

# Freedom- Loving People Should Defend the Rule of Law in Poland



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One of the key topics in the public debate in Poland in the last two years was the rule of law. It has also become an important issue in the foreign media and institutions, including the European Union. On December 20, 2017, the European Commission declared that “[d]espite repeated efforts, for almost two years, to engage the Polish authorities in a constructive dialogue in the context of the Rule of Law Framework, the Commission has today concluded that there is a clear risk of a serious breach of the rule of law in Poland.”<sup>1</sup>

Whatever one might think about the Commission’s decision, there was a series of legal acts, created and supported by the ruling Law and Justice (PiS) party, detrimental to the rule of law.

The Commission’s remark may be compared to a thermometer indicating a fever. Thermometers show a symptom of a sickness and should not be ignored, but they cannot cure the sickness. This is why, in Poland, the European Union should not be expected to automatically terminate bad policies of one of its members, but rather treat the EU activities as a stimulus for a greater mobilization of the Polish civil society.<sup>2</sup>

## LAW AND JUSTICE VS. THE RULE OF LAW

What are the examples of these bad policies? First, in the years 2015-16, the ruling PiS party took political control over the

<sup>1</sup> European Commission (2017) *Rule of Law: European Commission Acts to Defend Judicial Independence in Poland* (Press Release), December 20. Available [online]: [http://europa.eu/rapid/press-release\\_IP-17-5367\\_en.htm](http://europa.eu/rapid/press-release_IP-17-5367_en.htm)

<sup>2</sup> See also Tatała, M. (2018) “The EU Invokes Article 7 Against Poland, But Only Poles Can Defend Their Liberty”, [in:] [acton.org](http://acton.org). Available [online]: <https://acton.org/publications/transatlantic/2018/01/05/eu-invokes-article-7-against-poland-only-poles-can-defend>

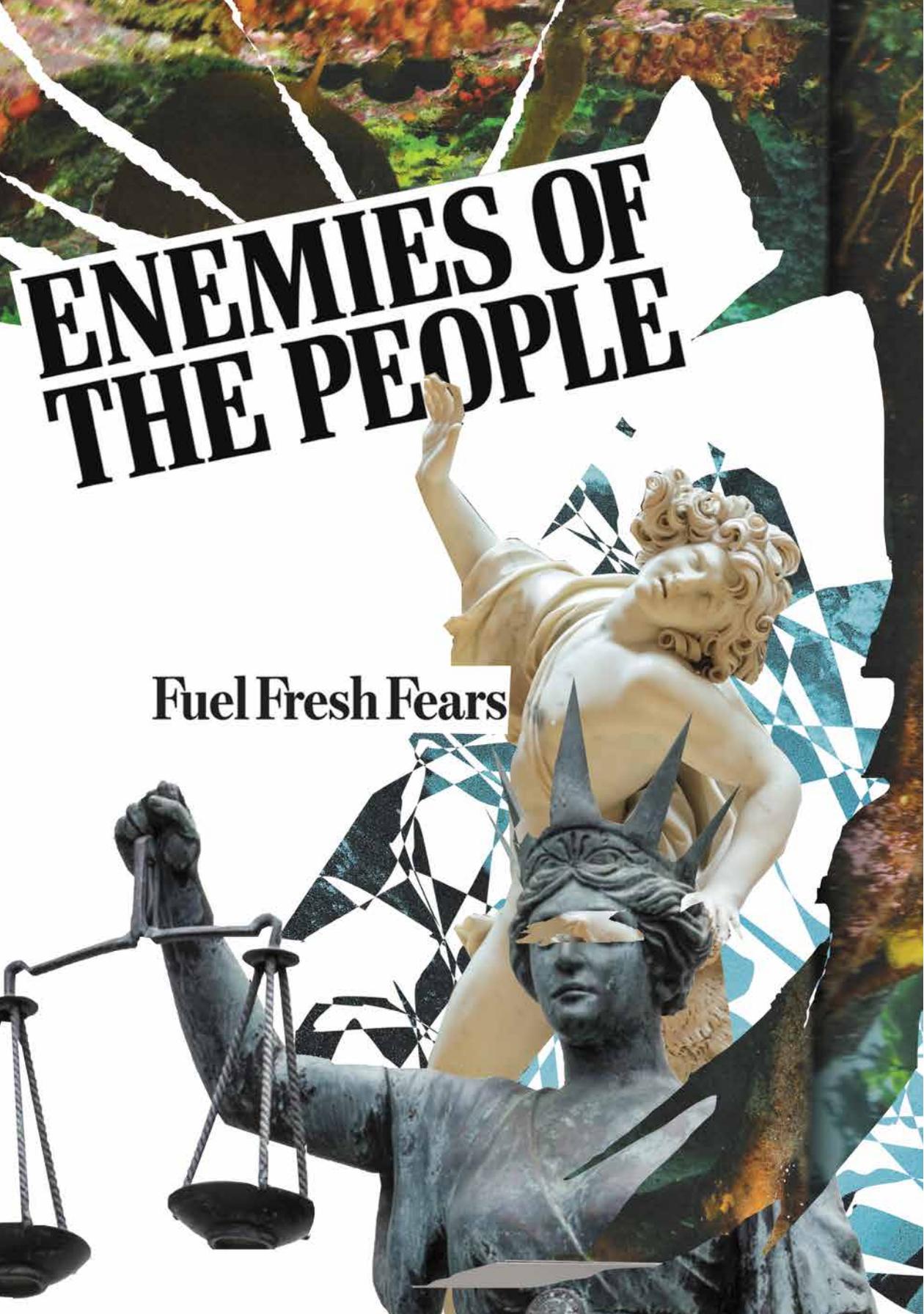
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Constitutional Tribunal, converting it into a rubber-stumping body for PiS legislation<sup>3</sup>. Second, the law on the Ordinary Courts Organization empowered the Minister of Justice (who is at the same time the Prosecutor General, a deputy, and a political party leader) to dismiss heads of courts in an arbitrary way and appoint their successors without binding consultation with the National Council of the Judiciary. Third, the new law on the Supreme Court lowered the retirement age, as a result of which some judges (including the president of the court) will be automatically replaced.<sup>4</sup>

