



The applicants realize that by granting this request, the Parliament will take an unprecedented step. However, the application is based on violations of the Act of 1976 that are part of a comprehensive undertaking aiming at the suppression of democracy in Poland. Failure by the Parliament to act strongly in response to these violations would open the way for the establishment of a dictatorial regime in Poland, and maybe in some other Member States. The European Union cannot afford this.

Additionally, by allowing MEPs whose election was tainted by grave violations of democratic principles to sit, the Parliament would cast doubt on its own democratic legitimacy.

The reasoning below is presented in support of this application and of other applications to the European Parliament, that have the same purpose and whose authors declare that they adopt the reasoning by Marcin Skubiszewski.<sup>2</sup> This document only discusses the admissibility of the application and items 1 and 2 above; reasoning in support to items 3 and 4 will be presented in a distinct document.

Section 1 (immediately below) recalls the importance of democracy as a founding principle of the European Union. It discusses the admissibility of the applications and the standing of the applicants.

The reasoning related to items 1 and 2 above (propaganda, discrimination against candidates, impossibility to challenge the election domestically for these causes) is laid out in Sections 2-6 (p. 7-39). Section 2 (p. 7) contains a legal analysis showing why, according to the case law and practice of various international bodies, State-sponsored political propaganda and discrimination against candidates in the area of access to media amount to a breach of the Act of 1976. Section 3 (p. 12) describes the importance of State-owned media in the Polish electoral process. Section 4 (p. 18) describes the legislation introduced and the mechanisms implemented by the Polish ruling majority to transform State-owned media into a propaganda engine. Section 5 (p. 33) describes why it was impossible to obtain redress in Poland regarding State-sponsored propaganda and the discrimination against certain candidates by State-owned media; this section specifically explains item 2 above. Section 6 (p. 39) describes the State-sponsored propaganda that accompanied the Polish election of 26 May. Section 7 (p. 61) explains why it would be appropriate for the European Parliament to conduct its own investigation and gather proofs that will come in addition to those provided with this application.

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2 Some of these applications erroneously quote the amount of “approximately 700 million euro” as being the cost of propaganda (item 1 above), instead of “approximately 600 million euro”. For an explanation of why this error was made, see below, Section 3.3 (p. 14) and footnote 25.

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## **1 On the admissibility of this application**

### **1.1 Democracy as a founding principle of the European Union**

According to Art. 12 of the Act of 1976, “the European Parliament shall verify the credentials of members of the European Parliament. For this purpose it shall take note of the results declared officially by the Member States and shall rule on any disputes which may arise out of the provisions of this Act other than those arising out of the national provisions to which the Act refers. This provision is implemented by Rule 3 of the Rules of Procedure of the European Parliament. The first sub-paragraph of Rule 3(1) states that “Following general elections to the European Parliament, the President shall invite the competent authorities of the Member States to notify Parliament without delay of the names of the elected Members so that all Members may take their seats in Parliament with effect from the opening of the first sitting following the elections”, and the first sub-paragraph of Rule 3(3) states that “On the basis of a report by the committee responsible, Parliament shall verify credentials without delay and rule on the validity of the mandate of each of its newly elected

Members and also on any disputes referred to it pursuant to the provisions of the Act of 20 September 1976, other than those which, under that Act, fall exclusively under the national provisions to which that Act refers”.

These provisions must be read in the larger context of the European Union’s democratic foundations, which the European Parliament embodies.

This importance of democracy in the European Union is proclaimed in particular in Article 2 TEU, which states that “the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”. This statement, located at the very beginning of one of the founding treaties of the European Union, has a clear constitutional value. It is, furthermore, legally and judicially enforceable, as evidenced by the ruling of the Court of Justice in the case *Associação Sindical dos Juizes Portugueses v Tribunal de Contas*<sup>3</sup>.

