

2021 Rule of law report targeted Stakeholder consultation

Submitted by the International Press Institute

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Media Pluralism - Poland

Media regulatory authorities and bodies (Cf. Article 30 of Directive 2018/1808)

Introduction

The Polish government has abused its political control over several key regulatory bodies to muzzle independent journalism and wield greater control of the nation's media sector. The national broadcaster has, since the 2016 purge of independent journalists, become the effective propaganda mouthpiece of the ruling Law and Justice (PiS) party. Since then PiS has

- Abused the financial advertising power of the government and state owned companies and agencies to slash advertising in critical media and redirect it to pro-government media
- Developed concrete plans to reduce foreign investment in media and break up larger opposition media companies via 'repolonisation' and 'deconcentration', under the cover of creating greater 'media pluralism'
- Sought to increase the power of the Office of Electronic Communications (UKE) to remove, renew and reward radio broadcast licenses
- Swamp independent media in a series of vexatious legal suits designed to drain their resources and stifle efforts to hold government to account
- Encouraged the state-controlled oil company, PKN Orlen, to purchase Polska Press, the largest network of regional newspapers, the newspaper distribution company Ruch, and approach to buy other private media made weakened by financial discrimination
- Launch a new bill for an advertising revenue tax in 2021 to further drain the resources of private media in a politically motivated manner
- Fill regulatory bodies, media or otherwise, with PiS appointees.

All of these issues were identified during the recent press freedom mission organised by the International Press Institute on behalf of the Media Freedom Rapid Response in December 2020, whose [report](#) forms the basis of this submission.

Independence, enforcement powers and adequacy of resources of media regulatory authorities and bodies. 3000 character(s) maximum

The **Broadcasting council, KRRiT** is responsible for overseeing broadcasting with the power to issue licenses and to stop broadcasters which breach Polish law. It has five members appointed in 2016 for six-year terms. Members must resign from any political parties and cease any related business activities. A new board is due to be appointed by the Sejm in 2022.

Amendments to the electronic communication law currently under discussion would increase the powers of the Office of **Electronic Communications (UKE)**. It is largely a technical body.

The **Office of Competition and Consumer Protection (UOKiK)**, is pursuing a number of antitrust investigations in the media market. These investigations, ostensibly about ensuring pluralism by blocking ownership concentration are, however, increasingly being used to stall and prevent mergers that would strengthen media companies perceived as opponents while approving fusions

of pro-government media. In January 2021 UOKiK [blocked](#) Agora from purchasing a 40% stake in radio company Eurozet “to avoid a harmful duopoly” with the current radio market leader RMF. Agora bought a minority 40% stake in Eurozet in 2019, with the other 60% acquired by the Czech SFS Ventures fund linked to billionaire George Soros. UOKiK’s decision followed strong [opposition](#) by PiS officials demanding the blocking of the merger. Agora denounced the decision as “arbitrary and selective” which “protects Agora’s competitors, not competition”.

Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies 3000 character(s) maximum

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Office of Electronic Communications (UKE) The President of UKE is appointed by the Sejm and the deputy presidents appointed by the Minister of Digital Affairs. All three positions have been appointed in the past year and therefore by PiS.

The **Office of Competition and Consumer Protection (UOKiK)**. The President was appointed by the Prime Minister in January 2020. It investigates anti-competitive practices and reviews state aid schemes to ensure compliance with the single market.

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

3000 character(s) maximum

Transparency of media ownership and government interference

The transparent allocation of state advertising (including any rules regulating the matter) other safeguards against state / political interference 3000 character(s) maximum

Since 2015, numerous state institutions and state-owned and state-dependent companies have ceased to subscribe to or place advertising in critical media, cutting off an important source of funding. Liberal titles like *Polityka* and *Newsweek Polska*, have been boycotted altogether and seen revenue from state advertising drop by 98-100% since 2015. In 2020, the liberal daily *Gazeta Wyborcza* was the only major media outlet in Poland to be excluded entirely from a government sponsored public awareness campaign about COVID-19, denying hundreds of thousands of readers important health information.

At the same time, public advertising has been used to reward and fund media towing the party line. Studies show that spending in conservative outlets like Gazeta Polska, Wsiec, Radio Maryja and Nasz Dziennik – often owned by PiS allies - has increased significantly during the same period.

This carrot and stick approach has resulted in private media outlets such as TV station *Polsat* gradually softening its editorial approach towards the government in return for more favourable advertisement placement.

This “indirect sponsorship” has led to the creation of a pro-government media bubble, with newly established pro-PiS portals reaping the rewards to amplify nationalist rhetoric but display little adherence to journalistic standards.

The new media tax due to start on July 2021 on national media ostensibly aimed at taxing the tech giants but also hitting the majority of Polish websites and online services and broadcast media to bear the brunt of the tax on advertising revenues.