<sup>3</sup> See: Helsinki Foundation for Human Rights, “The Constitutional Crisis In Poland 2015 – 2016”. Available [online]: [http://www.hfhr.pl/wp-content/uploads/2016/09/HFHR\\_The-constitutional-crisis-in-Poland-2015-2016.pdf](http://www.hfhr.pl/wp-content/uploads/2016/09/HFHR_The-constitutional-crisis-in-Poland-2015-2016.pdf)

<sup>4</sup> See: Venice Commission’s reports about Poland. Available [online], especially “Opinion on the Draft Act amending the Act on the National Council of the Judiciary; on the Draft Act amending the Act on the Supreme



# ENEMIES OF THE PEOPLE

Fuel Fresh Fears



THE GOVERNMENT  
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The government also introduced an extraordinary appeals procedure that gives it the power to re-open final judgments taken many years ago, undermining the certainty of the law. Finally, the new law on the National Council of the Judiciary enables the ruling party to control the composition of an institution, which was designed to protect courts and judges from politicians. The new National Council of the Judiciary is to be soon formed by the ruling PiS parliamentary majority while almost all opposition parties are boycotting this process, which they deem as unconstitutional.<sup>5</sup>

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Court, proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts, adopted by the Commission at its 113th Plenary Session (Venice, 8-9 December 2017)<sup>5</sup>. Available [online]: <http://www.venice.coe.int/webforms/documents/?country=23&year=all>

<sup>5</sup> Ibid.

All these legal changes, analyzed in detail (for example by the Venice Commission), infringe upon the independence of the judiciary and significantly weaken the rule of law in Poland. The presented article briefly discusses why the rule of law is important for freedom and prosperity and how it is conceptualized in some of the popular indices. The overview presents measurement of the rule of law in Poland and connects it with the PiS policies. Finally, the article explains the real problems with the rule of law in Poland that are not addressed by the ruling party (which is worsening the situation). The main argument is therefore that after PiS party won elections, many weaknesses of the rule of law in Poland, as indicated by various indices, were not necessarily connected with the justice system and judiciary. Moreover, when the justice system was indeed not working as well as it should have been, the PiS policies did not respond to any real problems and therefore cannot be regarded as justice system reforms dedicated to strengthening the rule of law in Poland.

### WHY DOES THE RULE OF LAW MATTER?

The rule of law is an “essential guardian of freedom,” as emphasized by Fred McMahon, from the Fraser Institute, in the Foreword to the most recent edition of the *Human Freedom Index*.<sup>6</sup> The rule of law is also an important element of a sound democracy, in which political rights and civil liberties are respected and the powers of the government are constrained i.e. there is a limited government. As F.A. Hayek pointed out, “[t]he Rule of Law thus implies limits to the scope of legislation: it restricts it to the kind of general rules known as formal law, and excludes legislation ei-

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<sup>6</sup> Vázquez, I. and T. Porčnik (2017) *The Human Freedom Index 2017*, Cato Institute, the Fraser Institute, and the Friedrich Naumann Foundation for Freedom, p. 3.

ther directly aimed at particular people, or at enabling anybody to use the coercive power of the state for the purpose of such discrimination.”<sup>7</sup>

Moreover, the authors of the *Human Freedom Index* emphasized that the rule of law should be understood as a unified bundle together with security, as conceptualized by John Locke: “The end of law is not to abolish or restrain, but to preserve and enlarge freedom: for in all the states of created beings capable of laws, “where there is no law, there is no freedom;” for liberty is to be free from restraint and violence from others; which cannot be where there is not law.”<sup>8</sup> The rule of law is thus needed to guarantee the existence of an individual’s freedom and protection from violations of this freedom by others.

