

Is it still an equal election in Poland?

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MamPrawoWiedziec.pl analyzed the most important changes regarding the judiciary, media and election rules that have taken place in the last 8 years.

In the autumn of 2023 parliamentary elections will be held in Poland. After eight years in government, the United Right, with Law and Justice as its leader, will fight for their third term, while the opposition, who last formed a governm

ent in 2015 – a coalition government of Civic Platform (liberals) and the Polish People’s Party – will try to regain power.

The team behind MamPrawoWiedziec.pl has analyzed changes in the functioning of the judiciary, the media and in the electoral procedures introduced in the years 2015–2023, which can impact the transparency and fairness of the 2023 parliamentary elections.

Two terms of Law and Justice rule have remade the political system. Poland will enter 2024 with institutions whose competences have been curtailed and a democratic system devoid of fuses and without the ability to self regulate. For almost a decade now United Right have been changing the rules of the Parliament’s functioning (the Sejm is no longer a rulemaking and regulatory institution), the competences of local governments have been restricted, the Constitutional Tribunal has no liberty to act, the judiciary has been taken over (the Minister of Justice is at the same time the Public Prosecutor General, judges are nominated by the new National Council of the Judiciary which itself has been elected without adherence to law, and the allocation of cases to particular judges is based on a questionable algorithm), new regulations tightening control over school principals have been introduced, as have financial tools for disciplining scientific institutions and non-governmental organizations. There has been a turnover of officials (not only high-ranking ones), preceded by abolishment of the so-called civil service – a group of independent state officials.

These, and other, changes were accompanied by a deregulation of the electoral system in Poland. The Electoral Code was amended nine times, requirements for members of institutions conducting the elections have been lowered and other institutions connected with elections have been eroded – including the Supreme Court, one of the competences of which is to declare the validity and the outcome of the elections. Access to reliable information has also been critically restricted – state media (central and local TV and radio stations and their internet websites) are foghorns for the government’s propaganda, while local commercial media have been bought by the state-controlled oil company Orlen. The takeover of public media, whose budget has been tripled, together with local media being bought by a state-owned company means that citizens are denied equal access to impartial information, and political parties are deprived of the guarantee of a fair election campaign. The Law and Justice party secured additional funding for its campaign through creating a system of

transfers of money from board members of state-owned companies and using public funds from grants for NGOs. The sum of these changes and their significance justify the suspicion that the upcoming elections in Poland will not be thorough and that their results will be influenced by an election campaign conducted without adhering to the principle of fairness (more on the gradual suppression of fair elections in Poland in our timeline).

The guarantee of a fair election is further undermined due to the takeover of audit institutions, to which citizens could address their complaints regarding irregularities which occurred during the election campaign and on election day. One can hardly expect complaints received by the National Broadcasting Council, National Media Council, National Electoral Commission, National Electoral Office, Public Prosecutor's Office, and the Supreme Court to be successful. These institutions have either been "taken over" or new regulations bar them from addressing complaints – or their employees are deterred from taking action under threat of suffering politically motivated consequences.

The sum of these changes and their significance justify the suspicion that the upcoming elections in Poland will not be fair and equal and that their results will be influenced by an election campaign conducted without adhering to the principle of fairness.

2015

[elections] **October 25**

Law and Justice (PiS) wins parliamentary elections with 37% of the vote.

[courts, tribunals
and the
judiciary] **November–December**

The ruling coalition United Right (Zjednoczona Prawica) attempts to take over the Constitutional Tribunal for the first time. The government wants to end the term of the tribunal's President and introduce disciplinary liability of the judges upon request of the Minister of Justice or the President. They also nullify the election of new justices of the tribunal.

[media] **December 30**

The government takes over control of state media.

2016

[media] The state media's budget is 0,78 bn PLN

January 8

The Chancellor of the Exchequer Dawid Jackiewicz appoints Jacek Kurski, former PiS MP, as president of Polish Television (TVP).

[courts, tribunals
and the
judiciary] **January 28**

The public prosecutor's office comes under the sway of political authorities as the Minister of Justice becomes Public Prosecutor General.

