

MEDIA FREEDOM AT A CROSSROADS:

Journalism in Poland faces uncertain future ahead of election

MISSION REPORT ON MEDIA CAPTURE
AND VEXATIOUS LAWSUITS IN POLAND
BY THE MEDIA FREEDOM RAPID RESPONSE



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IN POLAND BY THE MEDIA FREEDOM RAPID RESPONSE

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- ARTICLE 19 Europe
- European Centre for Press and Media Freedom (ECPMF)
- European Federation of Journalists (EFJ)
- Free Press Unlimited (FPU)
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INTRODUCTION

On 15 October Poland will hold parliamentary elections with the governing Law and Justice (PiS) party seeking a third term in office. The last few years have been a turbulent period for Poland with the war in neighbouring Ukraine making it a crucial geopolitical ally for Europe. At the same time, relations between Poland and the European Union are at an all time low following the Article 7 procedures against Poland for breaches in the rule of law. The election is being intensely fought between parties offering competing visions and the result is likely to be hugely consequential for Poland and its neighbours.

In parallel, concerns about media freedom in Poland have grown steadily since PiS came to power in 2015. While the country has long enjoyed one of the more robust and pluralistic media markets in central and eastern Europe, in recent years it has witnessed intensifying government efforts to assert control and influence over large sections of the media.

Following the 2020 Presidential elections, the Organization for Security and Co-operation in Europe (OSCE) monitoring report¹ declared that “the public broadcaster failed to ensure balanced and impartial coverage, and rather served as a campaign tool for the incumbent and frequently portraying the main challenger as a threat to Polish values and national interests”.

In 2022 and 2023 the European Commission’s Rule of Law Reports² noted that no progress had been made on:

- Ensuring that fair, transparent, and non-discriminatory procedures are adhered to for the granting of operating licences to media outlets,
- Strengthening the rules and mechanisms to enhance the independent governance and editorial independence of public service media taking into account European standards on public service media.

To explore this issue further and to assess the challenges facing Poland’s media and their ability to report on the government’s record in office and the competing political programmes on offer to the electorate, the partners of the Media Freedom Rapid Response (MFRR) organised a pre-election mission to Poland from 11-13 September and met with journalists, regulators, civil society groups, and government officials.

This report presents the key findings, explores how the combination of media capture and vexatious lawsuits have been used to pressure media, and outlines a set of recommendations for urgent reform.

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¹ <https://www.osce.org/files/f/documents/4/9/455728.pdf>

² https://commission.europa.eu/publications/2023-rule-law-report-communication-and-country-chapters_en

KEY FINDINGS

- The public media have been fully converted into a propaganda arm of the ruling PiS and acts not only to promote the interests of the party but also to attack and denigrate its critics.
- The private broadcast sector has come under intense pressure to ensure pliable media that are cautious of holding the government to account.
- The National Broadcasting Council, KRRiT, which serves as the national regulator for all broadcast media, is controlled by PiS allies and has abused its licensing powers to create business uncertainty and pressure private broadcasters such as TVN and RADIO TOK FM. It has further applied arbitrary and abusive financial penalties against broadcasters for their critical journalism to impose fear and self-censorship in newsrooms.
- Media pluralism was further compromised when the state-controlled oil company, PKN Orlen, took over the largest regional media company, Polska Press, in 2021 leading to the rapid replacement of the editors-in-chief with PiS supporting journalists. The editorial purge has led to a clear shift in editorial lines favourable to the ruling Law and Justice Party (PiS) ahead of upcoming elections.
- PKN Orlen's further acquisition of the country's largest press distributor, RUCH, provides it unprecedented control over access to the regional and local newspaper market.
- Local media are in an exceptionally precarious situation facing financial and distribution troubles, legal threats, and uneven competition against media backed by public authorities.
- Private media are denied access to state advertising income, weaponised by PiS to fund favourable media outlets and undermine independent journalism. The move exacerbates the financial pressure on media, particularly print, that are still developing new and sustainable income streams to support the digital transition.
- Polish media are subjected to one of the largest number of vexatious lawsuits, or SLAPPS - Strategic Lawsuits Against Public Participation - in the European Union. While judicial harassment of journalists is not new, since PiS came to power abusive litigation has become an integral strategy for weakening critical media.
- Most SLAPPS are initiated by politicians from the governing parties or state companies and public institutions and are therefore financed by public money.
- While Polish media have proved relatively resilient thanks to the significant presence of foreign owners, many fear that the hostile economic climate created in recent years may force many to reconsider their investments and withdraw from the market. Such a move is likely to have a devastating impact on media pluralism.
- The overwhelming majority of commentators met by the mission expressed deep concern that the country was at a crossroads and that four more years of the current policy would accelerate media capture and push Poland down the path to emulating the media environment in Hungary, Turkey, or Russia.

