

Submission by the Society of Journalists to the European Commission Rule of Law consultation for the 2021 Rule of Law report.

1. We are a media organisation
2. Name: Towarzystwo Dziennikarskie (Society of Journalists)
3. We will limit our remarks to the question of Media Pluralism in Poland in our contribution
4. We are a group of Polish Journalists , affiliated to the European Federation of Journalists (EFJ) and working closely with the Association of European Journalists (AEJ) to defend media freedom in Poland as well as to uphold journalistic standards in our country.
5. My name is Krzysztof Bobinski. My email address is bobinski@it.com.pl;
6. The Society's url is <http://towarzystwodziennikarskie.pl>
7. I am happy to have our contribution made public
8. I accept the personal data protection provisions.

I represent an organisation of journalists in Poland. I want to underline that we are happy that the Commission's rule of law survey is going into its second season and that one of the chapters is devoted to media pluralism which in our view is an essential element of the rule of law. Our experience in Poland shows us that media freedom is impossible without an independent and efficient justice system able to uphold basic civic and human rights. At the same time it is impossible to preserve an independent judiciary without a free media ready and willing to report on threats to the system of law and mobilise public opinion in its defence. We are pleased to be able to say that the current Commission is continuing to make this crucial link in this consultation on the rule of law.

I would add that I hope that this year the rule of law report will openly address the issue of the independence of public service media (PSM) in Poland and in other member states where the PSM have been captured by politicians. Also I will be referring to the problem of the well being and independence of local and regional media in our country which is a crucial question for local government governance and democratic procedures in the countryside and the small and medium sized towns

Media authorities and bodies

Independence, enforcement powers and adequacy of resources of media regulatory authorities and bodies

The main electronic media regulatory body is The National Council for Radio and Television (Krajowa Rada Radiofonii i Telewizji (KRRiT)) which issues broadcast licences and monitors the implementation of the conditions agreed with broadcasters during the licensing process. (the print media and the internet are not regulated other than by the press law and other laws). KRRiT is wholly under the control of the ruling Law and Justice movement and the KRRiT chair Witold Kołodziejcki, a Law and Justice (Prawo i Sprawiedliwość, PIS) loyalist, refuses to implement those clauses of the public broadcast law which require that news and current affairs coverage on Poland's public service media be impartial and should present all political points of view. Kołodziejcki argues, disingenuously, that such monitoring would put the KRRiT in the role of a censor of the electronic media. However by failing to act he tolerates massive bias in the public service media in favour of the ruling Law and Justice party and its allies, a fact which has been noted by the OSCE's ODIHR election monitoring teams in successive reports on elections in Poland between 2018 – 2010. The public service broadcast law also places strictures on content which runs counter to 'morality and the social good' a formula which could see the KRRiT censoring reports on current demonstrations in favour of abortion and LGBT rights. Accordingly Janusz Kawecki , a member of the KRRiT , said recently that the KRRiT was examining television coverage of autumn 2020 demonstrations by Poland's women's movement (Strajk Kobiet).

The KRRiT has adequate resources to monitor broadcast content and the right to impose heavy fines on public and private broadcasters if it finds them breaking the terms of the licencing agreements.

Existence and functions of media councils or other self regulatory bodies.

Each broadcaster has an in house ethics council which are mostly dormant. Central public radio and television as well as 16 regional public broadcasters have programme councils which have a built in majority of pro

government members. These councils are mandated to advise management on broadcast content and, potentially, provide a forum for independent members to criticise TVP and Polish Radio programming. Since 2016 such members have raised media freedom and pluralism issues in the PSM and on dismissals of journalists who sought to defend professional standards. Such criticism has been ignored by management. Currently a move is afoot to establish a network of independent members of these councils in order to strengthen their hitherto isolated voices and reach out more effectively to public opinion.

Poland has a self governing national media ethics council – the Rada Etyki Mediów (The Media Ethics Council, REM) which is bound to enforce a Charter of Media Ethics and answer complaints sent in by readers, listeners and viewers. Replies to complaints are placed on a website and the Council, since it was founded in 1995, has built up an impressive archive of cases which examines the limits of free speech in the media. It has no provisions for sanctioning transgressors and can only influence media behaviour by its powers of persuasion. Nevertheless the REM receives a steady stream of complaints some of them from defence lawyers in defamation cases who need a written opinion from REM to bolster their clients' case.

