

# 2021 RULE OF LAW REPORT

## GENERAL INFORMATION

PLEASE INSERT AN URL TOWARDS YOUR ORGANISATION'S MAIN ONLINE PRESENCE OR DESCRIBE YOUR ORGANISATION BRIEFLY:

<https://siecobywatelska.pl/>

## TRANSPARENCY REGISTER NUMBER/COUNTRY/CONTACT

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## PUBLICATION OF YOUR CONTRIBUTION AND PRIVACY SETTINGS

Public - Your personal details (name, organisation name, transparency register number, country of origin will be published with your contribution.

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## PLEASE PROVIDE ANY RELEVANT INFORMATION ON HORIZONTAL DEVELOPMENTS HERE

Citizens Network Watchdog Poland wants to achieve transparency in the public realm, good government and the accountability of power in Poland. This can be achieved twofold – by making citizens aware of their rights and by impacting the way how authorities conduct their activities. Both ways are used by our organisation.

The organisation was created in 2003 by active citizens working all over Poland. Maintaining contact with social base is an important part of our identity and philosophy of work. We also constantly work on reaching out to new circles of citizens with education, information and empowerment. On the other hand, organization plays an important role in making authorities of different types accountable, on all levels - national, local and the European.

In the beginning of 2021 Poland does not have an effective human rights protection system.

The Constitutional Tribunal was changed into a handy justification for the ruling majority's difficult decisions or a brake for acts that ruling majority enacts purely for PR purposes.

Another problem for the protection of rights is dependence of prosecutors on the Minister of Justice who is a Prosecutor General at the same time. This allows to stop investigations against people connected to the ruling majority and accuse those who are in the opposition.

Finally, the judiciary system was destroyed. There are two parallel systems. One based on the Constitution and a new one, in which the National Council of the Judiciary was re-elected in violation of the Constitution (the previous term was terminated). There is a Disciplinary Chamber in the Supreme Court, the shape of which is questioned in the light of the Constitution. The European Commission has filed a complaint with the European Court of Justice because such a situation threatens the independence of the judiciary in Poland, and thus the EU's cohesion. The ECJ suspended the disciplinary proceedings of the Chamber. However, the Chamber still hears cases concerning immunity, claiming that it is forbidden to hear disciplinary cases only.

To all these systemic problems, others can be added, such as making public television a propaganda tool, increasing cronyism and the abuse of public funds to support members of Law and Justice political camp (e.g. distribution of reconstruction funds after COVID-19), limiting rights in connection to COVID-19.

2021 is also witnessing a massive attack on freedom of speech and information. This is an area in which we are directly interested. In the first place, the state-owned company Orlen bought all regional media (December 2020). Then the Minister of Justice prepared a draft law on media freedom (January 2021), which resembles the rules of censorship. Then a new law was prepared imposing high taxes on the media (February 2021). In January and February 2021, two bills limiting openness were proceeded in the parliament. In February 2021, the Constitutional Tribunal received an application from the First President of the Supreme Court (also elected with some doubts) with a request to examine whether the provisions of the Act on access to information concerning restrictions on the protection of privacy of public officials are constitutional.

Our organisations focuses on freedom of information where we are the leading and the strongest organisation in Poland having contact with people in the field. We are also an important actor as regards anticorruption and freedom of speech.

In several other topics we often play an intermediary role. As we are active on the local and central level we explain several “central” topics to the citizens living in the field. On the other hand we make our partners on the central level more sensitive to local needs. We played a coordination role in a campaign to elect a civic candidate for the post of the Commissioner for Human Rights <https://naszrzecznik.pl/> and in the next two years, along with the Association 61, we are going to work on facilitating cooperation of different CSOs working for democracy.