MEDIA CAPTURE AND ITS CONSEQUENCES

Media Capture, by government, is the abuse of state powers to assert control over the media sector through four key levers:

- ▶ The political take-over of public media and conversion into state media that promotes the party of government
- ▶ The political take-over of media regulators and the abuse of regulatory powers to pressure independent media to provide pliant journalism
- ▶ The take-over of private media by owners aligned to the governing party, either through political ideology or through mutual financial interest
- ▶ The discriminatory distribution of state funds, primarily advertising, to reward media government cheerleaders

Today Poland displays all four of these features.

POLITICAL CONTROL AND WEAPONISATION OF PUBLIC MEDIA

In December 2015 following their election victory, the Law and Justice (PiS) government swiftly passed a law³ enabling it to dismiss and replace members of the governing and supervising bodies of public media. This placed public media under the direct control of PiS appointees and saw a rapid clear out of journalists in exchange for government supporters.

Members of the National Media Council (NMC), who since 2016 oversee appointments to the boards of public media, are themselves appointed by parliament. In 2022, the Sejm appointed three new members, all government supporters, while the remaining two were appointed by the President from a list provided by opposition parties. The three to two majority ensures PiS control of the NMC for another five years.⁴

Today public media is described by most commentators as a PiS public relations company at best and, at worst, a PiS propaganda arm. All agree that it suffers from heavy levels of government bias and includes teams dedicated to attacking and delegitimising government critics. The OSCE election report quoted earlier provides further evidence to this view.

Hanna Machińska, former deputy ombudsman for civil rights in Poland told the mission that “**Public media is not serving the public at all,**” adding that people were offered parallel realities or “**two drastically different pictures depending on which media people follow,**” that was exacerbating the polarisation of society.

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³ https://www.epra.org/news_items/poland-act-on-the-national-media-council

⁴ <https://ipi.media/poland-elections-to-pis-controversial-regulator-underscore-media-capture-challenges/>

Moreover, according to monitoring reports by the National Broadcasting Council, KRRiT, 80% of broadcast time of politicians is provided to the ruling coalition, of which 73% for PiS politicians and 7% for other coalition members. Opposition parties share the remaining 20%. The reports do not assess the quality of the coverage.⁵

Beyond these statistics, the mission heard that Telewizja Polska (TVP) and Polskie Radio (PR) provide systematic bias in favour of government leaders. While PiS speeches are broadcast in full length, this is never the case with speeches of opposition figures. Instead, TVP commentators systematically attack opposition candidates and critical journalists as liars and traitors. Examples of TVP bias and propaganda cited include alleging that Donald Tusk, leader of Civic Platform, impeded the investigation into the Smolensk tragedy⁶ and repeatedly claiming he is acting for German interests, and accusing independent journalists of spreading fake news.⁷

The most egregious and tragic example of propaganda took place in December 2022 when public Radio Szczecin smeared the opposition Civic Platform with false allegations of covering up a child abuse scandal. The campaign led to the identification of the child victim and his eventual suicide.⁸

The general bias of public TV and Radio is not denied by PiS and its supporters. The journalists' association Stowarzyszenie Dziennikarzy Polskich (SDP) informed the mission that the transition from a "Public Media" serving the whole population, to a "National Media" promoting a strictly conservative view, was a necessary counter balance to a market, they claimed, was dominated by "left wing" and "liberal" views.

The government's grip over TVP is further ensured by the direct subsidies paid each year. In 2020, TVP received a staggering 1.95 billion PLN and in 2022 1.71 billion PLN in direct Treasury payments as compensation for the shortfall in subscription fees of only 330 million PLN. KRRiT's report to parliament in May 2023 estimated that only a third of households pay the licence fee.⁹ Interestingly, the draft budget for 2024 makes no provision for subsidising TVP at all.¹⁰

The combination of political control over appointments and financial control over the budget fortify the government's iron grip over TVP which has long lost any semblance of public service values. Only root and branch reform of the governance structures and financing mechanism can return TVP to its public mandate.

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⁵ figures for the second quarter of 2023

⁶ https://wiadomosci.tvp.pl/64143457/szokujace-skutki-prorosyjskosc-tuska#S.embed_link-K.C-B.1-L.1.zw

⁷ <https://www.tvp.info/72479297/fake-news-patryka-michalskiego-z-wp-ws-szefa-policji-gen-jaroslawaszymczyka-w-tle-strzelanie-do-gornikow-pod-jsw>

⁸ <https://www.politico.eu/article/poland-state-media-under-fire-politician-son-suicide/>

⁹ https://www.senat.gov.pl/gfx/senat/userfiles/_public/k10/dokumenty/druki/1000/1002.pdf

¹⁰ <https://www.money.pl/podatki/co-z-budzetem-po-wyborach-zapomnieli-o-rekompensacie-dla-tvp-6940419921914464a.html>

POLITICAL CONTROL AND WEAPONISATION OF MEDIA REGULATORS

In 2015 Maciej Świrski, the current chair of the National Broadcast Regulator KRRiT, publicly described daily newspaper Gazeta Wyborcza as the “death star” and major broadcaster TVN as “Mordor” before recommending that they could be finished off by removing their advertising income and charging them with lawsuits.¹¹

In September 2022, Świrski was appointed to KRRiT by the Sejm, where he holds overall responsibility for the issuing of broadcast licences, conducting investigations for alleged breaches of the broadcast code and determining subsequent fines.