It is therefore not surprising that such an important concept, from the perspective of a human life, as the rule of law has been measured by various indices, which enable better understating of what drives human well-being. These indices also make comparative analysis and forming policy recommendations much easier. The rule of law is used as an important component of many indicators like economic freedom (e.g. by the Fraser Institute and the Heritage Foundation), personal freedom (e.g. in the *Human Freedom Index*), governance (e.g. *Worldwide Governance Indicators* by the World Bank), political right and civil liberties (e.g. the by the Freedom House).

The rule of law indices themselves are usually composed of many sub-indicators. The *Rule of Law Index*, developed by the World Justice Project, is composed of



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44 sub-factors grouped in 8 categories, e.g. constraints on government powers, order and security, civil justice, and criminal justice.<sup>9</sup> In the Freedom House’s civil liberties measurement, the rule of law is included and composed of four sub-categories: independent judiciary, due process in civil and criminal matters, protection of illegitimate use of force, and equal treatment by the law.<sup>10</sup>

### THE RULE OF LAW INDEX IN POLAND AND PERSONAL FREEDOM

The PiS party won the parliamentary and presidential elections in Poland in 2015. In mid-November 2015, it gained political control over the legislative and execu-

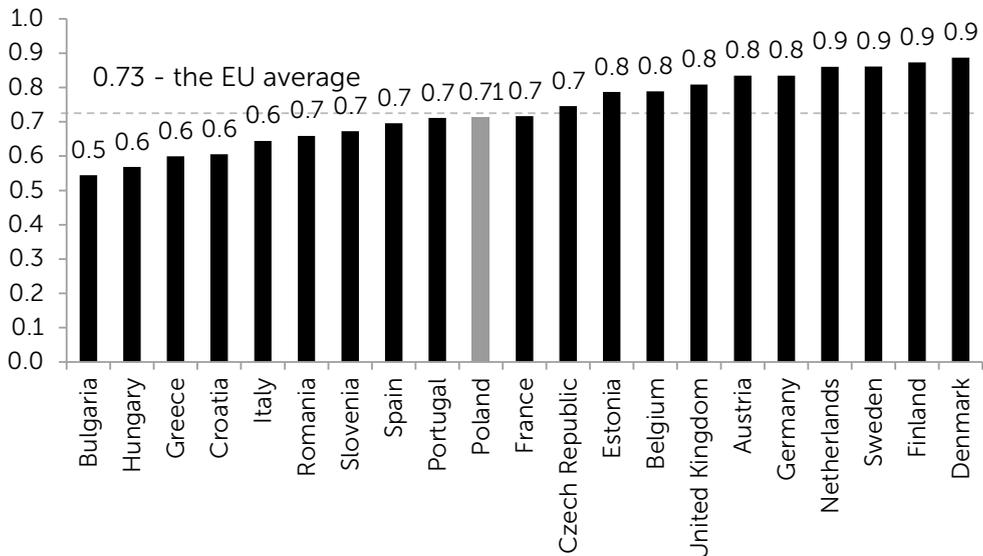
<sup>7</sup> Hayek, F. A. (1944) *The Road to Serfdom*. Abingdon: Routledge, p. 87.

<sup>8</sup> Locke, J. (1689) *Two Treatises of Civil Government*, New York: Barnes and Noble Books, sec. 57, p. 32.

<sup>9</sup> See: World Justice Project. Available [online]: <https://worldjusticeproject.org/>

<sup>10</sup> See: Freedom in the World (2018). Available [online]: <https://freedomhouse.org/report/methodology-freedom-world-2018>

Figure 1: Rule of Law Index 2016 in the EU



Source: World Justice Project<sup>13</sup>

tive branches of the government. To have a better diagnosis of the situation after the eight years of the previous coalition led by the Civic Platform (PO) it is necessary to focus on the measurements of the rule of law before PiS started to implement its key policies in this area.<sup>11</sup> Therefore, the *Rule of Law Index 2016* edition by the World Justice Project is used, rather than its latest 2017-2018 edition.<sup>12</sup> As was emphasized, it is a very complex indicator and the authors of some other indices, e.g. the Human Freedom Index, also use it. In the 2016 edition, out of 21-member states of the European Union, Poland was ranked 12th (See Figure 1), with a score (0.71) out of 21-member states of the Eu-

ropean Union, which is slightly below the EU average (0.73). Poland ranks 15<sup>th</sup> in the EU & EFTA & North America region, and 22<sup>nd</sup> in the global ranking. The situation in Poland that led to these scores was not satisfactory and there has been significant room for improvement. Nevertheless, it was unjustified to claim that there was a crisis in the area of the rule of law.