Regarding more particularly the European Parliament, Article 1(3) of the Act of 1976 states that “Elections [of the members of the European Parliament] shall be by direct universal suffrage and shall be free and secret”. This principle has been consecrated as a fundamental right at Article 39(2) of the Charter of fundamental rights of the European Union: “Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot”. This provision means that national electoral legislations must uphold European standards of democracy insofar as they apply to European elections. For example, the Court of justice of the European Union ruled that an individual cannot be disproportionately deprived of her/his right to vote because of a past criminal conviction<sup>4</sup>. This strongly suggests that all the other European standards of free and fair elections, as they stem among other from the case-law of the European Court of Human rights regarding Article 3 of Protocol 1 to the European Convention of Human Rights (Right to free elections), also apply.

Finally, according to Article 10(1) TEU, “The functioning of the Union shall be founded on representative democracy”. Article 10(2), first sub-paragraph, proceeds by stating that “Citizens are directly represented at Union level in the European Parliament”. This means that the European Parliament is the primary embodiment of the principle of democracy in the Treaties. It is therefore the constitutional duty of the European Parliament to preserve its democratic legitimacy by making sure that all its members have been elected through a democratic, transparent, pluralist, free and fair election. If the European Parliament had no power to review this point, it would be defenceless against any Member State that would send members who have not been democratically elected, hence turning it into an undemocratic institution. Since the verification of credentials is the only step of the procedure allowing the Parliament to perform such a review, it has to be construed as giving the Parliament the power to perform a substantial examination and not merely a formal one. Of course, since the European Union is based on the rule of law, any refusal of credentials on such grounds would be subject to judicial review by the Court of Justice of the European Union.<sup>5</sup>

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3 27 February 2018, C-64/16, para. 30 and 32. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CJ0064>

4 Delvigne, 6 October 2015, C-650/13. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CJ0064>

5 *E.g.*, Italy, Lettonia and Donnici vs. European Parliament and Occhetto, 30 April 2009, C-393/07 and C-9/08 <http://curia.europa.eu/juris/document/document.jsf?docid=73334>

This is not to say that the European parliament should assess the validity of the elections of MEPs as regards national Law. Article 12 of the 1976 Act and Rule 3 of the Rules of procedure of the European Parliament both make it clear that disputes arising from national Law fall exclusively in the competence of national authorities. However, the European Parliament has the right and the legal duty to assess whether the election of each MEP meets the *European* standards of democratic elections. Far from being arbitrary, abstract, vague, elusive or politicised, these standards flow objectively, among others, from the work of the Council of Europe, in particular the case-law of the European Court of Human Rights and the opinions of the Venice Commission.

It is therefore the right and legal duty of the European Parliament to refuse to validate the mandates of MEPs who have been elected in violation of European standards of democracy.

## 1.2 The applicants

This section describes the signatories of 19 applications to the European Parliament, all filed on the same day and having the same purpose: this application, three applications by candidates in the Polish election of 26 May, and fifteen applications by a total of 75 Polish voters. These applicants declare that they adopt in support of their respective applications the reasoning presented here, and appoint Marcin Skubiszewski as their representative.

Marcin Skubiszewski is a Polish citizen residing in Poland. He voted in the Polish 26 May election (See Attachment 2 – proof of citizenship and residence).

*Obserwatorium Wyborcze* (the Election Observatory) is an association incorporated in Poland and registered in the Polish National Judicial Register (*Krajowy Rejestr Sądowy*; often translated as National Court Register). Under Polish law,<sup>6</sup> the Election Observatory has full legal capacity. It has for objective, *inter alia*, “the care for democracy, citizens’ rights and the development of civil society” (*troska o demokrację, prawa obywatelskie i rozwój społeczeństwa obywatelskiego*) and “acting in support of the development of democracy, in particular leading to a complete and effective functioning of a democratic state ruled by law in Poland” (*prowadzenie działań wspomagających rozwój demokracji, w szczególności zmierzających do pełnego i skutecznego funkcjonowania demokratycznego państwa prawnego w Polsce*) (see Attachment 3).