KRRiT has five members, two of whom are appointed by the Sejm, one by the Senate, and two by the President.¹² The mission met with Professor Tadeusz Kowalski¹³, co-author of Poland’s 1992 Broadcasting Act and considered to be the only KRRiT Council member not aligned with the government. He was appointed by the Senate in August 2022.

Approval of broadcast licences requires a two thirds majority of Council members, four out of five votes in favour. Investigations into and rulings on complaints should be a collegiate decision of all Council members. However, according to Kowalski, it is conducted solely by the chair without the involvement of other Council members. The chair is empowered to decide on the level of fines.

KRRiT has consistently delayed decisions on licences for TVN, TVN24, TOK FM, and others, often waiting until the very last moment before confirming the licence. Such practice is a breach of the rules¹⁴ and creates economic uncertainty for businesses.

In April 2022, KRRiT was criticised by a Warsaw court for failing to meet its legal obligations in providing timely decisions on licence renewals.¹⁵ Despite this ruling, the practice continues.

TOK FM, for example, had to wait seven months before their application was approved on 11 September, less than two months before it was set to expire on 3 November 2023. KRRiT is required to provide responses within two months of the application.¹⁶

TVN is still waiting for their licence renewal, ten months after their application in December 2022. Kamila Cerań, editor-in-chief of TOK FM predicted that **“if PiS remains in power, the TVN licence will not be renewed.”**

Kowalski told the delegation that his efforts to put TVN and TOK FM’s licence applications on the agenda have been routinely rejected by the Council. He added that PiS is able to impose a high level of influence over KRRiT decisions.

¹¹ <https://wyborcza.pl/magazyn/7,124059,30013918,jak-wykonczyc-wyborcza-i-tvn-swirski-i-koledzy-mieli-pomysl.html>

¹² <https://www.gov.pl/web/krrit-en/krrit-board>

¹³ Kowalski is also former member of TVP Board and authored annual reports on state advertising

¹⁴ <https://cmpf.eu.eu/media-pluralism-monitor-2023/>

¹⁵ The Warsaw provincial administrative court found that “there was inaction on the part of the authority, which had the character of a gross violation of law”.
<https://cmpf.eu.eu/media-pluralism-monitor-2023/>

¹⁶ <https://www.mfrr.eu/poland-international-support-for-tok-fm-amidst-regulatory-pressure/>

Ceran added that despite the renewal of TOK FM's licence, they fear a stream of KRRiT investigations and fines in the future. In April 2023, TOK FM was fined 80,000 PLN (approx €17,800) for “inciting hatred” when a commentator claimed that certain quotes from new history textbooks reminded him of language used in Nazi youth textbooks.¹⁷

Other recent KRRiT investigations include:

- In December 2022, KRRiT launched an investigation against TVN for “propagating false information” and “threatening public security” with their documentary critical of a government report on the Smolensk air tragedy.¹⁸
- In March 2023, KRRiT started an investigation into TVN's documentary on child abuse in the church and claims of negligence by former Pope John Paul II.¹⁹
- In February 2023, KRRiT launched proceedings against Radio Zet for “promoting false information” and “threatening public security” after a reporter's tweet claimed Ukraine's President Zelensky had been ushered through Poland by US secret services without the knowledge of Polish authorities.²⁰ Radio Zet was fined 476,000 PLN which it appealed against on 27 September.²¹
- In July 2023, KRRiT launched another investigation into TVN's reporting, this time on police actions against a woman who was admitted to hospital after taking an abortion pill.

Maciej Świrski has not hesitated to put his 2015 advice to PiS into action in launching investigations and financially penalising independent media as KRRiT chair.²²

While KRRiT is increasingly investigating complaints against private broadcasters, complaints against the public broadcaster are repeatedly dismissed. After numerous complaints about homophobic content in TVP were ignored by KRRiT, the Basta Foundation took the complaints to a Warsaw court which condemned KRRiT's failure to investigate as a gross violation of the law.²³ Meanwhile, Świrski has refused to rule on Radio Szczecin's exposing the identity of a victim of child abuse until the public prosecutor's office has completed its investigation.²⁴

The lack of transparency and clear process for managing complaints and investigations further empowers the chair to act without accountability. Świrski is at liberty to act (or not) at his own discretion and without explanation on decisions that can decide the future of teams of journalists across the country.