Transparency of media ownership and government interference

The transparent allocation of state advertising (including any rules regulating the matter); others safeguards against state/political interference

It is important to note the attitude to media freedom held by the ruling PIS party and its founder Jarosław Kaczyński, is that all is well as long as the media support his views and his policies but if they do not, then, they have to be brought into line.

As a result at the end of 2015 when PiS was democratically elected, the movement moved to swiftly and successfully take control over the public media and has since sought to find ways of bringing the private media under control. It has also used the money at the disposal of the state owned (PIS controlled) companies to support newspapers and magazines which favoured its policies.

Taking control of the private media (owned in part by investors from the US and the EU) has been the most difficult thanks to limits placed by EU law, resistance from Washington and Brussels and despite harassment through tax and other regulations, law suits against journalists and a ban on placing advertising by state sector companies in privately owned publications. At the same time state sector managers, either through conviction or to show that they were ready to carry out the bidding of the rulers have placed their advertisements in pro PIS publications.

In a process where there were no rules of procedure state owned companies and government agencies spent 6.0 bn Polish Zloties (1.5 bn. Euro) between 2015 and 2020 on media advertising, according to a recent study conducted by Professor Tadeusz Kowalski working with Kantar Media. The study clearly shows that state sector company advertising spend has flowed since 2016 to pro PIS magazines and daily newspapers regardless of the high cost per reader while readers of anti PIS publications were ignored by these companies. During the first stages of the Covid crisis when the government was placing full page, paid, newspaper ads containing instructions as to how to stay safe in almost every Polish newspaper and magazine. However, the authorities ignored the oppositionist Gazeta Wyborcza and failed to place anti covid information ads there leaving its 65,000 readers without any advice at all.

The logical outcome of this support by state sector companies for PIS friendly newspapers has been the recent acquisition by PKN Orlen, the largest state sector company, of 20 regional dailies and over 100 local weeklies as well as 6 printing works from Passauer Presse, a German newspaper publisher. PKN Orlen has also acquired the ailing Ruch network which owns 1200 newspaper kiosks and set up a media buying company. This gives Orlen a great deal of power over other local newspapers who will have to print in their print works but also gives the company a hold over other state sector entities who will have to channel their advertising through Orlen's media buying unit. Thus this acquisition gives PiS, through Orlen, a powerful instrument to influence public opinion in the provinces. However, it also centralises the flow of state advertising to publications which is important as in fighting inside PiS is on the rise and Jarosław Kaczyński, through Orlen, will be able to control media activities by state owned companies which are beholden to various PiS factions.

The transaction has been questioned by Poland's Ombudsman who has argued that the deal should be reversed because it marks a possible threat to freedom of the press were Orlen to force journalists to follow the PIS party line. Poland's Competition and Defence of Consumers authority (UOKiK) however approved the transaction after ignoring opposition on the same lines from the Society of Journalists.

This incident shows that there are no institutional safeguards against state or political interference in Poland other than the right to protest.

Lately the government has proposed a tax on advertising revenue which would affect both domestic publishers and broadcasters and the large foreign social media owners. The plan, which has yet to be implemented, provoked an unprecedented day of protest when a great majority of private media decided not to broadcast either on television or radio and newspapers published a call to the government to desist on their front pages. The owners argued that the tax was designed to financially weaken the private media sector and make it easier for these outlets to be taken over as has happened with the purchase by PKN Orlen by Polska Press. The protest was joined by several local newspapers.

