

Freedom of Expression

1. Harassment of journalists and others who contribute to public debate

- 1.1. Legal harassment. Journalists from independent media are increasingly facing legal harassment. From 2015 to 2021, "Gazeta Wyborcza" (one of the leading daily newspapers) alone was targeted with at least 73 legal actions, while many more legal actions have been initiated against several other outlets.¹ Many of them were brought by public institutions, state-owned companies and public officials. Legal harassment of journalists has taken different forms, including: vexatious civil lawsuits, criminal defamation lawsuits (number of final conviction for criminal defamation through media has increased from 70 convicted in 2015 to 118 in 2018)², sometimes also other criminal law charges (e.g. various criminal insult laws, such as insulting a constitutional body,³ insulting religious feelings,⁴ insulting Polish nation⁵). What is more, legal harassment directed against persons seeking to exercise the freedom of expression is not only limited to journalists but affects also many others who contribute to public debate, such as activists, academics, artists or whistleblowers. A particularly worrying incidents include prosecuting for modifying national or religious symbols, e.g. for adding rainbow colours or women's symbols.⁶ Another troublesome trend is the use of legal actions to chill historical debates about the World War II and the Holocaust, among others by initiating criminal proceedings for 'insulting Polish nation' for referring to Poles' role in the Holocaust⁷ or filing civil lawsuits against historians exploring the topic.⁸ Some of these legal actions have been initiated by (or with legal assistance of) non-governmental organisations who are supported by public funds, for example "Institute for Combating Anti-Polonism", funded by the Justice Fund administrated by the Ministry of Justice.

¹ [Report: Attacks on Independent Media in Poland 2015-2021](#), Gazeta Wyborcza, 15.06.2021.

² Based on the Ministry of Justice replies to the HFHR freedom of information requests (replies dated 20.03.2019 and 19.12.2019); on 26 January 2022, the Ministry of Justice informed the HFHR that newer data on final convictions are still not available.

³ E.g.: [Prokuratura wszczęła śledztwo w sprawie tekstu „GW” o prezes TK](#), Press, 10.01.2018; [Polish defence minister seeks charges against journalist](#), International Press Institute, 12.07.2017.

⁴ E.g. [Wysokie Obcasy Editor-in-chief Aleksandra Klich-Siewiorek Questioned over a Cartoon](#), Council of Europe Platform for the Protection of Journalism and Safety of Journalists, 25.06.2021.

⁵ E.g. [Satire journalist faces jail for 'insulting Polish nation'](#), International Press Institute, 23.05.2018.

⁶ E.g. [White Eagle over the rainbow. Minister wants investigation](#), TVN24, 11.07.2018; [Poland: Arrest Over Virgin Mary's Rainbow Halo](#), Human Rights Watch, 8.05.2019; [Investigation opened after women's symbol put on Polish flag](#), ABC News, 16.12.2021; [Pro-women rights poster does not insult WW2 resistance symbol: Green Party activists' acquittal becomes final](#), HFHR, 22.02.2018.

⁷ [Poland Drops Case Against Journalist Who Wrote That Poles Participated in the Holocaust](#), Haaretz, 32.02.2021;

[Poland Drops Case Against Holocaust Scholar Who 'Insulted the Nation'](#), Haaretz, 27.11.2019;

⁸ [Polish appeals court overturns ruling against Holocaust historians](#), Guardian, 16.08.2021.

Recommendations:

- Cease any forms of legal harassment of journalists and others who contribute to public debate
- Adopt legislation to protect from vexatious legal actions (including Strategic Lawsuits Against Public Participation, SLAPPs), among others ensuring their early dismissals, in line with the growing international standards on anti-SLAPP measures;
- Consider decriminalisation of defamation;
- Review criminal law provisions envisioning aggravated penalties and public prosecution for insulting certain public authorities (e.g. head of state);
- Review criminal law provisions sanctioning insulting religious feelings in order to limit its scope only to incitement to hatred.