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¹⁷ <https://ipi.media/poland-tok-fm-fine-sparks-renewed-concerns-about-regulatory-capture/>

¹⁸ <https://ipi.media/poland-media-regulator-probe-into-tvn-documentary-sparks-renewed-licence-concerns/>

¹⁹ <https://ipi.media/poland-government-ramps-up-pressure-on-critical-media-as-elections-loom/>

²⁰ <https://ipi.media/poland-government-ramps-up-pressure-on-critical-media-as-elections-loom/>

²¹ https://www.press.pl/tresc/78472,nadawca-radia-zet-odwolal-sie-od-kary-nalozonej-przez-Swirskiego_-to-kara-najwyzsza-w-historii-polskiej-radiofonii

²² <https://www.pap.pl/aktualnosci/news%2C1599623%2Cszef-krrit-wszczal-postepowanie-ws-materialu-tvn-o-pani-joannie.html>

²³ <https://natemat.pl/490391,tpv-przegralo-w-sadzie-z-aktywista-lgbt-w-sprawie-zamieszana-krrit>

²⁴ the complaint was taken by former KRRiT member Krzysztof Luft.

<https://www.wirtualnemedi.pl/artykul/maciej-swirski-krzysztof-luft-radio-szczecin-kara-smierc-syn-poslanka-magdalena-filiks>

Krzysztof Luft, member of the National Media Council told the mission that **"if PiS remains in power, nothing will change with public media. No doubt they will also try to take over private media. We can also expect a different licensing policy, preventing private media from operating and developing"**.

Concern over political capture is not limited to media regulators but to any regulator whose decision could have an impact on the functioning of media.

In 2021, the Office of Competition and Consumer Protection (competition authority), UOKiK, was criticised for blocking the purchase of Radio Eurozet by Agora claiming the merger would create a dangerous duopoly in the radio market. In the same year, it was further criticised for its swift approval of PKN Orlen's take over of Polska Press.

Two years later, Agora led a successful appeal against the decision when the Appeal Court upheld an earlier ruling that UOKiK's decision had no legal basis since the duopoly is not defined in the law.²⁵ An appeal against the purchase of Polska Press was finally rejected by the courts.

Media regulators in Poland have been targeted for political control enabling the government to abuse the powers of licensing and investigations into complaints to intimidate, threaten, and coerce independent media. While many examples of robust media coverage remain, the chilling effect across the media scene is inevitable, neutering criticism and weakening media's ability to hold the government to account.

MEDIA OWNERSHIP, MEDIA PLURALISM, AND "REPOLONIZATION"

The Media Pluralism Report (MPM) measures Poland's media plurality risk at 71%. While high, this is lower than Hungary (86%), Czechia (84%), and Romania (85%)²⁶. One of the distinguishing factors of the Polish market is that, unlike other CEE countries, there remains a strong presence of foreign investors including the Swiss German Ringier/Axel Springer, the German Bauer, and the US Discovery ownership of TVN.

PiS have called for laws to reduce foreign investment and for the "repolonization" of Polish media. The so-called Lex TVN law from 2021 was designed to force the US Discovery to sell TVN by outlawing owners from beyond the European economic area from owning over 50% of a broadcaster. The law was eventually vetoed by President Andrzej Duda following US pressure.

Bogusław Chrabota, editor-in-chief of Rzeczpospolita, dismissed "repolonization" as nationalistic populism and insisted that it is foreign investment that allows Polish media to maintain its independence from the government. Rzeczpospolita is a publicly listed company with Polish, Dutch, and Swiss investors.²⁷

²⁵ <https://wyborcza.biz/biznes/7,177151,29505835,agora-wygrywa-z-uokik-teraz-moze-kupic-radio-zet.html>

²⁶ <https://cmpf.eui.eu/media-pluralism-monitor-2023/>

²⁷ <https://www.marketscreener.com/quote/stock/GREMI-MEDIA-S-A-47418863/company/>

Łukasz Lipiński, deputy editor-in-chief of Polish owned Polityka Weekly, said: ***“The notion that Poland’s media is controlled by foreign capital is nationalist propaganda used to justify government takeover of media and monopolise public debate.”*** Lipiński stressed that no media market or submarket is dominated by foreign capital, adding that only one in the top five internet portals, Onet, and only one of three national broadcasters, TVN, are foreign owned. ***“While foreign entities are also present in both the print and radio sectors, they do not have monopoly positions.”***²⁸

PiS succeeded in one significant shift in the media market by using the state-controlled energy giant, PKN Orlen, to purchase Polska Press from the German Passauer Neue Presse in December 2020. Despite the purchase putting 90% of regional media into state hands, UOKiK quickly approved the deal. The Human Rights Ombudsman, Adam Bodnar, appealed against the merger on media pluralism grounds arguing that it was an effective nationalisation of the regional media to ensure pro-government news coverage. The courts eventually rejected the appeal in part because there was no established method to measure media pluralism. 14 editors-in-chief were swiftly replaced with pro-government journalists.²⁹ The editorial purge has led to a clear shift in editorial lines favourable to the ruling Law and Justice Party (PiS) ahead of upcoming elections, making it one of the more flagrant examples of media capture in Europe.³⁰

The move was reminiscent of Putin’s use of Russia’s energy giant Gazprom in April 2001 to take over the country’s largest media company, Media Most, and its independent broadcaster NTV whose coverage had long criticised the Kremlin.

