tribunal judges who were scheduled to retire. (Three of these judges were set to retire in November 2015. However, the remaining two would stand down in December 2015, by which time the new PiS Government would have taken office.) For over a month, President Duda refused to swear in these five appointments, and in late November 2015, the new PiS-led Parliament declared them invalid. It then nominated [five of its own judges to the Tribunal](#). Even though the Tribunal was set to rule on the validity of the original appointments, on the night before its [ruling](#), President Duda swore in the PiS-nominated judges. On 3 December 2015, the Tribunal [ruled](#) that PO's latter two appointments were unconstitutional, but declared the appointment of the remaining three PO-nominated judges valid. Tribunal President, Andrzej Rzepliński, also [announced](#) that the PiS-appointed judges sworn in by President Duda would not be allowed to participate in the Courts' work until the dispute is resolved.

The PiS judicial appointments triggered [large anti-Government protests](#) in the country's capital, Warsaw. On 28 December 2015, the Government attracted further criticism and protests after it [passed a law](#) meaning that the Tribunal would require a two-thirds majority—with at least thirteen members present—to hear most cases. Writing in [Foreign Affairs](#), Kelemen and Orenstein observe that that because there are now “only ten uncontested judges on the Court today, the law effectively precludes the body from hearing cases until it accepts the new Government's replacement judges”. Moreover, the Tribunal would be required to [hear cases in the order they are received](#), which Agata Gostyńska-Jakubowska of the Centre for European Reform [suggests](#) could make it more difficult for the Tribunal to

challenge the Government. However, PiS have defended the move, [accusing](#) the court of blocking its policies, with Kaczyński [arguing](#) that “we won the election, but we have no right to set laws and remodel Poland”. Writing in the UK *Daily Telegraph*, Poland’s Minister of Foreign Affairs, Witold Waszczykowski, also [claimed](#) that the Government’s attempts to overhaul the Constitutional Tribunal was an effort to “correct deformations rushed through in the dying days of the previous Government”.

Meanwhile, on 30 December 2015, Poland’s Parliament [adopted a new media law](#) that allows Poland’s Treasury to [sack and appoint the heads](#) of the country’s public broadcasters. In [protest](#), four TVP directors (Poland’s public service television) resigned in early-January 2016. *The Economist* [reports](#) that Poland’s “centrist and liberal media outlets [have] condemned the new law”, though PiS officials have claimed it will depoliticise the country’s public service broadcasting. The law has attracted significant international criticism. The Secretary General of the Council of Europe (COE), Thorbjørn Jagland, [called on President Duda to reject the law](#), while the Organisation for Security and Co-Operation in Europe’s (OSCE) representative on media freedom, Dunja Mijatović, [warned](#) that it “will endanger the basic conditions of independence, objectivity and impartiality of public service broadcasters”. In addition, Poland’s Parliament has recently passed a law granting the Government powers to [sack and replace senior civil servants](#), and on 23 January 2016, thousands of Poles [protested](#) in Warsaw against Government plans to increase police surveillance powers.

Response of the European Union

On 13 January 2016, the European Commission launched an [investigation](#) into Poland’s recent media laws and changes to the Tribunal under the Rule of Law Framework, as these developments had “given rise to concerns regarding the respect of the rule of law”. The [Rule of Law Framework](#) was adopted in March 2014 by the European Commission, and “establishes an early warning tool allowing the Commission to enter into dialogue with the Member State concerned to prevent the escalation of systemic threats to the rule of law”. If a solution cannot be found within the Framework, Article 7 of the Lisbon Treaty could be invoked, suspending a Member State’s voting rights in cases of a “serious and persistent breach” of EU values. However, commentators have [suggested](#) that invoking Article 7 is a “nuclear option”, and would be difficult to achieve given that it requires unanimity among EU Member States. Poland’s Minister of Foreign Affairs, Witold Waszczykowski, has [suggested](#) that “escalating the dispute with Poland on matters of internal politics just further weakens the EU and obstructs the Union’s ability to deal with serious challenges”.

Britain’s Relationship with Poland

Late last year, it was [reported](#) that UK Prime Minister, David Cameron, had been unable to persuade Prime Minister Szydło of his plans to [curb in work-benefits for EU migrants](#). Szydło said she did not see “eye-to-eye” with Cameron and suggested that his proposals [undermined](#) the principle of free movement. Nevertheless, Reuters recently [reported](#) that Polish officials had indicated that they would be willing to [compromise](#) if the UK helped increase NATO’s presence in Poland. On 22 January 2016, the Polish Defence Minister, Antoni Macierewicz [announced](#) that the UK will permanently station 1,000 military personnel in Poland from 2017. However, the British Ministry of Defence had only [announced](#) that it was committing 1,000 military personnel to NATO exercises taking place in Poland.

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