[media] **June 22**

The National Media Council is created – an agency for media control with no basis in the constitution.

[courts, tribunals
and the
judiciary] **December 21**

Julia Przyłębska, viewed favorably by PiS who have influence over her but unfavorably by Polish judges, becomes President of the Constitutional Tribunal.

2017

[media] The state media's budget is 1 bn PLN

[courts, tribunals
and the
judiciary] **March 23**

The Minister of Justice takes over control of the organization of the work of judges.

July 20

An attempt to end the term of the Supreme Court is launched. The Supreme Court declares the validity of elections in Poland.

2018

[media] The state media's budget is 1,41 bn PLN

[election
management] **January 11**

Election management becomes more centralized and the importance of institutions is reduced.

Candidates to the National Electoral Commission, responsible for the conduct of elections in Poland, no longer need to be judges.

The National Electoral Commission loses some of its competences, the head of the National Electoral Office and electoral commissioners are now appointed by the Minister of Justice from among the candidates selected by the executive.

The new law brings with it the end of the term of the previous electoral commissioners – judges responsible for the conduct of elections in the districts. The growth in the number of commissioners (from 40 to 100) is accompanied by a decrease in the office's gravity as being a judge is no longer a prerequisite for becoming a commissioner.

Local governments are no longer responsible for the management of the elections in the respective areas. Electoral officials are now appointed by the National Electoral Office.

Voters voting abroad can no longer send in a postal vote.

[courts, tribunals
and the
judiciary]

January–April

Amendments to bills on the National Council of the Judiciary in Poland (NCJ; a body responsible for the promotion of judges) and the Supreme Court.

The NCJ is no longer independent from political authorities as NCJ members (judges) are now chosen not by judges, but by the parliament.

In order to cut the term of the first president of the Supreme Court short the age of retirement for judges is lowered.

The Supreme Court now has a new chamber: Extraordinary Review and Public Affairs Chamber. All of its 21 members are appointed by the political, so-called neo-National Council of the Judiciary. Its purpose? Declaring the validity of elections.

[election
management]

June 15

Amendment to the Electoral Code

Spurred on by the fear of there not being enough candidates for electoral officials, the authorities reduce the requirements to become one.

July 20

An attempt is made to change the electoral law for European Parliament elections. United Right wants to raise the effective electoral threshold which would mean that smaller committees stand no chance to have their members elected as MEPs. The bill is vetoed by the President.

[elections]

October 21

Local government elections.

During the election campaign politicians affiliated with PiS suggest that subsidies from the central government would be dependent on what local authorities are elected in the given region.

2019

[media]

The state media's budget is 1 bn PLN

[election
management]

January 31

The Electoral Code is aligned with the Supreme Court bill amendment.

[elections] **October 13**

Law and Justice (PiS) wins parliamentary elections with 43% of the vote.

[courts, tribunals
and the
judiciary] **December 20**

Supreme Court judges face disciplinary liability for calling into question the changes in the judiciary introduced by the United Right.

2020

[media] The state media's budget is 2,6 bn PLN

[election
management] **March 31**

Amendment to the Electoral Code: due to the pandemic, postal vote is introduced for people over 60 or those in isolation.

April 17

The National Electoral Commission's competences are curbed. For the 2020 presidential election, the NEC will no longer be responsible for:

- publishing notices of poll;
- giving confirmations of the right to vote;
- organizing postal and proxy voting;
- ballot design and printing of the ballots.

May 9

Temporary provisions are introduced, which take precedence over the Electoral Code. Universal postal vote is introduced for the presidential election of May 10, 2020.

The provisions are revoked on June 2, 2020.

May 10

First date for the presidential election. Despite pandemic provisions being introduced, the elections – so-called envelope elections due to the universal postal vote – did not take place.

June 2

Temporary provisions are introduced, which take precedence over the Electoral Code. Postal vote in the presidential elections is introduced for some voters.

[elections] **July 12**

Andrzej Duda, the sitting president and PiS candidate, wins re-election having received 51% of the vote in the second round of voting.