Marcin Skubiszewski is the chairman of the management board (*przewodniczący zarządu*) of the Election Observatory, and has the power to sign this application in the name of said association. This results from Attachment 3, page 2, *Rubryka 1 – Organ uprawniony do reprezentacji podmiotu, Dział 2* (Position 2 – body empowered to represent the entity, Section 2).

The following applicants were candidates in the election of 26 May in Poland, and were not elected:

[...]

The remaining 160 applicants are voters, and declare that they had the right to vote in the Polish 26 May election.

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<sup>6</sup> Law of 7 April 1989 Law on Associations (*Ustawa z dnia 7 kwietnia 1989 r. Prawo o stowarzyszeniach*), as modified. Available here: <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19890200104>

## 2 State-sponsored propaganda and the Act of 1976

According to the Act of 1976, Art. 1, para. 3, members of the European Parliament shall be elected in *free* elections. It is generally admitted that State-sponsored propaganda favouring or harming specific candidates, as well as State-sponsored discrimination against certain candidates that prevents them from reaching out to voters, *e.g.*, through media, are considered as violations of the principle of free elections.

In support of the sentence above, let us quote case law of the European Court of Human Rights (ECtHR) (Section 2.1); the position of the Venice Commission (Section 2.2); statements of the Parliamentary Assembly of the Council of Europe (Section 2.3); the principles agreed upon and followed by the OSCE (Organization for the Security and Cooperation in Europe) (Section 2.4), and those followed by the European Union in external election observation (Section 2.5). For the sake of completeness, let us quote statements by other international bodies (Section 2.6).

Throughout this section, boldface in quotations was added by the applicants.

### 2.1 Case law of the ECtHR

Art. 3 of the Additional Protocol to the European Convention on Human Rights (P1-3) reads as follows:

*The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.*

The ECtHR stated many times what follows:

*The Court reiterates that Article 3 of Protocol No. 1 enshrines a characteristic principle of an **effective political democracy** and is accordingly of prime importance in the Convention system.<sup>7</sup>*

This statement is applicable to the Act of 1976 as much as it is to the Article 3 of Protocol No. 1, because both these instruments mandate *free* elections.

The word *effective* is of key importance here. It implies that while assessing an electoral process, we must pay attention to all problems that may have made the process effectively non democratic; propaganda and discrimination in media (especially in State-owned media) are such problems.

The ECtHR further says:

*The free choice of the electorate depends on, inter alia, **having information concerning all eligible candidates**, and receiving it in a timely manner in order to form an opinion and express it on election day.<sup>8</sup>*

Still according to the ECtHR, the conditions under which a candidate runs

*must not thwart the free expression of the people in the choice of legislature – in other words, they must reflect, or not run counter to, the concern to maintain the integrity and*

<sup>7</sup> Sitaropoulos and Giakoumopoulos v. Greece § 63, 42202/07, 15 March 2012, <http://hudoc.echr.coe.int/eng?i=001-109579> (identical or similar language can be found in many judgements of the ECtHR).

<sup>8</sup> Abdalov and others v. Azerbaijan § 90, 28508/11, 37602/11, 43776/11, 11 July 2019, <http://hudoc.echr.coe.int/eng?i=001-194294>

effectiveness of an electoral procedure aimed at identifying the will of the people through universal suffrage.<sup>9</sup>

[...] the Court observes that it has consistently stressed **the need to avoid arbitrary decisions and abuse of power in the electoral context** [...]<sup>10</sup>

## 2.2 The Venice Commission

The Venice Commission's *Code of Good Practice in Electoral Matters* says what follows:

### 3. Free suffrage

#### 3.1. Freedom of voters to form an opinion

a. State authorities must observe their duty of neutrality. In particular, this concerns:

- i. media;
- ii. billposting;
- iii. the right to demonstrate;
- iv. funding of parties and candidates.<sup>11</sup>

[...]