1.2. **Safety of Journalists.** In recent years journalists have been also faced with an increased risks for their safety, especially while covering demonstrations. The danger came not only from some demonstrators,⁹ but sometimes also from the police. The reported incidents include, inter alia, a photojournalist being shot with a rubber bullet, several journalist being bitten with truncheons and being sprayed in the face despite them either wearing PRESS signs or otherwise being clearly identifiable as journalists.¹⁰ When examined by the police or the prosecutor's office, too often such incidents have been trivialised, explained as legitimate use of force and have not even resulted in disciplinary consequences for the perpetrators.¹¹

Recommendations

- Guarantee the safety of journalists and their legal protection,¹² notably in the context of public demonstrations;
- Effectively investigate any attacks on journalists, including cases of excessive force used by the law enforcement officers against journalists covering public demonstrations, and, where appropriate, bring perpetrators to justice.

1.3. **Threats to protection of journalistic sources.** Journalists also continue to be under risks of unlawful surveillance, what poses threat for the effective protection of the confidentiality of journalistic sources. The European Commission for Democracy through Law (Venice Commission) noticed already in 2016 that the Polish legal regime

⁹ See, e.g. violent attacks on the OKO.press journalists Agata Kubis and Maciek Piasecki covering pride parade in Lublin (conducted by counter-demonstrators to the parade), condemned by the OSCE The Representative on Freedom of the Media: [Regular Report to the Permanent Council for the period from 5 July 2019 to 21 November 2019](#); *Policja w Lublinie: podczas marszu nikt nie został ranny. Nikt poza dziennikarzami OKO.press*, OKO.press, 29.09.2019.

¹⁰E.g. *Polish Photojournalists Beaten by Riot Police*, Council of Europe Platform for the Protection of Journalism and Safety of Journalists, 12.11.2020; *Unlawful police violence against journalists must stop. We condemn the recurring assaults and demand accountability*, Gazeta Wyborcza, 22.01.2021.

¹¹ See e.g. replies from Police authorities cited in the [Ombudsman's motion to the Prosecutor's Office](#) from 16.06.2021, or the [reply](#) to the HFHR letter from the Commander of the Warsaw Police from 22.06.2021.

¹² [Projekt zmian Prawa prasowego chroniący dziennikarzy wraz z uzasadnieniem](#), Press Club Polska.

governing secret surveillance law does not envisage sufficient safeguards to prevent abuses and provided several recommendations, among others related to strengthening the protection of privileged communication (including communication between journalists and their sources), introducing independent oversight body and providing an ex-post notification mechanism.¹³ None of the Venice Commission's recommendations have been implemented by the government.

- 1.4. In addition to threats arising from unlawful surveillance, journalistic sources have been also at risk resulting from **requests of disclosure their sources**. There have been a number of instances where public prosecutor's office requested journalists to reveal their sources, in addition in some cases journalists were fined for refusing to comply with the requests.¹⁴

Recommendations

- Provide effective safeguards against excessive use of secret surveillance, including effective protection of journalistic sources being unlawfully disclosed through surveillance measures, by implementing the recommendations provided in the Venice Commission Opinion No. 839/ 2016.
 - Ensure that international standards on the protection of journalistic sources are properly applied by courts and prosecutors.
- 1.5. Restrictions on journalistic work on the Poland's border with Belarus. The state of emergency, introduced on Poland's border with Belarus on 2 September 2021, imposed – among other limitations – unprecedented restrictions on journalistic work, effectively banning media coverage of the dramatic events in the border area. For three months, journalists were not allowed to enter the state of emergency zone due to a general prohibition on entering the area (media were not covered by almost twenty exceptions envisaged). Additionally, restrictions on freedom of information on activities that are undertaken "in relation to safeguarding the state border or preventing illegal migration" were introduced and it was prohibited for anyone to capture images containing "border infrastructure". While the latter two restrictions were lifted with the formal termination of the state of emergency on 2 December 2021, the entry restrictions to the area remain effectively in force since then, albeit on a different legal basis. On 1 December 2021 a new Law amending the Law on State Border Protection entered into force, and it has empowered the Ministry of Interior to impose similar extraordinarily limitations on human rights in the border area through ordinances (as of March 2022, the restrictions on the entry to the area have been prolonged till 30 June 2022).¹⁵ The current restrictions cover a larger border area than the former formal three-month state of emergency. While the new legislation allows the commander of the local border guard to grant special permissions to enter the zone for "a fixed time and on specific terms" also to journalists, in practice media representatives are only

¹³ The European Commission for Democracy through Law (Venice Commission), Opinion on the Act of 15 January 2016 amending the Police Act and certain other Acts, Opinion No. 839/2016, 13 June 2016.