Rules governing transparency of media ownership and public availability of media ownership information

There are no rules on transparency of media ownership and newspaper owners are subject to the same rules and regulations as are other corporations. All companies are obliged to register company accounts and other information with the Registry Court (Krajowy Rejestr Sądowy KRS)

Framework for journalists' protection

Rules and practices guaranteeing journalist's independence and safety

There are numerous safeguards of journalistic independence in Polish laws such as the Radio and Television law and the Press Law which was much amended after it was initially passed in 1984 by the then Polish authorities. The Press Law gives a journalist the right to refuse to accept editorial orders which would force him or her to contravene principles of probity, objectivity and professional accuracy. These safeguards are regularly broken by editorial management in the pro government media and can only be tested in the courts when a journalist is sacked for refusing such an instruction and decides to sue for wrongful dismissal.

Law enforcement capacity to ensure journalists' safety and investigate attacks on journalists

Poland is bound by Council of Europe recommendations and ECHR rulings which say that journalists have the right to be present at demonstrations even after the police have called for participants to disperse. In the autumn of 2020 with the onset of major street demonstrations on the November 11 independence day and demonstrations against the planned introduction of further restrictions on abortion (and amidst the covid crisis when restrictions on public gatherings were in place) there were incidents when journalists were beaten even though they were clearly identified as press people. There were also cases of detention of photographers. At this time there were also cases of violent police action against the demonstrators. The police used tear gas from hand held canisters against journalists as well as demonstrators. Last November 11 police also fired rubber bullets wounding Tomasz Gutry a photographer in the cheek. He worked for a pro government magazine and later obtained an apology from the police. It has to be noted that there were no apologies to journalists from critical media who were also beaten on the same day. Also women journalists have been manhandled and detained during pro abortion protests.

It seems clear that such incidents (also involving members anti terrorist units in plain clothes) came as a result of official instructions to treat demonstrators roughly. In effect this included women demonstrating for the liberalisation of abortion laws. The aim appears to have been to inflict maximum discomfort on demonstrators and discourage people from future participation in demonstrations.

It also has to be said that NGOs and the organisers of demonstrations while protesting against police violence (they were supported by the ombudsman) failed to seek to initiate a dialogue with the police to establish a modus

vivendi as to police behaviour during future demonstrations. Were this to happen Poland would possibly obtain a code of conduct agreed between both sides to govern the behaviour both of the police, journalists and demonstrators.

There does not appear to be any special law enforcement capacity to ensure journalists' safety.

Access to information and public documents

Access to public information legislation is in place in Poland and opposition politicians have achieved a measure of success in extracting information, from the bureaucracy later rather than sooner. The task is more difficult for journalists who find access to public information difficult and time consuming.

The situation could worsen as the new head of the Supreme Court Małgorzata Manowska has asked the Constitutional Tribunal (CT) to examine Poland's access to public information legislation in the light of the fact that it contravenes Poland's constitution. Ms Manowska is asking the CT consider the acceptance of a stricter definition of who is considered to be a public official and who is bound to publicly declare his or her material circumstances. Ms Manowska is also suggesting that limits be put on the number of institutions funded by the government which at the moment are bound to openly declare their finances and sources of funding. Critics of the move argue that were the changes to be accepted then this would place significant limitations on access to public information.

PiS politicians (as well as members of the opposition) are open to off the record meetings with journalists even from those they deem to be hostile to them. Official press conferences however are strictly disciplined with official refusal to answer questions which stray from the agenda of a given conference. Journalists insisting on asking questions risk failing to be asked to these conferences. This is a major infringement on the right to public information. Jarosław Kaczyński the head of PiS gives interviews solely to media with support his party.

Lawsuits and convictions against journalists (including defamation cases) and safeguards against abuse

The years that the Law and Justice party has been in power have seen a visible growth in the number of lawsuits which have been brought against journalists by government agencies and state controlled entities for defamation and also among journalists themselves. Some cases termed SLAPPs have been brought by the state to embroil media outlets in expensive court procedures others have sought to have the courts pronounce on the extent to which defamation has occurred when critical articles have been published.

The result is that the onus for determining the truth and defining the limits of free speech has been placed squarely in Polish court rooms. This comes as pressure has mounted on the judiciary as well as the prosecution service to follow the wishes of government politicians who have been pushing to limit the independence of the judiciary in the wake of the drive to take control of the Constitutional Tribunal in 2016.