PKN Orlen had also acquired the RUCH newspaper distribution chain giving it further leverage over the print sector. Andrzej Andrysiak, head of the Association of Local Newspapers complained that up to 25 of its local papers had lost contracts with RUCH since the takeover and that access to independent news at the local or regional level was increasingly under threat from the heavily subsidised Polska Press on the one side and local government publications on the other. The association reported that there are only 150-160 independent local newspapers serving 308 counties in Poland, meaning over half of counties do not have access to private local print media. ***“Readers there can choose between Polska Press and local government’s outlets,”*** added Andrysiak.³¹

The mission also heard anecdotal examples of independent newspapers such as Gazeta Wyborcza not being available at PKN Orlen petrol stations, or being deliberately concealed from the public. Hanna Machińska said that ***“Gazeta Wyborcza is missing at many small-town newspaper outlets. But you can find antisemitic magazines.”***³²

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²⁸ Onet is owned by Ringier Axel Springer, also present in the print market. TVN is owned by US Discovery. Bauer Group owns the largest radio company, RMF and also many magazines. for a detailed overview of ownership in Poland go to [Poland - Euromedia Ownership Monitor \(media-ownership.eu\)](https://www.euromedia-ownership.eu/)

²⁹ <https://ipi.media/poland-media-capture-fears-confirmed-in-new-report-examining-pkn-orken-takeover-of-polska-press/>

³⁰ <https://hfhr.pl/aktualnosci/-od-prasy-regionalnej-do-orken-press-sytuacja-w-mediach-nalezacych-do-polska-press-raport>

³¹ Authorised interview with Andrzej Andrysiak, 11.09.2023

³² Authorised interview with Hanna Machińska, 11.9.2023

The allegations are hard to substantiate and Karol Zgódka, Director of the Department of Media and Creative Sectors at the Ministry of Culture, noted that selectively removing newspapers from sale would be in breach of the Press Law.

The TV market is dominated by three players, TVN (40% of audience), Polsat (30%), and TVP (24%). TVN is owned by the US Discovery channel and produces consistently independent news coverage. TVP is state controlled. Polsat Plus Group, meanwhile, is owned by Poland's second richest businessmen, Zygmunt Solorz-Zak.³³ The group is also heavily invested in the energy industry (including brown coal, wind farms, and green hydrogen) and is currently rolling out 5G across the country,³⁴ making it heavily dependent on state contracts.

Many commentators, including Hanna Machińska, complained about the lack of access to independent news particularly in Eastern regions. A frequently noted example was the upgrading of broadcast delivery standards completed in 2022 that required new household decoders. While all private broadcasters were required to make the transition, TVP has continued to transmit on the old system. According to a joint statement by private broadcasters, this discriminatory action has resulted in around 2.5 million viewers unable to access Polsat, TVN, TV Puls, and Kino Polska.³⁵

The Polish media scene is distinct from other CEE countries due to the continued presence of foreign investors who, because of the larger size of the market, are still able to generate returns on their investments. Their presence provides resilience to political interference that is lacking in other countries. While this has sustained media independence until now, many journalists fear that a third victory for PiS will persuade foreign investors that Poland is no longer a good investment destination. Their withdrawal would likely have a devastating impact on media pluralism.

THE DISCRIMINATORY ALLOCATION OF STATE ADVERTISING

The misuse of state advertising to fund pro-government media and starve independent media of vital income is a well-documented problem across many central and eastern European countries. Poland is no exception.

According to studies conducted by Professor Kowalski based on Kantar Media data, since 2015 state advertising has been steadily withdrawn from independent media and directed towards the public media and PiS supporters such as Sieci magazine.³⁶

The Supreme Audit Office (NIK) studies confirmed that state advertising has grown rapidly since 2017 with public media and Polsat the great beneficiaries. TVN had enjoyed a 10% share of state advertising in 2017 but has received none since 2019.³⁷

³³ https://en.wikipedia.org/wiki/Zygmunt_Solorz-%C5%BBak

³⁴ <https://biznes.interia.pl/giedy/aktualnosci/news-grupa-polsat-plus-podsumowuje-i-kwartal-2023-roku,nId,6779409>