## II. ANTI-CORRUPTION FRAMEWORK

### A. THE INSTITUTIONAL FRAMEWORK CAPACITY TO FIGHT AGAINST CORRUPTION (PREVENTION AND INVESTIGATION / PROSECUTION)

18. LIST OF RELEVANT AUTHORITIES (E.G. NATIONAL AGENCIES, BODIES) IN CHARGE OF PREVENTION DETECTION, INVESTIGATION AND PROSECUTION OF CORRUPTION. PLEASE

INDICATE THE RESOURCES ALLOCATED TO THESE (THE HUMAN, FINANCIAL, LEGAL, AND PRACTICAL RESOURCES AS RELEVANT), E.G. IN TABLE FORMAT.

**Central Anticorruption Bureau** - the institution established solely to combat corruption

- about 1,300 employees
- the budget for 2021 is PLN 211,289,000. About 47 million. Euro
- operates on the basis of its own act
- can conduct criminal investigations, systemic analysis and institutional control activities.

**Internal Security Agency**

- recognizes, prevents and detects crimes, including corruption offenses of persons performing public functions, if it may harm the security of the state
- the budget in 2021 is PLN 631,586,000. About 140 million. Euro

In addition, there are many institutions that have some form of combating corruption in their tasks, sometimes in relation to selected groups of state officials:

- **Police** - conducts proceedings in cases of corruption offenses, including those committed by its own officers and employees;
- **Military Counterintelligence Service (SKW)** - detects corruption crimes committed by soldiers on active military service, officers of the Military Counterintelligence Service and the Military Intelligence Service as well as employees of the Polish Armed Forces and other organizational units of the Ministry of National Defense (MON) as long as they may threaten the security or combat capability of the Polish Armed Forces or other organizational units of the MON;
- **Military Police** - conducts proceedings for corruption offenses committed, among others by soldiers, employees and people on the premises or facilities of military units;
- **Border Control** - conducts proceedings in cases of corruption offenses committed by persons who are officers or employees of the Border Control in connection with the performance of official duties;
- **National Revenue Administration** - handles cases related to bribery, abuse of powers and paid protection in connection with the performance of official activities by its officers and other employed persons;
- **Supreme Audit Office** - controls public institutions in terms of legality, economy, purposefulness and reliability. This may contribute to the detection of corruption.
- **Internal audit** - public administration offices counteract corruption through internal control and internal audit units.

## B. PREVENTION

20. GENERAL TRANSPARENCY OF PUBLIC DECISION-MAKING (INCLUDING PUBLIC ACCESS TO INFORMATION SUCH AS LOBBYING, ASSET DISCLOSURE RULES AND TRANSPARENCY OF POLITICAL PARTY FINANCING)

ACCESS TO INFORMATION RELATING TO LAW-MAKING, LOBBYING

The information is proactively disclosed from the moment the concept of assumptions to the bill or

bill appears. Then - if it is a process taking place at the government level - information appears on the website <https://legislacja.gov.pl/>. If the draft is prepared by the Sejm or the Senate, the draft appears on the websites of these institutions. If the President is preparing the draft, it appears on the Sejm portal after it has been prepared. **Access to knowledge about who influences the law at an earlier stage, who meets decision-makers and who proposes specific solutions is significantly difficult and not always available upon request for information.**

This is because **the institutions do not document their actions**. The Citizens Network Watchdog Poland has repeatedly asked ministries to provide better information on ministerial meetings, meetings between ministry employees and outsiders (round tables, expert groups, working groups, etc.), and to publish notes from the meetings of these groups.

**As reported by the ministries in their replies to our requests- not all meetings are recorded in the calendar, many meetings at the ministry take place every day and it is difficult to control them, notes are often not drawn up.**

At the same time, there are many difficulties in obtaining information related to the creation of law upon request for public information. Since 2012, the category of "internal document", "technical" or "working" appears in the jurisprudence of administrative courts. Although Art. 61 sec. 3 of the Polish Constitution regulates the right to information in accordance with Art. 10 of the European Convention on Human Rights, introducing the possibility of limiting the right to information solely on the grounds of "protection of the freedoms and rights of other persons and business entities, as well as protection of public order, security or important economic interest of the state, as specified in statutes", the law began to be limited on the basis of recognition by courts that specific documents are not public information and therefore are not subject to these restrictions. As a result of such judgments, citizens were denied access:

- to e-mails in which amendments to the Public Information Act (2011) were established;
- opinions of constitutionalists who were to indicate the constitutionality of the retirement scheme (OFE) reform (which was the basis for the signing of this reform by the President of the Republic of Poland in 2011)
- calendar of the person holding the position of the President of the Constitutional Tribunal who met with the chairman of the ruling party (2019)
- recordings from the cameras of the Marshal's Guard in the Hall of Columns (Sejm) in 2016, when perhaps there was no quorum, and these recordings would confirm or deny it.