¹⁴ See e.g. the case of Katarzyna Włodkowska: [Poland: Journalist must not be jailed for refusing to disclose source](#), International Press Institute, 29.11.2021, or Ewa Żarska: [Prosecutor's office demands access to information covered by reporter's privilege. HFHR responds](#), HFHR, 16.11.2017.

¹⁵ Act of 17 November 2021 amending the Act on State Border Protection and certain other acts.

allowed to participate in strictly monitored 'tours' organised by the border guard, with a fixed route chosen by the authorities and only in the company of the border guards.¹⁶ On 18 January 2022, the Supreme Court, adjudicating on a case of journalists convicted for entering the state of emergency zone, found that the entry ban was unconstitutional – among others because it was introduced through an ordinance (lower-order legal act) and it constituted a disproportionate restriction on freedom of movement and freedom of expression, preventing journalists' and humanitarian aid's access to the area.¹⁷ While the judgement referred to the restrictions imposed under the now-formally terminated state of emergency, its reasoning applies also to the similar restrictions remaining in force since 1 December 2021 through the Ministry of Interior ordinances.

Recommendations

- Provide real access for journalists to the area at the Poland's border with Belarus, lifting restrictions declared unconstitutional by the Supreme Court.
- 1.6. Intimidation of journalists at the border area. In addition to the legislative restrictions at the border area, journalists working in the broader region, outside the prohibited zone, have been facing different forms of intimidation from soldiers operating in the area. Among others, the army staff aggressively stopped, handcuffed and searched photojournalists Maciej Moskwa and Maciej Nabrdalik, as well as examined photos stored in their cameras, despite their protests invoking journalistic secrecy.¹⁸

Recommendations

- Cease intimidation of journalists documenting the situation at the border area and thoroughly investigate all incidents of journalists being harassed by soldiers or law enforcement officials.

¹⁶ "[Safari](#)", czyli dziennikarska wizytacja granicy pod ścisłym nadzorem, Gazeta Wyborcza, 4.12.2021.

¹⁷ Judgment of the Supreme Court of 18.01.2022, case file I KK 171/21; [Poland's top court slams media ban at Belarus border](#), Euractive, 19.01.2022.

¹⁸ [Polish authorities detain, harass journalists covering refugee crossings from Belarus](#), Committee to Protect Journalists, 23.11.2021; [Dziennikarze brutalnie zatrzymani pod Michałowem składają zażalenie na zatrzymanie i przeszukanie](#), HFHR, 25.11.2021.

2. Media capture – overview

- 2.1. One of the major threats for freedom of expression in Poland is the process of media capture, understood as a form of media control achieved through a series of systematic and premeditated steps taken by the government.¹⁹ The first two elements of the process, namely the **regulatory capture** (i.e. taking control over regulatory bodies relevant for the media sector) and gaining **control of state media**, were already observed in the period covered by the 3rd UPR cycle. These processes have been initiated through legislative changes in 2015 and 2016, which eventually introduced a new institution – the National Media Council and changed the rules of appointment of the public media management structures, leading to immediate staff changes in the public media.²⁰ The ruling of the Constitutional Tribunal of 13 December 2016,²¹ which declared the changes in the procedures of the appointment unconstitutional, still has not been implemented. Since 2016 also the National Broadcasting Council (responsible, inter alia, for granting broadcasting licenses and authorised to sanction broadcasters) has become controlled by a majority appointed by the ruling coalition and the President.
- 2.2. Third key element associated with the process of media capture, namely **use of state funding to control media**, has also been applied. Government publicity campaigns and ads from state-controlled companies are diverted to the media favourable to the government, even if their market position (e.g. readership rate) is weak or very weak, while popular media titles critical towards the government are – largely or entirely – deprived of such funds.²² For instance, with regard to weeklies, in 2020 state-owned companies did not allocate *any* funds for advertising to “Newsweek Polska” even though its sold circulations is more than twice higher than “Sieci”, which received over 20 million PLN revenue from state-owned companies’ ads.²³
- 2.3. Finally, since 2020, the fourth key element of the media capture, namely the **ownership takeover**, can also be observed in Poland. There have been two crucial events in this area. First, the acquisition of Polska Press, one of the biggest publishing groups in Poland, by the state-owned oil giant, PKN Orlen, preceded by the PKN Orlen’s acquisition of Ruch, a major press distributing company. Second, the attempts – so far unsuccessful – to gain control over the TVN Group, the largest private television in Poland, through a legislative measure (new media ownership law, that immediately became known as *Lex TVN* and that eventually was vetoed by the President) and possibly through not renewing the broadcasting licences of its TV channels, TVN24 and TVN 7 (eventually, after extraordinarily lengthy proceedings and just a few days before the expiry date, National Broadcasting Council renewed both channels’ licences – however the future of all the channels of the TVN Group remains uncertain, as the regulator has continued to