³⁵ <https://tvn24.pl/biznes/z-kraju/wspolne-oswiadczenie-nadawcow-komercyjnych-tvn-polsat-tv-puls-i-kino-polska-5763526>

³⁶ <https://www.wirtualnemedial.pl/artikul/panstwowe-spolki-wydatki-reklamowe-do-kogo-ida-tvp-media-braci-karnowskich-gazeta-polska-media-tomasz-sakiewicz>

³⁷ <https://wyborcza.pl/7,75398,29960035,ogromna-kasa-dla-przyjaznych-wladzy-mediow-nik-sprawdzil-wydatki.html>

According to Sejm member Hanna Gill-Piątek “the channelling of hundreds of millions of zlotys by companies and foundations subordinate to the government in the form of advertisements to media outlets favourable to the current government is a violation of the constitutional principle of equality of elections.” With the subservient role of the National Broadcasting Council and the Constitutional Court she adds that “There is no one to control it anymore.”

During the COVID-19 crisis, the government published public health warnings in all the national media except the country’s leading newspaper, Gazeta Wyborcza.

Rzeczpospolita lost its government advertising at the end of 2022 after rejecting overtures to soften its journalism. According to editor-in-chief Bogusław Chrabota, this represented 7% of their advertising income.

In the weekly print market, no government adverts can be found in Polityka (90,000 circulation) or Newsweek (60,000 circulation), while the PiS supporting Sieci with only 30,000 circulation, is full of government ads.

Independent media are not only denied access to state advertising but they are also denied access to public officials and information. PiS cancelled an election debate due to be hosted by TVN. Meanwhile, requests for information and interviews are routinely refused to independent media.

Piotr Stasiński, deputy editor-in-chief of Gazeta Wyborcza, said that “**when we ask questions in preparing an article - they don’t respond. Then when we publish, they sue us. So they ignore the right to information and then they legally harass us**”.

The discriminatory allocation of state advertising funds is designed to punish government critics, reward its supporters, and establish a pliant media culture. PiS have employed this tactic ruthlessly in recent years to create market barriers to investors, cut revenue for independent media, and to manipulate media coverage to provide PiS with an unfair electoral advantage.

VEXATIOUS LAWSUITS AND THE LEGAL INTIMIDATION OF MEDIA

Strategic Lawsuits against Public Participation (SLAPPs) are abusive legal actions initiated by powerful and wealthy individuals - often affiliated with politics or big business - to shut down their critics and therefore evade public scrutiny. These damaging lawsuits chill free speech and transparent debate on the issues of public interest and ultimately threaten democracy. Poland is among the EU countries with the largest number of SLAPPs and was crowned the “SLAPP Country of 2022” by the Coalition against SLAPPs in Europe (CASE).³⁸

The judicial harassment of journalists and activists is not a new phenomenon in Poland and can be traced back to the 1990s when newly established media faced libel suits, publication bans, and gag orders. This happened despite enacting a regulation saying that courts have to demonstrate public interest grounds in order to ban a publication. While the regulation remains in place, our interlocutors call it “a dead letter law”.

Since PiS came to power there has been a stark increase in lawsuits and pre-trial legal letters targeting journalists and media outlets critical of the government and exposing the abuse of power. The government has gradually incorporated SLAPPs into its arsenal of tactics to weaken independent media. The overwhelming majority of legal actions are initiated by politicians affiliated with the ruling alliance, including government ministers, state-owned companies, and even the public broadcaster.

Poland’s second-largest daily Gazeta Wyborcza is facing around 100 lawsuits. For the last five years, Gazeta Wyborcza has had a policy of preparing its legal defence of articles as they write them. Many other independent outlets face dozens of lawsuits. These statistics - even if just a partial snapshot of the full picture - are already staggering compared to other countries in Europe³⁹.

Filing multiple lawsuits on the same issue or even on behalf of the same person is also a worrying practice. Zbigniew Ziobro, leader of Sovereign Poland and part of the ruling coalition, sued Gazeta Wyborcza for the same article as a Minister of Justice, as a Public Prosecutor General, and as a natural person. Filing multiple lawsuits, which have to be defended separately, is a classic form of abusive litigation designed to further drain the resources of the targeted media.

Independent journalists and their outlets are increasingly targeted for their hard-hitting reporting, be it investigating the Kremlin’s influence on the Polish political landscape, coordinated smear campaigns orchestrated directly from the Ministry of Justice, or the humanitarian crisis on the Polish-Belarusian border. Ewa Siedlecka, a journalist with Polityka weekly, was hit with a SLAPP for writing a piece which criticised a smear campaign against judges critical of the government’s judicial reforms. In the judgement against the journalist the court stated that **“the aim of the trial was not to determine the truth but to examine journalistic practices”**.⁴⁰

³⁸ <https://www.the-case.eu/>

³⁹ Only Croatia has a comparable level of SLAPPs in the EU:

<https://www.hnd.hr/eng/cja-s-poll-at-least-951-active-lawsuits-against-journalists-and-media>

⁴⁰ <https://www.polityka.pl/opolityce/2145340,1,forma-trolli-w-ministerstwie-sprawiedliwosci.read>

SLAPPs taken by municipal governments against local media are poorly reported on and often fall under the radar of media support groups. Costly legal proceedings are a particular challenge for poorly resourced media.