Crucial information is revealed when looking at sub-factors of the *Rule of Law Index 2016*, especially when Poland's scores diverge from the EU average. The biggest problems of the justice system (especially civil justice) are unreasonable delays (See Table 1). This finding is consistent with other data (e.g. Doing Business reports). It is important to emphasize that the policies implemented by the PiS government so far

<sup>11</sup> The first activities connected with the capturing of the Polish Constitutional Tribunal began just after the PiS government was formed but they should not have a significant impact on the majority of measurements done in 2015 and at the beginning of 2016.

<sup>12</sup> See: World Justice Project (2016). Available [online]: <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2016>

<sup>13</sup> Only 21 out of 28 EU member states are included in the Rule of Law Index. Scores for the countries like Lithuania, Latvia and Slovak Republic are unknown, which makes regional comparisons more difficult.

were not focused on the improvement of the speed of the courts' proceedings in the slightest.

Quality and speed of the administrative proceedings also negatively affected the value of the index in Poland and the methodology of the World Justice Project's report suggests that this was mostly due to the work of the local and national bureaucrats and not the administrative and other courts. Furthermore, in terms of availability and clarity of publicized laws and access to government data, transparency in Poland was worse than the overall score for the EU.

Three sub-factors of the *Rule of Law Index 2016*<sup>14</sup> in which the score of Poland was relatively low, in contrast to the EU average, are constraints on the government powers. According to the *Rule of Law Index 2016* these powers have not been effectively limited by the legislature, the judiciary and by the independent auditing and review, i.e. sub-factors 1.1, 1.2, and 1.3. This is a clear signal that the politicians should strengthen the separation of powers and checks and balances in Poland and not to weaken or dismantle them. However, the ruling PiS party chose the latter path by increasing dependence of the judiciary on the government and significantly limiting possibilities of independent auditing by other public institutions, controlled now by the PiS nominees.<sup>15</sup>

Overall, it is really difficult to blame the Polish judges and the justice system for rather weak performance in some of these areas. When judges, and the system in which they operate designed by the politicians, can be blamed (e.g. delays in the civil justice) it is still not a reason to weaken the independence of the judiciary, especially when one looks at the rather poor assessment of constraints on the government powers. [See Table 1]

It is also interesting to see how and why the score of Poland in the *Rule of Law Index* worsened between the 2016 edition analyzed above (0.71) and the latest 2017-18 edition (0.67). It becomes evident that the PiS's policies and political climate affected the scores. The actions that may have contributed to this include the public media activities in which judges, NGOs, and the opposition parties were frequently attacked in an unjustified way – one of the most recent examples of such an attack is a leaflet distributed by the Polish PM Mateusz Morawiecki to foreign journalists, which was based on manipulations and even lies about the Polish justice system and judges.<sup>16</sup> 38 out of 44 sub-actors received lower scores in the most recent edition of the *Rule of Law Index*. Assessment of only two sub-factors mentioned in Table 1, showing divergence of Poland from the EU average (i.e. weaknesses of the rule of law from a comparative perspective) has slightly increased (by only 0.1). Moreover, Table 2 shows 11 sub-factors that experienced the largest drop. [See Table 2]

<sup>14</sup> See: World Justice Project (2016). Available [online]: <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2016>

<sup>15</sup> The list of the institutions includes various regulatory bodies and agencies, media supervisory institutions, and the key positions in the civil service. FOR (2018) estimated the scale of this changes. Available [online]: <https://for.org.pl/publikacje/raport-for-partia-w-panstwie-bezprecedensowa-wymiana-kadr-w-administracji-rzadowej-i-jej-legislacyjne-podstawy>

<sup>16</sup> See: IUSTITIA Polish Judges Association (2018) "The Arguments of Polish Judges Association Iustitia Related to the Pm Mateusz Morawiecki Statements." Available [online]: <http://www.iustitia.pl/informacje/2018-the-arguments-of-polish-judges-association-iustitia-related-to-the-pm-mateusz-morawiecki-statements>

Table 1: Comparison of Poland's score in selected sub-factors of the Rule of Law Index 2016 with the EU average