Meanwhile the **Office of Competition and Consumer Protection (UOKiK)**, is being used to investigate and arbitrarily rule against mergers that would strengthen independent media in favour of pro-government media leading to further deterioration of the investment climate designed to deter investments in independent media and encourage the owners to sell unprofitable companies. The state oil company, PKN Orlen, stands in the wings ready to purchase any media whose investors have had enough.

Rules governing transparency of media ownership and public availability of media ownership information 3000 character(s) maximum

The government plans to introduce laws on repolonisation and deconcentration of the media. Any restriction on EU companies investing in media would fall foul of EU law.

Foreign investment in print media is not currently restricted. Foreign companies are estimated to be invested in 40% of the country’s publications and own about 75% of distributed circulation. Current information suggests the “repolonisation” law would [limit](#) foreign-owned companies to a stake of between 15% and 30% in domestic media affecting Swiss-German Ringier Axel Springer Polska, which publishes Fakt, Newsweek and ONET.pl, as well as TVN24, owned by U.S media company Discovery.

A supplementary bill on “deconcentration” would limit the number of outlets that a single media group can own, breaking up larger groups such as Agora.

PKN Orlen and PiS business allies would likely be used to purchase the shares of departing foreign investors, muzzling critical publications and cementing further control over Polish media.

In November 2020 the government-controlled state oil giant PKN Orlen [purchased](#) a 65% stake in newsstand operator Ruch, which owns a network of 1,300 newspaper kiosks providing the company significant control over the infrastructure that distributes print media allowing it to raise prices and discriminate against critical titles.

On December 7, PKN Orlen purchased 100% of Polska Press from the German Verlagsgruppe Passau. Including over 20 regional dailies, 120 weekly magazines and 500 online portals across the country and indirect access to an estimated 7.4 million readers. Such an acquisition of a media company by a state energy firm is unprecedented within the EU.

PKN Orlen CEO Daniel Obajtek and many other top figures were appointed directly by the Ministry of State Assets, which is headed by deputy prime minister, Jacek Sasin.

A purge of critical voices is expected to follow ahead of 2023 local elections. Unlike TVP, no media law exists which could limit the scale or severity of editorial changes at Polska Press.

These tactics bare similarities to the [strategy](#) used by the FIDESZ in Hungary to push out German and Swiss owners and replace them with government-friendly oligarchs.

Framework for journalists' protection

Rules and practices guaranteeing journalist's independence and safety 3000 character(s) maximum

Journalists in Poland work in a hyper-polarised society in which threats and insults linked to their profession have become increasingly normalised. As media have become enmeshed in “culture wars”, social media vitriol has increasingly been targeted at journalists on both sides of the political spectrum. Many Polish editors report that their reporters are routinely vilified, discredited and delegitimised in smears in pro-government media or by PiS officials. Tried-and-tested accusations include journalists being dismissed as “anti-Polish”, “political activists” or “foreign agents”.

Gender-based insults against female journalists online and the publishing of unsubstantiated rumours and conspiracy theories about foreign publishers are also common. Pro-government mouthpieces and the public broadcaster TVP are used to spread propaganda and at times relentlessly attack PiS critics, broadcasting targeted smears against journalists and media houses, stoking the hostile climate.

While physical attacks on journalists are rare in Poland, physical attacks saw a sharp rise in 2020 particularly against journalists covering protests. Several were injured and some hospitalised after violence from both protesters and police officers. The police hit and shot rubber bullets at journalists clearly identifiable by ‘PRESS’ insignia. Heavy-handed behaviour by law enforcement culminated in the high-profile arrest of a photojournalist in November.

In October, Gazeta Wyborcza journalists Magda Koziół and Joanna Urbańska-Jaworska were [assaulted](#) by football hooligans while documenting a Women’s March protest in Warsaw, leading to one being hospitalised. Some TVP regional crews also faced threats and [damage to property](#) from protesters angry at its coverage.

In other protests police violence led to numerous injuries. 74-year-old photographer, Tomasz Gutry, was hospitalized after being [shot in the face](#) with a rubber bullet by police

from 10 metres away. Video [footage](#) shows police using batons to beat photojournalists pinned against a flight of stairs. [Renata Kim](#), a journalist from *Newsweek Polska*, was assaulted despite wearing a bright PRESS vest. Other photographers were [pepper sprayed](#). On November 23, police arrested award-winning photojournalist [Agata Grzybowska](#) as she documented a protest in Warsaw. She was [detained](#) for three hours for “violating the physical integrity” of a police officer before being released without charge.