¹⁹ UNESCO, *Reporting Facts: Free from Fear or Favour*, In-Focus edition of the World Trends in Freedom of Expression and Media Development, 2020 Paris; Marius Dragomir, *Media Capture in Europe*, MDIF, May 2019.

²⁰ *Poland: independence of public service media*, Article 19, HFHR, 31.01.2017.

²¹ Judgement of Constitutional Tribunal of 13.12.2016, case file K 13/16.

²² Tadeusz Kowalski, *Advertising expenses' analysis of state-owned companies (SOC) in the years 2015-2019*, 2020.

²³ Tadeusz Kowalski, *Advertising expenses' analysis of state-owned companies (SOC) in the years 2015- 2020. Annex. Advertising expenditure of ministries and central offices in 2020*, 2021, p. 18.

suggest it might withdraw its licences).²⁴ Some of the indicated elements of the media capture are described in more detail below.

- 2.4. Acquisition of Polska Press by the state-owned oil company, PKN Orlen. In December 2020 PKN Orlen, a Polish state-controlled oil company, informed on its plans to acquire one of the biggest publishing groups in Poland, German-owned Polska Press, publisher of 20 daily regional newspapers (at least one per each of the 15, out of total 16, administrative regions' capital cities in Poland), almost 120 local weekly magazines and around 500 local news platforms. In February 2021, the Office of Competition and Consumer Protection approved the transaction. However, in March 2021, the Polish Ombudsman appealed against the decision of the competition authority to the District Court in Warsaw and applied for an interim measure suspending the execution of the decision, in particular for a prohibition on the exercise of any shareholders rights in shares held by PKN Orlen. In April 2021, the District Court of Warsaw granted the requested interim measure, obliging PKN Orlen to refrain from exercising any shareholder rights over the acquired shares until the final outcome of the judicial examination of the Polish Ombudsman appeal against the competition authority decision. Blatantly ignoring the court order, the new owner soon replaced almost all editors-in-chief of its outlets.²⁵ The effects of the editors replacement on the media content soon followed – for instance, as revealed by an internal, leaked e-mail, one of the new editors-in-chief instructed journalists that the coverage of the protest against *Lex TVN* should be restricted just to a few sentences.²⁶
- 2.5. The acquisition of Polska Press by PKN Orlen has raised serious concerns over its impact on the media pluralism. It has been noticed that the government already fully controls the public broadcasting – a crucial actor on both national and regional TV and radio markets, and the purchase of Polska Press effectively added the majority of the regional press to the government's media portfolio. Moreover, PKN Orlen already had a significant position in the media ecosystem in Poland prior to the acquisition of Polska Press. In November 2020 it finalised the purchase of the Ruch company, second largest press distribution company in Poland, controlling almost one quarter of the press distribution market. It also controls an influential media house, Sigma Bis, which started operating at the end of 2019.²⁷ The purchase of the Polska Press added to that almost all regional dailies, as well as the control of six printing houses where a significant part of all press titles of various publishers are printed, giving PKN Orlen a great influence over the entire media production chain.²⁸ Moreover, since Polska Press Internet outlets have an amount of almost 17.5 million of monthly real users,²⁹ the purchase has also provided PKN Orlen an opportunity to obtain an extensive knowledge of customers'

²⁴See, e.g. Chairman of the National Broadcasting Council, [Reply to the Commissioner for Human Rights Letter](#), 4 March 2022.