## 2.3 The Parliamentary Assembly of the Council of Europe

In the resolution of 23 January 2019 entitled *Media freedom as a condition for democratic elections*, the Parliamentary Assembly of the Council of Europe says, *inter alia*, what follows<sup>12</sup>:

1. The Parliamentary Assembly recalls that free elections are a pillar of every democratic society. The electorate cannot be said to have genuine freedom of choice if that choice is not a well-informed one; consequently, **the right to freedom of information and media freedom are essential preconditions of the right to free elections**, in accordance with Article 3 of the Protocol to the European Convention on Human Rights (ETS No. 9). The media must be free to inform the public, without being subject to any political, economic or other pressure, and with due regard for professional ethics.

[...]

8. Accordingly, the Assembly calls on member States to review, where necessary, their regulatory frameworks governing media coverage of election campaigns, in order to bring them into line with Council of Europe standards, ensuring in particular that they:

[...]

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9 *Ibid.* § 91. See also *Hirst v. United Kingdom* § 62, 74025/01, <http://hudoc.echr.coe.int/eng?i=001-70442>

10 *Abdalov and others v. Azerbaijan* (*op. cit.*) § 97

11 *Code of Good Practice in Electoral Matters, Guidelines and Explanatory Report*, p. 8. European Commission for Democracy Through Law (Venice Commission). Venice, 18-19 October 2002.

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev2-cor-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev2-cor-e)

12 Resolution 2254 (2019). Assembly debate on 23 January 2019 (5th and 6th Sittings).

<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=25409&lang=en>



**8.10. guarantee the editorial independence of public service media, putting an end to any attempts to influence them or transform them into governmental media: the use of public service media to promote a specific political party or candidate must be classified as illegal misuse of public funds;**

**8.11. enhance the operational capacities of media regulators which must be independent of the political and economic powers; in this regard:**

**8.11.1. ensure that the composition of these bodies is politically neutral and based on media expertise and competence;**

[...]

## 2.4 The OSCE

The Copenhagen Document of the Conference on Security and Cooperation in Europe (1990)<sup>13</sup> says:

*(7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will*

*(7.1) — hold free elections at reasonable intervals, as established by law;*

[...]

*(7.8) — provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;*

[...]

All full-scale election observations missions recently sent by the OSCE ODIHR (Office for Democratic Institutions and Human Rights) included media monitoring.

The ***unimpeded access to the media on a non-discriminatory basis*** is repetitively described by the OSCE ODIHR as one of “OSCE commitments for democratic elections” or as “a fundamental principle of democratic elections” (e.g., see the *Election Observation Handbook*<sup>14</sup>).

The importance of media objectivity for the integrity of the electoral process, as seen by the OSCE ODIHR, is further conveyed by the following statements:

*The right of voters to make an informed choice implies that the media should inform them in an objective and accurate manner regarding the platforms and views of different candidates and parties and of events in the electoral campaign and the electoral process [...]*<sup>15</sup>

[...]

***Politicians should have access to the media to inform the electorate about their policies and opinions on matters of public interest. The media also provide an arena in which candidates can debate. Candidates can be covered in a variety of formats and***

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13 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE. 29 June 1990 <https://www.osce.org/odihr/elections/14304>

14 Sixth edition, Section 3.1, p. 18. Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2010. <https://www.osce.org/odihr/elections/68439>

15 *Handbook On Media Monitoring for Election Observation Missions*, Section 2 A, p. 13. Same publisher, 2012. <https://www.osce.org/odihr/92057>

can have access to the media in a number of ways; what is crucial is that they should have an equal opportunity to inform voters about their policies and **not face discrimination in getting media access**. Candidates have the right of reply to statements or reports in the media that are inaccurate or offensive and to do so in a timely manner during the entire electoral process.

[...] Candidates and parties ought also to comply with certain fundamental duties in order to respect the freedom of the media. They should not interfere in the editorial policy of media outlets by way of any direct or indirect means of pressure [...]<sup>16</sup>

[...]