[media] **September 23**

The Organization for Security and Co-operation in Europe (OSCE) criticizes Polish state media, stating that Polish Television “has not fulfilled its legal obligation to be a source of objective and unbiased information during the election campaign”.

December 7

The state-owned oil company PKN Orlen buys regional media: 20 regional daily newspapers, almost 120 local weeklies and internet websites.

2021

[media] The state media’s budget is 2,6 bn PLN

August 11

An attempt is made to limit the scope of activity of the private TV network TVN.

[election
management] **October 14**

The National Electoral Commission has the right to examine whether political parties register donations and keep a record of contracts. The NEC has the right to impose fines.

In practice, however, the NEC cannot enforce these rights as the MPs did not foresee executive regulations.

[media] **December 17**

The so-called LexTvN, a bill aiming to limit the activities of the private TV network TVN, is passed in Parliament with votes from the United Right.

December 27

President Andrzej Duda vetoes LexTVN.

2022

[media] The state media’s budget is 2 bn PLN

[courts, tribunals
and the
judiciary] **May 26**

The Disciplinary Chamber of the Supreme Court is closed and the Professional Liability Chamber is introduced in its stead.

[election
management] **December 23**

Yet another amendment to the Electoral Code is published on the Parliament’s website.

2022–2023

[campaign financing] The United Right use public funds to advertise their MPs, including:

- awards for Country Housewives Associations financed from state-owned companies
- new equipment for Volunteer Fire Brigades bought with money from the central and local budgets but made to look as if it were thanks to MPs from the United Right (opposition MPs are not present at the handing over of the equipment)
- grants for purchase of property amounting to several million PLN awarded to organizations with ties to United Right politicians
- grants for NGOs funded by the National Freedom Institute awarded to, among others, organizations run by parliamentary assistants of United Right MPs, organizations, moreover, whose activities are surprisingly modest

2023

[media] The state media's budget is 2,7 bn PLN

[election management] **January–March**

The amendment of the Electoral Code introduces:

- electoral commissions in villages of up to 200 inhabitants. 6 000 new polling stations are estimated to be created;
- a Central Register of Voters, overseen by the Ministry of Digital Affairs;
- guaranteed transport to polling stations for people with disabilities and people over 60;
- persons of trust who have the right to video the election process and who are paid for their work (the fee amount is set in the bill).

Competences of the National Electoral Commission regarding receiving complaints about electoral districts are taken over by administrative courts, whose decisions in this matter cannot be appealed.

[election management] **April 14**

An attempt is made to limit the freedom of political activity when the United Right introduces a bill on "A National Committee for investigating Russian influences on internal security of the Republic of Poland in the years 2007–2022". As a final administrative decision the committee can, among others, ban people from "holding offices connected with management of public funds for a period of up to 10 years". In May, President Andrzej Duda signed the bill into law.

[election management] **April–May**

A new regulation means that electoral commissions outside Poland have no more than 24 hours after voting ends to count the ballots. If they do not manage to pass on the results to regional commissions within that time, all votes cast in their commission are invalidated.

In the second round of the 2020 presidential election over 418,000 Polish citizens voted abroad. 75% of them chose the opposition candidate, Rafał Trzaskowski, over the sitting president, who went on to win re-election.

Marcin Wiącek, Commissioner for Human Rights (Ombudsman), urges the Parliament to amend the regulation, stating that it infringes on the substance of electoral law and renders the validity and efficiency of one's vote dependent on circumstances which are beyond the citizens' control – the deftness of election management. Moreover the Constitution does not differentiate when it comes to the right to vote between citizens based on where they live.

The Parliament rejects the plea for striking down the 24 h window for counting votes in commissions outside Poland. Poles living abroad come together to demand the establishment of additional electoral commissions, especially in the UK – in Manchester and London.

[campaign
financing] **May–August**

The government uses funds from the central budget to organize so called “800+ picnics” – events which in theory are supposed to promote the government programme 800+ (a new version of the 500+ programme, which supports families with benefits of 500 PLN/month per child – the amount is set to rise to 800 PLN in January 2024), but at the same time are strikingly similar to “Family picnics” organized during previous Law and Justice election campaigns. This is taking place during the pre-campaign, before the official announcement of the election.