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists 3000 character(s) maximum

Access to information and public documents 3000 character(s) maximum

Journalists are also subject to discrimination when it comes to access to information. Public officials connected to the ruling party routinely refuse communication or interviews with certain media. Reporters are often denied access to legally guaranteed and publicly held information without explanation. Critical reporting about officials or institutions is sometimes met with retaliation in the form of cancellation of accreditation or blocked entry to political events.

Representatives from investigative news platforms said these issues had worsened further during the COVID-19 pandemic, during which official requests for public health information routinely went unanswered, in violation of the Polish Freedom of Information Act. Communication with the Ministry of Health during the pandemic was also extremely challenging for journalists on both sides of the political spectrum.

Lawsuits and convictions against journalists (incl. defamation cases) and safeguards against abuse

Legal harassment of independent media in Poland also reached unprecedented levels in 2020 as PiS officials and their allies continued efforts to bury critical outlets under an avalanche of costly and time-consuming court battles. Foreign-owned publishers and publications have been targeted with vexatious civil defamation and libel cases. Questionable criminal investigations, though rarer, have also been brought disproportionately against watchdog media.

Many lawsuits are initiated by government agencies, state bodies or PiS politicians themselves, and are aimed at draining newspapers' financial resources. The vexatious nature of these cases means many can be classified as Strategic Lawsuits Against Public Participation (SLAPP), a form of legal harassment used to intimidate and silence public interest journalism. The number of these lawsuits has increased markedly under PiS.

Crucially, the continued independence of Poland's lower courts has blunted the worst of these legal attacks underscoring the clear connection between media freedom and judicial independence in Poland amid the EU's ongoing Article 7 procedure regarding pressure on courts and the rule of law.

By far the most targeted publication was the liberal daily Gazeta Wyborcza, a strong critic of Law and Justice. In 2020, the newspaper was [fighting](#) more than 50 different lawsuits¹. While most lawsuits are eventually won, the legal costs were a burden on resources and had a "chilling effect" on critical reporting. The newspaper also faces a significant number of pre-litigation requests - many drafted by specialized law firms – involving cease-and-desist letters, apology requests or extortionate demands for financial compensation.

During the COVID-19 pandemic the newspaper's journalists and photojournalists also faced dubious criminal charges for allegedly breaching lockdown rules, including reporter [Angelika Pitoń](#) and photojournalists [Pawel Rutkiewicz](#) and [Wojciech Jakub Atys](#).

Investigative news outlet ONET faces at least 8 different vexatious lawsuits many brought by state entities supported by government lawyers. The outlet has now been forced to hire private lawyers and while ONET can afford the costs many smaller news companies are forced to self-censor. Poland's biggest weekly, Polytika, told the mission his outlet was also facing consistent legal pressure.

The Polish Society of Journalists, estimates that around one in ten defamation cases were successful, indicating that lawsuits are used to harass government critics rather than achieve justice. And Poland's lower courts are, for now, still independent and rule in favour of upholding journalists' rights.

Other - please specify 3000 character(s) maximum

Since the 2016 purge of Poland's public broadcaster, TVP has been transformed into state media and voice of the PiS. News coverage on national TV and radio is deeply biased and opposition politicians and viewpoints are either absent or marginalised. Coverage of candidates during the 2020 presidential election was particularly partisan, creating an uneven playing field during elections.

Since that victory, PiS's agenda has been to fundamentally recalibrate and restructure the Polish media market in its favour. The 'repolonisation' and 'deconcentration' reforms are justified as overhauling a system which PiS claims bears the antecedents of Communist rule that long excluded right-wing voices and viewpoints. Policies are therefore couched in the language of "rebalancing" the country's media landscape in the name of greater pluralism. Behind this rhetoric, however, the true aim is to destabilise and weaken the influence of critical media while strengthening media aligned with its own nationalist agenda.

¹ The Media Freedom Rapid Response (MFRR) has [provided](#) €15,000 through its legal defence fund to help GW

This subtle but escalating assault on the freedom of the media is driven in part by PiS's populist ideology, which has instilled in its leaders the view that they alone represent the "will of the people" and wield a monopoly on truth. Control of a legislative majority is wrongly taken as a carte-blanche to undermine democratic norms and solidify its control over all areas of governance. This is said to be exacerbated by the fortress mentality of PiS leaders, who see critical journalism and investigative reporting as "oppositional", rather than part of a democratic system's necessary checks and balances.

The strategic use of state resources, regulators, and the discriminatory application of laws are designed to apply the maximum pressure on media while remaining just technically, inside the letter of EU law, while in practice riding rampant over the spirit of EU Law and the EU's fundamental freedoms under Article 11.

Inaction on the part of the EU will only further embolden the Polish government and other populist governments to adopt similar measures until the political make-up of the EU makes it no longer possible to act in defence of its fundamental values