**Using state/public media to promote a certain political party or candidate is, therefore, an illegitimate manipulation of the public and an abuse of public resources.**<sup>17</sup>

The OSCE ODIHR describes the 2003 election to the Russian State Duma as follows:

**[...] the election failed to meet a number of OSCE commitments for democratic elections, most notably those pertaining to: unimpeded access to the media on a non-discriminatory basis, a clear separation between the State and political parties, and guarantees to enable political parties to compete on the basis of equal treatment.**

[...] The democratic norms of voter access to information and equal conditions for candidates and parties to convey their message to the electorate were severely compromised. The main countrywide State broadcasters displayed favoritism towards United Russia and, in doing so, failed to meet their legal obligation to provide equal treatment to electoral participants, also a fundamental principle of democratic elections.<sup>18</sup>

## 2.5 European Union observation missions

According to the handbook used by European Union external election observers:

**For there to be a genuine democratic electoral process, it is essential that candidates and political parties have the right to communicate their messages so that voters receive a diverse range of information and are enabled to make an informed choice.**

[...]

The media therefore have a great deal of responsibility placed on them during election periods, and it is essential that they provide a sufficient level of coverage of the elections that is fair, balanced and professional, so that the public is informed of the whole spectrum of political opinions as well as of the key issues related to the electoral process.

[...]

**The state-owned and publicly funded media have a special responsibility to be balanced and impartial during an election campaign period. Because of their unique**

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16 Ibid., Section 2 B, p. 14.

17 Ibid., Section 2.1 A, p. 15.

18 Russian Federation. *Elections to the State Duma, 7 December 2003. OSCE/ODIHR Election Observation Mission Final Report*. Section 1, p. 1. Warsaw, 27 January 2004. <https://www.osce.org/odihr/elections/russia/21482>

role in society, state-funded media should provide equitable access to candidates and parties as part of their responsibilities to the public.<sup>19</sup>

## 2.6 Statements by other international bodies

To summarize the position of other international bodies regarding propaganda and discrimination in media during the electoral period, it is best to quote the ECtHR<sup>20</sup>:

52. *The standards relating to public service broadcasting were further developed by the Committee of Ministers of the Council of Europe in the Appendix to Recommendation no. R (96) 10 on “The Guarantee of the Independence of Public Service Broadcasting” (1996). The Committee of Ministers recommended that “the legal framework governing public service broadcasting organisations should clearly stipulate their editorial independence and institutional autonomy”. Furthermore, “the legal framework governing public service broadcasting organisations should clearly stipulate that they shall ensure that news programmes fairly present facts and events and encourage the free formation of opinions. The cases in which public service broadcasting organisations may be compelled to broadcast official messages, declarations or communications, or to report on the acts or decisions of public authorities, or to grant airtime to such authorities, should be confined to exceptional circumstances expressly laid down in laws or regulations ...”. Finally, in the Appendix to Recommendation Rec(2000)23 on “The Independence and Functions of Regulatory Authorities for the Broadcasting Sector”, the Committee of Ministers again stressed the importance for States to adopt detailed rules covering the membership and functioning of such regulatory authorities so as to protect against political interference and influence.*

53. *Recommendation no. R (99) 15 of Committee of Ministers of the Council of Europe on measures concerning media coverage of election campaigns provided that regulatory frameworks in Member States should provide for the obligation of TV broadcasters (both private and public) to cover electoral campaigns in a fair, balanced and impartial manner, in particular, in their news and current affairs programmes, including discussion programmes such as interviews or debates. The Committee of Ministers also recommended the States to examine the advisability of including in their regulatory frameworks provisions whereby free airtime is made available to candidates on public broadcasting services in electoral time, “in a fair and non-discriminatory manner”, and “on the basis of transparent and objective criteria”.*

54. *The Inter-Parliamentary Council (a body of the Inter-Parliamentary Union based in Geneva), at its 154th session in Paris, on 26 March 1994 adopted the “Declaration on Criteria for Free and Fair Elections”. Pursuant to that Declaration every candidate must have an equal opportunity of access to the media, particularly the mass communications media, in order to put forward their political views (Article 3 § 4). Everyone must have the right to campaign on an equal basis with other political parties, including the party forming the existing government; and to seek, receive and impart information and make an informed choice (Article 3 § 3). The States must ensure*