The biggest problem is that there is more and more discretion in the proceedings of both, obliged entities and administrative courts. There is no legal basis for recognizing a document resulting from the actions of a public institution as anything other than public information. Art. 61 sec. 1 of the Constitution of the Republic of Poland provides that "Citizens have the right to obtain information about the activities of public authorities and persons discharging public functions". If the offices want to limit access to them, they should refer to the relevant protected goods. Meanwhile, they recognize that something is not public information and it happens that the courts agree that they are right.

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#### ASSETS DECLARATIONS

**According to the law**, the assets declarations of deputies, senators, mayors, councillors, judges, prosecutors and some of the heads of the most important institutions in the state, including court directors and their deputies, the President of the Supreme Administrative Court, the First President of the Supreme Court, The President of the National Bank of Poland **are disclosed**. The group of people

obliged to submit an asset declaration is, however, wider and largely includes people in decision-making positions.

**An unresolved problem is the obligatory disclosure of asset declarations of the prime minister, ministers and deputy ministers.** According to the law, they are public if the person holding such a function decides to disclose the assets himself/herself. Although there is a custom of publishing ministerial statements, it is not compulsory and it happened otherwise.

The regulations changing this situation were drawn up just before the parliamentary elections on October 13, 2019 (the process of drafting this law is unknown, it was not possible to obtain information on how it was created). However, the act containing the provisions was submitted to the Constitutional Tribunal immediately after the elections. Because apart from the regulations that Polish citizens have been waiting for years to be introduced regarding the disclosure of the assets declarations mentioned above, it also contained provisions regarding the wide disclosure of the property of politicians' families, including adult children. The Constitutional Tribunal, which is completely dependent on the ruling majority, is unlikely to consider this bill at all in the coming years. This means that a return to the topic is unlikely.

**Another issue is to include certain statements under the "secrecy" clause.** This system is not accountable. The Citizens Network Watchdog Poland made an unsuccessful attempt to control this clause against a judge who is a deputy disciplinary officer for the judges. According to the media, he was one of 4 judges out of 800 whose statements were included in the clause in the Court of Appeal in Poznań (the body competent to disclose statements). Media and CSOs pressure appears to have contributed to the clause's removal as a statement for 2019 has been released. There may be more cases in which it is difficult to understand why they are subject to the clause in one year and not in another, or where the clause is imposed for unknown reasons. According to the media, the reservation of documents in the described case was to take place at the request of the person concerned, who worked 15 years earlier in the prosecutor's office, where he dealt with organized crime.

The illusory nature of asset declarations is also often raised. This is due to the fact that declarations are still filled out on paper and scanned, **there is no data in electronic systems. Filled out on paper, they are illegible, you have to put a lot of effort into reading them.**

#### TRANSPARENCY OF POLITICAL PARTIES

Political parties may be financed only from the state budget, donations from natural persons, legacies, bequests, income from own property, membership fees.