²⁵ [Poland: Orlen continues editorial purge at Polska Press](#), International Press Institute, 10.06. 2021; [Czystka w Polska Press. Orlen wymienia redaktorów naczelnych na ludzi bliskich władzy](#), Onet, 15.07.2021.

²⁶ [Orlen w Polska Press. "Nie używać określenia wolne media." Sąd instrukcje, jak pisać o "lex TVN" i LGBT+](#), Gazeta Wyborcza, 11.08. 2021.

²⁷ [Why is a Polish oil company building up a media empire?](#), Deutsche Welle, 04.01.2021.

²⁸ [Stanowisko IWP dotyczące działań PKN Orlen na rynku prasy](#), Izba Wydawców Prasy (Chamber of Press Publishers), 19.01.2021.

²⁹ [Results of the Mediapanel survey for November 2020](#), Gemius Polska, 4.12.2020.

preferences (estimated 60,07% of Internet users in Poland).³⁰

- 2.6. Attempts to gain control over the TVN Group. TVN Group is a media and entertainment group, currently owned by a US media company, Discovery. It operates 13 independent TV channels, among others TVN24 (one of the three biggest news stations operating in Poland) and TVN (flagship, general TV channel, with Poland's most popular newscast, Fakty). In 2021, one could observe two parallel processes that has been understood as attempts of gaining control of the media group (or some of its TV channels) by the ruling coalition. One attempt was done through a legislative measure. On 17 December 2021 the parliament passed a law that prohibited companies from outside the European Economic Area (EEA) from owning – directly or indirectly – a majority stake in media companies based in Poland. While the law was framed in general terms and its initiators claimed it was meant to protect state security, it effectively targeted one entity: TV channels run the TVN group, and hence it became immediately known as the *Lex TVN*. The law has been widely perceived as a measure aimed to force the TVN group US owner, Discovery, to sell its shares to entities that will be under some control of the ruling coalition. This goal was openly revealed by the representative of the draft law initiators, Member of Parliament Marek Suski, who said during an open meeting with supporters that *"if this law is successfully passed and some of these shares [of TVN Group] can be bought also by Polish businessmen, we will have some influence on what is happening on this station"*.³¹ Eventually, on 27 December 2021 the President Andrzej Duda decided to veto the law, effectively preventing it from entering into force. However, the representatives of the ruling coalition has commented that the issue is not fully closed, indicating that the government will *"return to this subject, but in a different form"*.³²
- 2.7. In parallel to the legislative developments, the pressure to change the ownership of the TVN Group channels stemmed also from the National Broadcasting Council (KRRiT), who was about to decide on broadcasting licences renewal of the news channel TVN24 and entertainment channel TVN7, whose 10-years licenses expired in September 2021 and February 2022, respectively. Eventually, both licences have been renewed, but after unprecedentedly lengthy proceedings and in both cases just a few days before the expiry. According to the KRRiT Chairman, Witold Kołodziejski, the length of the proceedings was the result of the internal analysis and lack of consensus within the Council whether the ownership structure of the TVN Group complies with non-EEA ownership restrictions laid in the Broadcasting Act in a situation where the direct shareholder of TVN Group is a company with its seat in the European Economic Area (EEA) and the controlling shareholder of that EEA company is a US company. Even though eventually the two licenses have been renewed, the future of all TV channels of the TVN Group remains uncertain: the National Broadcasting Council has formally obliged its Chairman through a resolution to call upon all licensees which are dependent on entities from outside the European Economic Area to adjust its ownership structure, suggesting that companies who will not comply might be

³⁰ [PKN Orlen przejmuje spółkę Polska Press od Verlagsgruppe Passau](#), Dziennik Gazeta Prawna, 7.12.2020.

³¹ [Ustawa przeciw TVN. Suski wzywa do demonstracji przed siedzibą stacji](#), 11.07.2021.

³² [Marek Suski o „lex TVN”: wrócimy do tematu, ale w innej formie](#), Wirtualne Media, 04.01.2022.

deprived of their broadcasting licences due to acting in 'gross violation of the law'.³³ While the resolution was framed in general terms, this effectively would mean forcing US-owned Discovery to sell TVN Group.