Critical media are also increasingly served with pre-litigation requests for corrections. The Helsinki Foundation for Human Rights noted that local media are seeing more motions for corrections in the context of the electoral campaign. There is no clear distinction between correction and clarification in the law, enabling an individual to use repeated clarification requests to harass an outlet. Under Polish law, a media outlet has copyright over a journalistic piece, not its author, yet journalists remain liable for its content and are routinely sued together with the publisher. This can be highly problematic especially when editors introduce a headline that becomes subject to legal proceedings.

While around Europe defamation is increasingly subject to civil law, in Poland defamation remains a criminal offence, punishable with a prison sentence. Moreover, Article 212 of the Penal Code allows for individuals to bring criminal proceedings against a media, journalist, or activist which is an exceptional situation in the EU. Proposals to reform these laws have been discussed over the years but no government made it a priority. These provisions, used less frequently before PiS came to power, are now being actively revived.

The mission heard reports of politicians using an accelerated court procedure under the electoral law to intimidate journalists. The “24 hour response rule” is designed to allow politicians to demand instant retractions or corrections for demonstrably unfounded statements made during the election campaign. This has been used at least twice against Gazeta Wyborcza who were forced to defend their journalism in court the morning after the complaint was filed, before the judge dismissed the cases.

Meanwhile, the ongoing, often drawn-out court proceedings initiated in recent years continue to create a chilling effect on public interest journalism. Those reporters who are facing multiple lawsuits recall a sense of weariness and are concerned that repeated attempts to question the accuracy and reliability of their work will ultimately affect their credibility.

Journalist Grzegorz Rzeczkowski, who is facing several lawsuits for his investigations into Kremlin influence on Polish politics, highlighted the emotional strain and chilling effect on anyone seeking to cover Russian interests in Poland. ***“Each suit is intended to scare and silence me. However, the lawsuits are not about entire texts or the situations I described, but about small fragments from the article. The fact that I am being sued by Russians associated with the Kremlin should make the public concerned”.***

One of the essential factors that help counter SLAPPs is an unbiased and independent judiciary. This has been crucial in enabling the Polish media to win the vast majority of their cases in court.

However, the sweeping judicial overhaul led by the current government weakens judicial independence and undermines the rule of law. The government enjoys direct control over the Constitutional Tribunal and the National Council of the Judiciary (KRS) which, in turn, is responsible for appointing judges. Lawyers that the mission met with expressed growing concern that this may soon impact their cases and their ability to get a fair judicial hearing.⁴¹ They also said that Polish judges are not always adequately trained on defamation and fail to consider, for example, the case law of the European Court of Human Rights.

MEETING WITH THE MINISTRY OF CULTURE

The mission requested meetings with official government and institutional representatives including with the Minister of Justice, the Minister of Culture, the Director General of the public broadcaster TVP, the chairman of the National Broadcasting Council (KRRiT), and representatives from the Law and Justice (PiS) party. Regrettably they were all unsuccessful.

We were however grateful to be able to meet and take up our concerns with Krzysztof Zgódka, Director of the Department of Media and the Creative Sectors in the Ministry of Culture.

Mr. Zgódka could not comment on the quality of public media nor on decisions of the regulator, simply insisting that both KRRiT and the National Media Council were independent and that the ministry would not interfere in their policies. He also noted that any newspaper kiosks that refused to sell certain newspapers would be in breach of the press law. Looking to the future he said the Ministry plans to tackle disinformation and harmful content for the youth.

GIVING THE LAST WORD TO POLAND'S JOURNALISTS

“Defending basic journalistic standards takes a huge amount of time that should be secured for reporting on public interest issues.”

- Łukasz Lipiński, editor-in-chief of Polityka.pl.

“Poland is not yet Hungary. But the dismantling of democratic institutions and undermining of independent media weakens the system’s checks and balances and heavily erodes political accountability. Our investigations into high-ranking politicians where we expose abuse of power, inaccuracy, or even lies have little impact. PiS managed to shape the public debate in a way that any investigation into their actions is perceived by their supporters as biased, inaccurate or fake. In this way PiS can afford ignoring such revelations and when we prove something - nothing changes.”

- Magdalena Chrzczonowicz, deputy editor-in-chief of OKO.press.