Each year, political parties submit their reports to the National Electoral Commission (PKW) by March 31 of the following year. These are reports on the sources of obtaining funds, including loans and expenses incurred from the resources of the Election Fund. PKW publishes this information without any attachments <https://pkw.gov.pl/finansowanie-polityki/finansowanie-partii-politycznych/sprawozdania-finansowe-partii-politycznych-za-rok-2019/komunikat-panstwowej-komisji-wyborczej-z-dnia-10-czerwca-2020-r-w-sprawie-sprawozdan-o-zrodlach-pozy> **To find out who donates to political parties or who receives money from them, you need to go to the National Electoral Office and get acquainted with the details. It is a burdensome and late procedure for citizens, especially in election years, when knowing who pays for individual political parties is important when casting vote/make decision.**

Due to the fact that the Constitution of the Republic of Poland, in Article 11, guarantees that the financing of political parties is public, the Citizens Network Watchdog Poland has been trying for over 7 years to obtain information from political parties on request for public information, beyond the deadline for submitting a report. There is a wealth of jurisprudence in favour of citizens who want to keep up-to-date with the party's finances. **Unfortunately, the two largest parties - Law and Justice and the Civic Platform - still have to be sued. Parties that start their activities are also often unaware of their duties - as in the case of Robert Biedroń's Spring party (<https://siecobywatelska.pl/jak-w-mijajacej-kadencja-partie-traktowaly-swoja-przejrzystosc/>).**

## 21. RULES ON PREVENTING CONFLICT OF INTERESTS IN THE PUBLIC SECTOR

The basic method of preventing a conflict of interest are the restrictions imposed by the Act on Restricting Business Activities by Persons Holding Public Functions of August 21, 1997.

Persons issuing decisions in public institutions and those who lead them are subject to restrictions to a different extent. They cannot conduct business activity, some of them have a limited possibility of holding shares in commercial companies, the possibility of being employed in them, being members of management boards, supervisory boards, etc. They must also inform about the economic activity conducted by their spouse. If such persons are in the described situation, they must terminate it before taking up the position, i.e. sell the shares, stop performing functions in management boards or supervisory boards, or close the business activity. Then they also make an appropriate statement on this matter. Where the situation changes during the exercise of the function, this usually means resignation from the office.

The ban on holding positions in company bodies does not apply to some persons, as long as they have been designated by the State Treasury, other state legal entities, companies with the Treasury shareholding, local government units, their unions or other legal persons of local government units or a metropolitan association. These persons may not be appointed to more than two commercial law companies with the participation of entities indicating these persons.

In addition, the National Electoral Commission keeps an open register of benefits <https://rk.pkw.gov.pl/>. Applications for it must be made by ministers, voivodes, persons managing local governments and metropolitan unions. This register should contain the following information:

- all positions and occupations performed both in public administration and in private institutions for which remuneration is collected, and professional work performed on one's own account;
- material support by other entities of the public activity carried out by the notifier;
- donations received from domestic or foreign entities, if their value exceeds 50% of the lowest salary of employees;
- domestic or foreign trips not related to the public function, if their cost has not been covered by the applicant or his/her spouse or their employing institutions or political parties, associations or foundations of which they are members;
- other benefits gained.
- participation in the bodies of foundations, commercial companies or cooperatives, even when no cash benefits are collected on this account.

In the event of untrue statement, one can be penalized, pursuant to Art. 233 of the Criminal Code, as in the case of giving false testimony. At the time when consultations are conducted on the European Commission's report on the rule of law, the public in Poland learns that the president of one of the state-owned companies - Orlen, many years earlier, **being the mayor of the commune, probably only formally had no shares in a certain company. During his term of the office of the commune administrator, he significantly influenced its personnel and commercial policy. The question remains whether the prosecutor's office, which is dependent on the ruling majority, will take up the case.** According to media reports, the prosecutor had already had evidence in this case. This leaves little hopes for law enforcement in this matter. Additionally, the prosecutor's office subordinated to the ruling majority had already discontinued other criminal proceedings against the same person. It was about corruption. The case was revealed by one of the dailies - Gazeta Wyborcza. In the first few days, it was the Orlen company (with the participation of the State Treasury and controlled by the state) that dealt with crisis communication. Thus, the company's resources were misused again in defence of the private individual.

## 22. MEASURES IN PLACE TO ENSURE WHISTLEBLOWER PROTECTION AND ENCOURAGE REPORTING OF CORRUPTION

For many years, all governments have consistently failed to regulate the situation of whistle-blowers. CSOs – Batory Foundation, the Helsinki Foundation for Human Rights, the Forum of Trade Unions and the Institute of Public Affairs prepared a civic bill. There is no political will to adopt any regulation.