Sub-Factors of the Rule of Law Index 2016 edition	Score	Poland versus EU average
7.5 Civil justice is not subject to unreasonable delay	0.34	-0.20
4.5 Freedom of belief and religion is effectively guaranteed	0.64	-0.15
6.4 Due process is respected in administrative proceedings	0.51	-0.13
1.1 Government powers are effectively limited by the legislature	0.61	-0.12
6.3 Administrative proceedings are conducted without unreasonable delay	0.54	-0.09
3.1. Publicized laws and government data	0.61	-0.09
1.2 Government powers are effectively limited by the judiciary	0.62	-0.09
1.3 Government powers are effectively limited by independent auditing and review	0.64	-0.08

Source: own calculations based on the World Justice Project



NEW RESTRICTIONS  
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IN CERTAIN TIMES

First of all, the rule of the PiS party has contributed to growing conviction among the experts about the improper government influence on criminal and civil justice, even before the laws on the Supreme Court and the National Council of Judiciary were passed in 2018. Importantly, the Minister of Justice Zbigniew Ziobro, who was empowered to dismiss the heads of courts in an arbitrary way and appoint their successors, is at the same time the Attorney General (whose powers to control the prosecution have been significantly increased<sup>17</sup>), a member of the parliament and the leader of the political party Solidarna Polska (op-

<sup>17</sup> Council of Europe (2017) "Opinion on the Act on the Public Prosecutor's Office, as Amended, Adopted by the Venice Commission at its 113<sup>th</sup> Plenary Session, 8-9 December 2017". Available [online]: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)028-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)028-e)

Table 2: Sub-factors of the Rule of Law Index, which experienced the largest drop between 2016 and 2017-18 editions

Sub-Factors of the Rule of Law Index	2017-18	2016	Change
8.6 Criminal system is free of improper government influence	0.59	0.80	-0.20
4.2 The right to life and security of the person is effectively guaranteed	0.72	0.88	-0.16
8.3 Correctional system is effective in reducing criminal behavior	0.58	0.71	-0.12
4.6 Freedom from arbitrary interference with privacy is effectively guaranteed	0.61	0.73	-0.12
7.4 Civil justice is free of improper government influence	0.59	0.70	-0.11
4.7 Freedom of assembly and association is effectively guaranteed	0.64	0.75	-0.11
3.4 Complaint mechanisms	0.72	0.82	-0.10
1.5 Government powers are subject to non-governmental checks	0.63	0.72	-0.09
4.4 Freedom of opinion and expression is effectively guaranteed	0.63	0.72	-0.09
3.2 Right to information	0.66	0.75	-0.09
3.3 Civic participation	0.63	0.72	-0.09

Source: Own calculations based on the World Justice Project

erating as part of the PiS parliamentary majority). Consequently, politicization and government influences in the justice system have been growing. It can also be one of the explanations why the right to life and security of the person is not regarded as guaranteed, as was in the past (See sub-factor 4.2 in Table 2).

Secondly, the *Rule of Law Index 2017-18* shows also how some other policies by the PiS party, which are not directly linked to the operations of the judiciary, contributed to the worsening of the Polish score. As such, new restrictions on the freedom of assembly enabled the ruling party to

have a monopoly of assembly over certain places, in certain times.<sup>18</sup> New law on the police<sup>19</sup> and so called anti-terrorist legislation<sup>20</sup>, which make it easier for the gov-

<sup>18</sup> See Amnesty International (2018) *Poland 2017/2018*. Available [online]: <https://www.amnesty.org/en/countries/europe-and-central-asia/poland/report-poland/>

<sup>19</sup> Council of Europe (2016) "Opinion on the Act of 15 January 2016 Amending the Police Act and Certain Other Acts, Adopted by the Venice Commission at its 107<sup>th</sup> Plenary Session". Available [online]: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)012-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)012-e)

<sup>20</sup> Panoptykon (2017) "Poland Adopted a Controversial Anti-Terrorism Law". Available [online]: <https://en.panoptykon.org/articles/poland-adopted-controversial-anti-terrorism-law>

Table 3: Sub-factors of the Legal System & Property Rights area in the Economic Freedom of the World Index 2015

Rule of Law (Areas)	Poland's score	Highest Score in the Ranking	Poland in the Ranking (159 countries)	Source
Judicial independence	4.59	Finland (9.57)	85	GCR*
Impartial courts	3.73	Switzerland (3.73)	95	GCR
Protection of property rights	5.39	Switzerland (9.15)	76	GCR
Military interference in rule of law and politics	10.00	26 states (10.00)	1	PRS Group
Integrity of the legal system	7.50	9 states (10.00)	38	PRS Group
Legal enforcement of contracts	4.12	Norway (7.75)	84	Doing Business
Regulatory restrictions on the sale of real property	9.28	Georgia (9.98)	18	Doing Business
Reliability of police	5.15	Finland (9.65)	88	GCR
Business costs of crime	6.71	UEA (9.06)	51	GCR
<b>Overall score: Legal System &amp; Property Rights</b>	<b>5.79</b>	<b>Finland (8.88)</b>	<b>51</b>	-

Source: Fraser Institute (\*GCR = Global Competitiveness Report)

ernment to tap the phones or screen and block the online activities, led to a drop in score of the freedom from arbitrary interference with privacy. Worsening of the freedom of opinion and expression can be explained by the political climate, activities of the public media, and various attacks on the private media by the representatives of the ruling party.<sup>21</sup> Further-

more, according to the *Rule of Law Index 2016*, the government powers were not effectively limited by the legislature, the judiciary, and by the independent auditing and review. In the 2017-18 edition, non-governmental checks were also assessed as much weaker than in the past.