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⁴¹ In August 2023, the general prosecutor, unhappy with the conviction of two TVP commentators for defaming an activist, filed an ‘extraordinary complaint’ to the supreme court where government appointed judges can overturn the conviction. <https://wiadomosci.onet.pl/kraj/ziobro-rusza-na-ratunek-pracownikom-tvp-ruch-po-skazaniu-ogorek-i-ziemkiewiczza/kqb0cm1>

"I'm pessimistic about a third PiS government. They will restrict freedom of speech. Media outlets will be punished, bought by political business allies, or closed. I'm preparing for the worst-case scenario, we work under very hard circumstances."

- Grzegorz Rzeczkowski, Newsweek

"Years ago I felt journalists should not be activists, but when democracy is at stake then journalists must defend democracy. Does that make us activists?"

- Aleksandra Sobczak, editor-in-chief of Gazeta Wyborcza.

CONCLUDING RECOMMENDATIONS

Public broadcasting requires a root and branch reform of both the governance structures and financing mechanism to guarantee political independence and the fulfilling of the public service remit. In particular:

- The appointment process for management and governing bodies must be depoliticised with candidates appointed through transparent, open, and non-discriminatory procedures on the basis of their professional skills and experience with guarantees of political neutrality.
- PSM funding must be conducted through arms-length decision making ideally through a form of TV licensing to ensure that the funds are free of political interference. Any government supplementary allocation should be taken in transparent decision making, that guarantees stable long term financing, adequate to fulfil the public service mission.

Media regulators must be able to operate fully independent of government in line with Article 30 of the EU's AudioVisual Media Services Directive that demands regulators are legally distinct from government and functionally independent of their respective government. Reform of KRRIT should include:

- Depoliticising the appointments process to ensure candidates are appointed through transparent, open, and non-discriminatory procedures on the basis of their professional skills and experience with explicit guarantees of political neutrality.
- Ensuring all processes with respect to licensing and investigations into breaches of the code are subject to clear and transparent procedures and collegiate decision making. Failure to meet those procedures, such as undue delays in licensing decisions, or manifestly politicised investigations, must have clear consequences for those responsible with commensurate compensation provided to the broadcaster affected.
- All decisions must be duly justified in line with the regulatory powers of the office and broadcast code.
- All investigations into alleged breaches of the broadcast code must be conducted by the full board and not placed in the hands of the Chair alone. Investigations should follow due process allowing the accused to present its arguments. Decisions should be accompanied by detailed justifications. There should be an appeals process for condemned media including the option to revisit rulings in the courts in line with European standards of free expression.
- Information should be publicly available on the handling of all complaints received with detailed reports issued at least annually on all decisions with due justification.

Media pluralism must be ensured through a diverse range of media and owners that operate independently of the state with strong guarantees of editorial independence. Recommended measures include:

- PKN Orlen should be required to immediately divest its media investments and state controlled companies, outside of the public media framework, should be barred from owning media.
- A media plurality test should be developed to measure the impact of transfers of ownership in the media market on pluralism and to guarantee media pluralism.
- The government must guarantee a level economic playing field for all media and end practices that discriminate against, and create a negative investment climate for, private media operating independent of government.
- Media should guarantee minimum levels of editorial independence and ethical standards that protect the newsroom from external interference and ensure journalistic integrity.

The discriminatory use of state resources to manipulate the media market must end.

- Public funds and state advertising must be distributed according to transparent, objective, proportionate, and non-discriminatory criteria through open, proportionate, and non-discriminatory procedures.
- Annual reports should be issued on the distribution of all state advertising to media. This should include details of revenue from contracts with state bodies received by companies that belong to the same business grouping as media companies
- The awarding of all public contracts to companies whose beneficial owners also own media must be subject to particularly careful scrutiny and safeguards to ensure that the awarding of such contracts are not used to influence editorial content of those media.

Vexatious lawsuits

- The judicial appointment procedure must be transparent and independent in practice and in line with European norms and standards.
- The judiciary must be properly trained on the use of strategic lawsuits and mechanisms should be put in place allowing for the early dismissal of evidently vexatious cases and a requirement for claimants to cover the cost of proceedings in such instances.
- Defamation must be decriminalised and become a matter for civil law only.
- The government must end the sponsoring of self evidently vexatious lawsuits taken against media or other actors, for legitimate criticism and free expression.

ENDS

The mission was organised by the Media Freedom Rapid Response (MFRR) and the delegation comprised of representatives of ARTICLE 19 Europe, the European Centre for Press and Media Freedom (ECPMF), the European Federation of Journalists (EFJ), Free Press Unlimited (FPU), and International Press Institute (IPI).

The mission took place in Warsaw between 11 - 13 September and met with a wide range of editors, journalists, regulators, civil society groups, lawyers, the Office of the Commissioner for Human Rights, and the Ministry of Culture. We would like to thank all those who took their time to meet with us and share their experience without which this report would not have been possible.



**MEDIA FREEDOM
RAPID RESPONSE**