## 23. LIST THE SECTORS WITH HIGH-RISKS OF CORRUPTION IN YOUR MEMBER STATE AND LIST THE RELEVANT MEASURES TAKEN/ENVISAGED FOR PREVENTING CORRUPTION AND CONFLICT OF INTEREST IN THESE SECTORS. (E.G. PUBLIC PROCUREMENT, HEALTHCARE, OTHER).

According to the Government Program for Counteracting Corruption for 2018-2020, the sectors most at risk of corruption are:

- **Modernization and expansion of infrastructure** - tenders and poorly prepared/deliberately manipulated specifications of orders essential terms;
- **Digitalization of public administration** - unclear selection criteria and the methods of selecting companies, abuse of non-competitive procedures, dividing orders, specifications limiting competitiveness. There are also difficulties related to the knowledge of the contractors.
- **Défense** - limited transparency of orders (due to state security) and their specialized nature. Irregularities may also relate to the parameters of the purchased equipment and weapons, including issuing approval for the lowering of requirements, activities related to the approval, testing, research and control. Corruption can also occur in the context of the trading with illicit information.
- **Healthcare** - distribution of public funds for the contracting of medical services, drug reimbursement, purchase and delivery of medical equipment, and outsourcing of medical services to non-public entities. Associated risks with informal influence on the legislative process in the area of health care and state drug policy, illegal influence on the drug registration procedure.

International trade in drugs and organs.

- **Energy** - lobbying regarding the law and illegal obtaining of licenses and permits.
- **Environmental protection** - timber trade conducted by the State Forests, concessions, administrative proceedings regarding environmental protection.
- **Management of EU funds** - various threats, depending on the sphere they concern.
- **Public procurement** - the most common behaviour conducive to corruption includes: non-application or circumvention of public procurement law, defective conduct of the procedure awarding public contracts, lack of reliable public procurement planning, defective preparation of documents, improper drafting of contracts, abuse of modes non-tender procedures, manipulation of tenders, unequal access to information on public procurement, manipulating the criteria for evaluating offers, improper or insufficient documentation of conducted proceedings, granting orders to unreliable contractors.
- **Professional sports competitions** - in this case, corruption occurs primarily all in the form of bribery on the part of sport-judges, players, sports activists and other participants of the competition. Bribery is also associated with mutual wagering as one of the forms of gambling and with the so-called selling matches.

## MEDIA PLURALISM

### B. TRANSPARENCY OF MEDIA OWNERSHIP AND GOVERNMENT INTERFERENCE

#### 32. THE TRANSPARENT ALLOCATION OF STATE ADVERTISING (INCLUDING ANY RULES REGULATING THE MATTER); OTHER SAFEGUARDS AGAINST STATE / POLITICAL INTERFERENCE

There are no rules governing the commissioning of advertisements by public institutions. A common practice, both at the governmental and local government level, is commissioning advertisements to "government-friendly" media. This practice does not always occur, but it is a serious enough problem to contribute to the weakening of development conditions for the media locally and strongly affect the condition of nationwide media.

#### 33. RULES GOVERNING TRANSPARENCY OF MEDIA OWNERSHIP AND PUBLIC AVAILABILITY OF MEDIA OWNERSHIP INFORMATION

Theoretically, anyone can check the media owner, but it's difficult to do it in one go. Pursuant to the Press Act, publishers must provide the name and address of the publisher as well as the address of the editorial office and the name of the editor-in-chief. However, who is the owner must already be searched individually in public registers. It is often complicated as the owner of these registers may also be another entity whose data must be looked for further. There is no obligation to provide such details, so access to such information is limited.

Moreover, there is no media database. An attempt to create such a database was made by the Polish Pen Club in relation to dailies and magazines <http://pressclub.pl/re-Register-dziennikow-i-czasopism/>. This action encounters a number of difficulties, as such data in the courts are often not digitized.