Finally, the above-mentioned negative changes contributed to the lower score for rule of law in the *Human Freedom Index 2017* (in the area of personal freedom), as the index was based on the most recent edition of the *Rule of Law Index*.

<sup>21</sup> See Freedom House (2017) "Pluralism under Attack — The Assault on Press Freedom in Poland," [in:] [freedomhouse.org](https://freedomhouse.org/article/new-report-pluralism-under-attack-assault-press-freedom-poland). Available [online]: <https://freedomhouse.org/article/new-report-pluralism-under-attack-assault-press-freedom-poland>



# THE RULE OF LAW IN POLAND HAS BEEN ONE OF THE WEAKEST ELEMENTS IN THE OVERALL SCORES OF THE ECONOMIC FREEDOM

## ECONOMIC FREEDOM AND THE RULE OF LAW

The rule of law is not only important for personal freedom, but for economic freedom as well. Therefore, its measurements are included in the most reputable global indices, such as the *Economic Freedom of the World* by the Fraser Institute (used also in the *Human Freedom Index*) and the *Index of Economic Freedom* by the Heritage Foundation. The measurement of the rule of law from the economic perspective usually focuses on the protection of property rights, independence of judiciary, and efficiency (usually speed and costs) of the contract enforcement by the courts. Moreover, it is mostly based on two sources – the *Global Competitiveness Reports* (by the World Economic Forum) and *Doing Business Reports* (by the World Bank). The rule of law in Poland has been one of the weakest elements in the overall scores of the economic freedom. To better understand how the rule of law was assessed in Poland let us first look at the latest *Economic Freedom of the World* report,

which covers the year 2015. Specifically in the area of Legal System & Property Rights, Poland received the lowest scores in 1) impartial courts, 2) legal enforcement of contracts, 3) judicial independence, 4) reliability of the police, and 5) protection of property rights (See Table 3).

Four of the components listed in Table 3 are based on the *Global Competitiveness Reports* (GCRs) and their *Executive Opinion Survey* (for Poland it is composed of around 200 responses).<sup>22</sup> The two rounds of the survey, which later served as the score for the *Economic Freedom of the World* ranking, were conducted in 2015 and 2016. The scores for all four components were worse than in the previous edition. The question is to what extent the PiS political successes in 2015, and first policies implemented after PiS formed the government (e.g. taking control over the Constitutional Court), affected the opinions of business executives.

There are two further insights into the rule of law in Poland, resulting from the GCRs. Firstly, the real problem in the Polish justice system is its efficiency, mostly lengthy proceedings and unnecessary delays (as suggested also by the *Rule of Law Index* discussed above and *Doing Business* presented below). Nevertheless, there are no survey questions related to this problem in the *Executive Opinion Survey*, thus, to some extent, negative opinions on the efficiency might be expressed in other questions in which courts are mentioned, e.g. about their impartiality or independence.

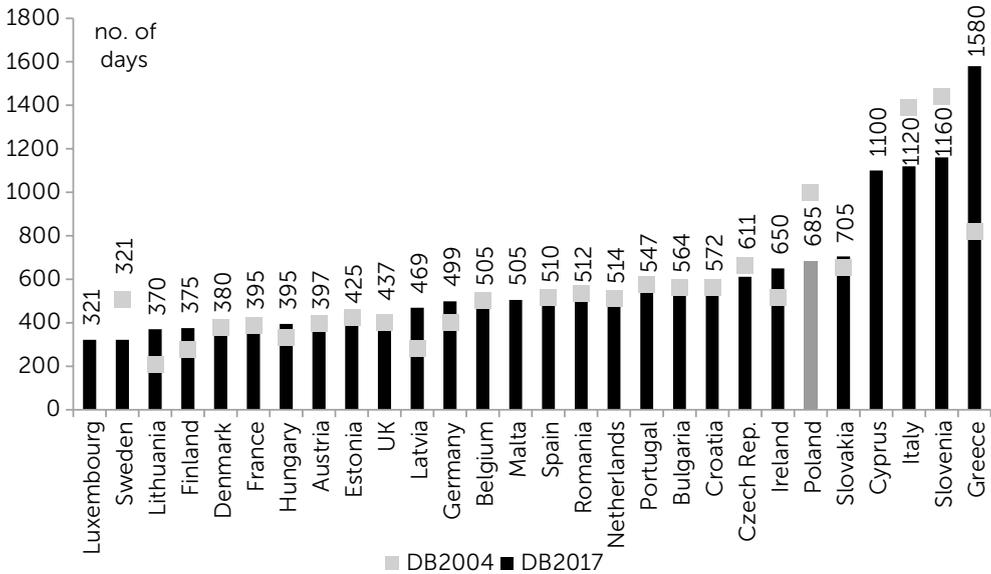
<sup>22</sup> For more information see: Global Competitiveness Report 2016-17 (2016) "Chapter 1.3: The Executive Opinion Survey: The Voice of the Business Community", pp. 77-88. Available [online]:, [http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017\\_FINAL.pdf](http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017_FINAL.pdf)