The Society of Journalists has sought to monitor defamation cases where state entities and their allies have attempted to deflect the public impact of critical media articles and broadcasts by having the courts order the publication of apologies and retractions and direct the removal of offending texts as well as payment of large contributions by publishers or authors to worthy causes. Monitoring has not been easy as often publications prefer to keep such problems out of the public view and relatively rarely publicise the number of cases to avoid revealing to investors that they are beset by legal problems.

The Society's monitoring identified 148 cases initiated against journalists or publications between 2016 and 2020 and the peak of this activity came in 2018 when 25% of the total were started and 31 per cent were started in 2019 falling to 13 per cent in 2020. The fall may be explained by the fact that around a quarter of the cases which were ongoing in 2019 and 2020 were lost by the state plaintiffs. The state entities won a mere 9 per cent of the cases in 2019 and 5 per cent in 2020. The great majority of cases remained unresolved in both years owing to major delays in Poland's justice system (41 per cent in 2019 and 53 per cent in 2020).

The fall in activity by state entities in 2020 may be explained by the fact that so few of them found favour with the courts. This suggests that the government's drive in these years to limit the independence of the judges is failing. It can be noted in the past six months brought to court in the wake of demonstrations by the police on public order charges and those accused of offending public morality have also been found not guilty by the courts.

Thus it has fallen to the courts to defend citizens and the law against abuse by the authorities in the lack of other safeguards. This development begs the question of whether at some point in the future self governing arbitration bodies for journalists should not be established as a port of 'first call' for those who feel they have been offended in the media. Only where arbitration in such bodies fails then cases could be taken to court for resolution. This would lessen the courts' work load and free them from seeking to define the limits of free speech, polite discourse and, at times, being asked to adjudicate versions of the truth in media reports of events.

Other

The situation of local media

The purchase by PKN Orlen, a state owned entity of the media assets of Polska Press from the German Passauer Presse publisher has focussed attention on the situation of regional and local media in Poland.

The transaction saw Orlen take control of 20 regional daily newspapers, around 120 local weeklies, 6 printing companies and gave it access to around 17.4 million internet users. It is generally assumed that the aim of this transaction is to use this media network to bolster support for the ruling Law and Justice movement (this vehemently is denied by Mr Daniel Obajtek, the CEO of Orlen and a PiS loyalist who insists the transaction will serve to diversify the energy giant's business portfolio).

Whatever the outcome of this move it is clear that a rich and powerful player has entered the local and regional media market which up till now has attracted little attention from media experts but also from local government governance analysts who focus on institutional issues but rarely examine the influence on local public opinion of local and regional media. Indeed it has to be said that while the saying that „democracy depends on a free media' is often repeated in Poland no one ever says that 'local democracy depends on a free local media'.

Interestingly the Florence based Medium Pluralism Monitor on whose research much of the Commission's rule of law report relies, devotes little attention to the question of local media. Local Polish think tanks specialising in local government issues also rarely examine local media problems.

Meanwhile the Orlen transaction leaves independent local media with around 200 newspapers owned by some 60 publishers (and a joint weekly print run of 1.2 million newspapers) exposed to the danger that the government controlled group could move to purchase the cash strapped independent local weeklies thereby further narrowing the space for an independent voice in the small and medium sized towns and the country side. However the problems of local publishers go further, as more often than not, local officials of all political persuasions are rarely tolerant of having an independent publication in their district and would happily bring such publishers to heel. Thus it requires a great deal of determination by such media to keep local politicians at arms length and it seems that the time has come to consider EU financial support programmes to focus not only on national media but also on local media.

Surveys show that around 20 per cent of the rural and small town population (mainly the older people) regularly reach for local newspapers. This is a significant share of the national electorate and they deserve independent media they can rely on as much as city dwellers.

It might be useful to note that one of the original aims of the Common Agricultural Policy was to bolster rural incomes to avoid the poverty which then saw the rural population favour radical political options and later, possibly, question the benefits of European integration.

It may well be that the time has come for the establishment of a Local Media EU Policy which would address the financial problems of local and regional media and provide their readers with an independent press which would defend and enrich local democracy.

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