## C. FRAMEWORK FOR JOURNALISTS' PROTECTION

### 36. ACCESS TO INFORMATION AND PUBLIC DOCUMENTS

Access to public information for journalists is based on the Public Information Act. Over the last 10 years, changes in access to documents have not always been subject to positive changes. It has become a standard not only to use the concept of an „internal document” to limit access to information, which has already been mentioned, but also to say that applicants expect too many documents to be made available (processed information) or to claim that a document does not constitute public information. In practice, this is an important limitation of the right to information, also for journalists. In recent years, the phenomenon has started to take on monstrous proportions.

<https://www.press.pl/tresc/62718,zabawa-w-gluchy-telefon;>

<https://www.polityka.pl/tygodnikpolityka/spoleczenstwo/2102465,1,urzedowe-techniki-splawiania-obywateli.read>

Additionally, in 2021, there has been a real offensive of information restrictions. First, two new laws were presented suddenly. One introduced a "diplomatic secret" - limiting access to information on foreign policy in an indefinite and very broad manner. This law has been adopted. The second ends with supervision over the actions of prosecutors and the possibility of checking how they conducted preparatory proceedings <https://siecobywatelska.pl/podwojny-zamach-na-jawnosc/>. This one is still in a process of enacting. In turn, there were three cases in the Constitutional Tribunal concerning the limitation of openness <https://siecobywatelska.pl/co-wladza-chce-ukryc/> It is unpredictable when they are going to be heard.

Moreover, it happens more and more often that state-owned companies or specific state institutions deny access to information to selected journalists, do not invite them to press conferences, do not grant accreditations <https://siecobywatelska.pl/interweniuujemy-niedopuszczalny-bojkot-dziennikarzy-przez-polska-wytwornie-papierow-wartosciowych/>

### 37. LAWSUITS AND CONVICTIONS AGAINST JOURNALISTS (INCL. DEFAMATION CASES) AND SAFEGUARDS AGAINST ABUSE

A matter that has not been settled for years is the deletion of article 212, concerning the criminal sanction for defamation, from the Penal Code. <https://siecobywatelska.pl/arttykul-212-postulujemy-dekryminalizacje-znieslawienia/>

## OTHER

Newspapers run by local governments are also a problem that has not been resolved for years, as they confer with the independent press at the local level and contribute to the weakening of the latter.

<https://siecobywatelska.pl/gazety-wladzy/>

In 2021, a company with a large share of the State Treasury and controlled by the state - PKN Orlen, purchased a network of regional newspapers. This poses a great threat to freedom of speech. The Ombudsman lodged a complaint regarding the consent to this purchase.

<https://siecobywatelska.pl/czy-wydawanie-prasy-to-biznes-jak-kazdy-inny/>

## OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES – POLAND

### INDEPENDENT AUTHORITIES

A new Ombudsman should be elected by September 9, 2020. For more than half a year, the ruling majority manipulated the deadlines, boycotted the actions for the election of the Ombudsman, and has now applied to the Constitutional Tribunal, which is dependent on it, to remove the Ombudsman's mandate due to the fact that his appointment had passed. At the time the case is to be held (March 10), no recruitment for a spokesman was announced. Earlier, there were three unsuccessful rounds of elections in which citizens tried to elect a civic candidate  
<https://naszrzecznik.pl/> It failed.

### ELECTIONS

The presidential election in 2020 aroused great controversy. The incumbent President used his position and campaigned despite the pandemic. At the same time, he did not respond to requests for information regarding this campaign. <https://siecobywatelska.pl/pytamy-dla-was-o-wybory/>

Apart from the rules governing the creation of electoral law, changes were made to the elections. They began to be organized on the basis of the law that has not yet been adopted. As a result of this practice, the data of millions of voters was transferred to an institution that has not yet been established formally, i.e. the Polish Post Office. The law was broken, and the President of the Office for Personal Data Protection did not stand up for the citizens. Currently, citizens are pursuing their rights in courts. <https://siecobywatelska.pl/wybory-kopertowe-prezes-uodo-nie-widzi-problemu/>