*Ruled by a Contemporary Spirit*

*After Outside Pressure, Rebels*



Figure 2: Number of days needed to resolve a commercial dispute as analyzed in the *Doing Business* reports



Source: own calculations based on the World Bank

Secondly, all the above questions from the GCRs are a part of the overall assessment of the institutions in the country. The worst scores for Poland in the most recent editions were given to public trust in politicians, favoritism in decisions of government officials, and burden of government regulations. They have nothing to do with the justice system in Poland and, unfortunately, the PiS government, through new regulations, policy instability, nepotism, and patronage within the public institutions and state-owned enterprises, made the situation even worse.

One of the worst sub-factors used in the *Economic Freedom of the World* ranking comes from the *Doing Business* reports, namely legal enforcement of contracts. This score is based on time (in days) and cost (as percentage of the debt) to resolve a commercial dispute.<sup>23</sup> In the case of Po-

land, the time is the biggest problem, and when looked from a comparative perspective, only five EU countries are assessed worse than Poland (Slovakia, Cyprus, Italy, Slovenia, and Greece). Nevertheless, since the first edition of the *Doing Business* report, Poland has made a huge progress in this area (See Figure 2). In other measures, e.g. the CEPEJ reports (in 2014 the average disposition time of 1<sup>st</sup> instance civil and commercial litigious cases was 203 days, with the average in the Council of Europe countries of 237 days)<sup>24</sup> and European Commission's EU Justice scoreboards<sup>25</sup>, Poland is usually close to or above the EU

line]: <http://www.doingbusiness.org/methodology>

<sup>24</sup> CEPEJ (2016) *European Judicial Systems: Efficiency and Quality Of Justice*, p. 195. Available [online]: [https://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/REV1/2016\\_1%20-%20CEPEJ%20Study%2023%20-%20General%20report%20-%20EN.pdf](https://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/REV1/2016_1%20-%20CEPEJ%20Study%2023%20-%20General%20report%20-%20EN.pdf)

<sup>25</sup> European Commission (2017) *EU Justice Scoreboard*, pp. 7-8. Available [online]: [https://ec.europa.eu/info/sites/info/files/justice\\_scoreboard\\_2017\\_en.pdf](https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2017_en.pdf)

<sup>23</sup> *Doing Business* (2018) *Methodology*. Available [on-



IN SOME COUNTRIES,  
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average, suggesting that it is an exaggeration to state that, again from a comparative perspective, Poland has dramatic problems or a crisis in this area.

Notably, time and cost to resolve a commercial dispute in a court do not only depend on activities of the judiciary (See Table 4). Evidence-based policies with a goal of reforming the justice system should consider the full picture of the situation.

Finally, the length of the court proceedings in Poland is longer globally than in many countries, but the speed of the justice system is not the only criteria important in the process of delivering the justice. As such, in some countries, for instance Belarus, Azerbaijan or Russia, the courts work very

Table 4: Components of the “Enforcing Contracts” category for Poland in the Doing Business 2018 report

<b>Time (days)</b>	<b>685</b>
Filing and service	60
Trial and judgment	480
Enforcement of judgment	145
<b>Cost (% of claim value)</b>	<b>19.4</b>
Attorney fees	12
Court fees	5.4
Enforcement fees	2

Source: World Bank

fast but the justice system's independence from the ruling authorities is weak or non-existent. These countries should definitely not serve as best practices of respecting the rule of law for Poland and other states.