[election
management] **June**

Law and Justice chairman Jarosław Kaczyński proposes to hold a referendum coinciding with the upcoming parliamentary elections. The referendum questions are supposed to be about the European Union's migration and asylum policy.

[election
management] **July 7**

The *Nationwide Referendum Bill* is amended to make it possible for both the elections and referendum to be held on the same day. This is yet another change to electoral law introduced in the election year.

Information about referendum questions has still not been released to the public.

[election
management] **July 11**

The European Parliament adopts a resolution saying changes to Polish electoral law introduced by United Right “may have a discriminatory effect” regarding votes cast abroad and may threaten the fairness of the upcoming parliamentary elections in Poland.

[election
management] **July 31**

President Duda signs the amended bill on “A National Committee for investigating Russian influences on internal security of the Republic of Poland in the years 2007–2022”. After amendments the committee can no longer ban people from “holding offices connected with

management of public funds for a period of up to 10 years”, but it can still interrogate candidates standing in the 2023 elections, potentially political enemies of the ruling party.

[election
management]

August 4

The Central Voter Register – a database of voters’ data – is created. The institution responsible for the CVR is The Ministry of Digital Affairs. The Minister is Janusz Cieszyński, Law and Justice candidate in the upcoming parliamentary elections, running as number 1 on that party’s list in Olsztyn.

[election
management]

August 16

The Parliament overrules the Senate’s veto of the amendments to the *Nationwide Referendum Bill*.

President Duda signs the bill into law.

[election
management]

August 17

Despite dissent from all opposition parties, the Parliament passes a bill on the organization of a nationwide referendum. Before the bill is passed, referendum questions are revealed in a series of videos posted on Law and Justice’s social media. Key politicians (Law and Justice chairman, the prime minister, former prime minister as well as the Defence Minister) take part in the videos and explain to the viewers how they should answer each question. Each of the videos also features the name “Donald Tusk” – the former prime minister and chairman of the main opposition party is presented as being against the answers recommended by the government.

The questions are not devoid of suggestive undertones:

1. Do you support the selling off of Polish state assets to foreign entities, prompting Poles to lose control over strategic sectors of the economy?
2. Do you support raising the retirement age, including bringing back the increased retirement age of 67 for men and women?
3. Do you support removing the barrier on the border between the Republic of Poland and the Republic of Belarus?
4. Do you support taking in thousands of illegal immigrants from Africa and the Middle East, in accordance with the compulsory mechanism of relocation imposed by the European bureaucracy?

[election
management]

August 28

The National Electoral Commission publishes their guidelines on running parallel campaigns: for the elections and for the referendum. The guidelines ignore the demand of opposition parties that candidates standing in the elections should not be allowed to simultaneously carry out referendum campaigns.

The separation of election and referendum campaigns is starkly inadequate.

[election
management]

August 30

The Parliament appoints 9 members of the National Committee for investigating Russian influences on internal security of the Republic of Poland in the years 2007–2022. In protest, opposition parties do not nominate any candidates. All members of the Committee are nominated by the United Right.

[campaign
financing]

August–October

32 million PLN for parliamentary elections and nearly 7 million for Senate elections – this is the maximum amount an electoral committee can spend on their election campaign in this year's elections. No limit, however, is set for the referendum campaign.

Due to the possibility of combining the two campaigns, the Law and Justice party – which controls the budgets of ministries and state-owned companies – can significantly increase the resources spent on the election campaign.

First of all, due to two campaigns taking place simultaneously, the limit of how much money every citizen can donate for their political party has been raised.

Second of all, although the fact that the referendum will take place at the same time as the elections does not mean the limit of how much electoral committees can spend on their campaigns is higher, the referendum campaign, in which there are no limits, can be carried out by both political parties and other entities dependent on the government (e.g. foundations of state-owned companies).

[media]

August–October

Law and Justice candidates decline invitations to take part in debates organized by independent media.