- 2.8. In this context it should be also emphasised, that the minutes of the National Broadcasting Council meetings suggest a biased approach of the media regulator towards the TVN Group. The minutes reveal among others that the media regulator's own legal services informed the Council's members that the interpretation of the Broadcasting Act provided by the representatives of the TVN Group, arguing that the company's ownership structure is in line with the legal requirements, "is present both in the available legal commentaries and in the past practice of the authority, so it is justified"³⁴ and that "it would be difficult now to substantiate and demonstrate the allegation that the broadcaster acted inconsistently with the provisions of the [Broadcasting] Act", since "the authority's [i.e. the media regulator] position on the ownership structure of TVN expressed some years ago was unequivocal".³⁵ At the same time, some members of five-member Council expressed strong disapproval of the broadcaster, accusing it of undertaking "destructive actions also against the state"³⁶ and stating that "in general, the TVN programme's viewpoint is unacceptable".³⁷
- 2.9. The issue of the licences' renewal was not the first time when the National Broadcasting Council in its current composition targeted TV channels from the TVN Group. In December 2017 the media regulator imposed a record high fine (almost 1,5 million PLN) because of the way TVN24 covered demonstrations over government proposals to restrict media access to the parliament, on the basis that the coverage was "promoting illegal activities and encouraging behaviour that threatens national security". Following domestic and international criticism of the decision, the fine was eventually rescinded in January 2018.³⁸
- 2.10. Takeover of the public media. The takeover of the management structure of the public media was concluded already in 2016, but the subsequent years fully confirmed its damaging effects on the media pluralism. One result is an extremely biased content – as confirmed, among many others, by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) election missions to Poland (for instance, after the presidential election in 2020, the observers simply concluded that the public television "acted as a campaign vehicle for the incumbent" President Andrzej Duda³⁹). Moreover, the changes resulted in still ongoing removals of journalists who are deemed by their supervisors as not sufficiently conforming to the ruling coalition programme expectations. For instance – among many others – in July 2021, Radosław Bielawski, a programme editor

³³ National Broadcasting Council, [Resolution of the No. 230/2021](#) of 22 September 2021 on taking action to order the rules of radio and television broadcasting in Poland with regard to the possibility to operate of entities from outside the European Economic Area.

³⁴ Minutes of National Broadcasting Council Meeting of 1 July 2021.

³⁵ Minutes of National Broadcasting Council Meeting of 25 May 2021.

³⁶ Minutes of National Broadcasting Council Meeting of 2 September 2021.

³⁷ Minutes of National Broadcasting Council Meeting of 17 June 2021.

³⁸ [Polish regulator rescinds fine against broadcaster TVN](#), International Press Institute, 17.01.2021.

³⁹ OSCE ODIHR, [Republic of Poland Presidential Election 28 June and 12 July 2020. ODIHR Special Election Assessment Mission - Final Report](#), 23.09.2020.

of a daily morning show on the public television TVP2 was dismissed for a lack of an adequate reaction to a situation when an artist invited to the live show pulled out a rainbow flag and dedicated the song to the LGBT community in Poland (according to his supervisors, he should have redirected the camera away from the singer or decided to end the show⁴⁰); while Grażyna Bochenek, an awarded journalist from local Public Radio station in Rzeszów, was dismissed because she broadcasted a listener's opinion about the current Polish President, Andrzej Duda that called the President a "figurehead" (accompanied by a different, positive opinion of another listener, broadcasted in in the same programme).

Recommendations:

- Ensure fair and transparent distribution of public funding to the media, including of state advertising, and cease using it as a tool to economically reward or punish media outlets, depending on how they report on the ruling coalition;
- Respect the independence of the regulatory bodies relevant for the media sector – of National Broadcasting Council, as well of the Office of Competition and Consumer Protection – and ensure they act in a transparent, impartial and non-arbitrary manner;
- Ensure that any possible media ownership legislation, including any restrictions on the extent of foreign ownership of media, will be drafted and implemented in a non-arbitrary manner and will take full account of Poland's obligations under international law, in particular, the obligation to guarantee media pluralism and to respect media independence.

⁴⁰ [TVP Programme Editor Radostaw Bielawski Dismissed over a Rainbow Flag](#), Council of Europe Platform for the Protection of Journalism and Safety of Journalists, 23.07.2021.