Summarily, a more detailed analysis of the Global Competitiveness Reports and Doing Business is important to understand the weaknesses of the rule of law in Poland. Scores from these two reports have an impact on the *Economic Freedom of the World* reports, *Human Freedom Index*, and *Index of Economic Freedom*. The last edition of the *Index of Economic Freedom* states that in Poland “the judiciary is independent but slow to operate and sometimes subject to political pressure. The court system remains cumbersome, poorly administered, and inadequately staffed.”<sup>26</sup> First of all, this

<sup>26</sup> 2018 Index of Economic Freedom (2018) Poland. Available [online]: <https://www.heritage.org/index/country/poland>



THE PiS POLICIES  
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MUCH EASIER  
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AS A CONSEQUENCE,  
WEAKEN THE RULE  
OF LAW IN POLAND  
INSTEAD  
OF STRENGTHENING  
THIS IMPORTANT  
PILLAR  
OF THE PERSONAL  
AND ECONOMIC  
FREEDOMS

observation confirms that the problem of the justice system, which has never been seriously addressed by the ruling PiS party, is its efficiency and not independence. Secondly, the PiS policies in the area of the judiciary will make political pressures on the judiciary much easier and frequent and, as a consequence, weaken the rule

of law in Poland instead of strengthening this important pillar of the personal and economic freedoms.

### **FUTURE OF THE RULE OF LAW IN POLAND**

Poles have been right to defend the rule of law against the attacks of the ruling PiS party.<sup>27</sup> It is true that the level of the rule of law, as measured by many indicators, was not perfect when the PiS government was formed, nor was it dramatically low. Moreover, the ruling party has never presented any credible, evidence-based diagnosis of the real problems of the justice system and reforms based on such an analysis. For example, as it was shown in this article, the key problem is the efficiency of the justice system and not the lack of independence in the judiciary. The ruling party has not yet addressed this problem, while some of their policies and inactions (such as maintaining many vacancies in the courts) made the situation even worse.

The rule of law is important for personal and economic freedoms, and thus is why these areas have been conceptualized and measured by various organizations, including the *Human Freedom Index*. Not all aspects of the rule of law are connected with the justice system and, in fact, the *Rule of Law Index* shows that one of the weaknesses that should be addressed are ineffective constraints on the governmental powers by the legislature, the judiciary, the independent auditing and review, and the non-governmental checks. Unfortunately, the consequences of various PiS policies are even weaker constraints on the government powers.

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<sup>27</sup> See also Tatała, M. (2017) "Democracy and Rule of Law in Poland: U.S. Helsinki Commission Briefing," [in:] 4liberty.eu. Available [online]: <http://4liberty.eu/democracy-and-rule-of-law-in-poland-u-s-helsinki-commission-briefing/>

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## WHAT IS NEEDED TODAY IN POLAND IS A WIDE PRO-RULE OF LAW COALITION OF THE CIVIL SOCIETY ORGANIZATIONS, BUSINESS COMMUNITY, AND POLITICAL PARTIES

Moreover, the rule of law is essential for an existence of a sound, constitutional democracy. As stated in the Declaration for Democracy in Central and Eastern Europe<sup>28</sup>, one of the serious regional problems can be described as “a lack of independence and accountability in key political institutions, including the judiciary, which can lead to abuses of power and corruption.” The PiS policies (including the law on the Ordinary Courts Organization from 2017 and the new laws on the Supreme Court and the National Council of Judiciary) will undoubtedly result in making this problem more and more visible.

In light of these developments, what is needed today in Poland is a wide pro-rule of law coalition of the civil society organizations, business community, and political parties. Firstly, the rule of law should be a platform of cooperation for the major opposition parties such as the Civic Plat-

form (PO), Nowoczesna, as well as non-parliamentary parties, even from the left. Secondly, the rule of law shall also constitute a platform of cooperation of various non-governmental actors that may have very different visions and missions, but in this one topic, can identify and promote a common agenda. Thirdly, there should be more interest in the rule of law among the business community as the rule of law is important for the economic freedom and business environment in Poland.

Evidence-based plans for a justice system reform should be drafted and proposed as an alternative to the PiS policies. It is true that in the opinion polls many people have been expressing their dissatisfaction with the current justice system.<sup>29</sup> This, however, does not automatically mean mass support for PiS anti-reforms. Apart from providing the alternatives, what is also needed is much better communication – both inside the judiciary (to inform the Polish people i.e. their customers about the courts’ work), and about the rule of law in general (to make this topic attractive for the voters). Therefore, the concept of the rule of law should be more strongly embedded in people’s minds and hearts as defending the rule of law is extremely important for the future of freedom and democracy in Poland. ●

<sup>29</sup> E.g. CBOS (2017). Available [online]: [http://www.cbos.pl/SPISKOM.POL/2017/K\\_112\\_17.PDF](http://www.cbos.pl/SPISKOM.POL/2017/K_112_17.PDF) (in Polish)



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<sup>28</sup> The full text of the Declaration is available online (in Polish): <http://democracyonline.org/>