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19 *Handbook for European Union Election Observation*. Third edition. Section 4.8.1, p. 77-78. Election Observation and Democratic Support, Brussels 2016. [https://eeas.europa.eu/sites/eeas/files/handbook\\_for\\_eu\\_eom\\_2016.pdf](https://eeas.europa.eu/sites/eeas/files/handbook_for_eu_eom_2016.pdf)

20 *Communist Party of Russia and Others v. Russia*, no. 29400/05, 19 June 2012. <http://hudoc.echr.coe.int/eng?i=001-111522>

*non-partisan coverage in State and public-service media and equality of access to such media (Article 4).*

### **3 The importance of State-owned media in the Polish electoral process**

In this section we show that State-owned broadcasters play a big role in Polish politics, to such an extent that whenever they are used as a tool for influencing voters instead of informing them objectively, this influence is likely to be decisive for the outcome of the election. Section 3.1 recalls the great importance of public broadcasting in Europe; Section 3.2 briefly describes the Polish State-owned broadcasters; Section 3.3 quantifies the State financial support for State-owned broadcasters; finally, Section 3.4 quantifies the audience of these broadcasters and their influence on the voters.

#### **3.1 The importance of public broadcasting: the common European heritage**

The Amsterdam Protocol<sup>21</sup> (which is part of the primary law of the European Union) reads as follows:

*THE HIGH CONTRACTING PARTIES,*

*CONSIDERING that the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism,*

*HAVE AGREED UPON the following interpretive provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:*

*The provisions of the Treaties shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting and in so far as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State, and in so far as such funding does not affect trading conditions and competition in the Union to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account.*

It is noteworthy that the protocol considers specifically the public broadcasting (and not broadcasting in general) as directly related to democratic needs of the society. And these democratic needs are one of the reasons why the protocol authorises Member States to provide for the funding of public service broadcasting in conditions that derogate from the rules otherwise applicable in the internal market.

The following statements by the OSCE ODIHR and by the Venice Commission further stress the special importance of public media for democracy.

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21 Protocol (No 29) on the system of public broadcasting in the Member States of 26.10.2012 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012E%2FPRO%2F29>

The OSCE ODIHR:

*The underlying idea of public-service broadcasting is that the private sector alone cannot ensure pluralism in the broadcast sphere.<sup>22</sup>*

The Venice Commission:

*21. The underlying idea of public-service broadcasting is that the private sector alone cannot ensure pluralism in the broadcast sphere. Public broadcasters tend to be held to higher standards of responsibility with respect to principles of universality, diversity, independence, distinctiveness from other kinds of broadcasters, and accountability. The stricter regulation imposed on these broadcasters is justified by the need to protect them from undue interference or control by the government, thus enabling journalists to freely operate according to their obligation to the public. In many countries, however, public or state broadcasting channels remain under tight government control.<sup>23</sup>*

### **3.2 The Polish State-owned broadcasters and their channels**

Poland has 19 State-owned broadcasters. All public television channels, both national and regional, are broadcast by one company, *Telewizja Polska (TVP)*. The broadcasting of radio channels is split between 18 companies: one of them, *Polskie Radio (PR)*, broadcasts multiple national channels, while the remaining 17 companies broadcast regional and local channels, each company being responsible for a different region.

The following public TV channels are broadcast by TVP and are available in the clear from terrestrial transmitters (DVB-T) covering no less than 99,5% of the Polish population (they are additionally available through all Polish cable and satellite packages in their basic versions):

- TVP1 and TVP2 – two national generalist channels;
- TVP Info – a national continuous information channel;
- TVP3 – for 5 hours daily, this channel is different in each Polish administrative region (there are 16 such regions, called voivodships or *województwa*), and broadcasts regional programmes. Each region has a TVP office producing these programmes.

Outside the aforementioned daily five hours, TVP3 broadcasts nationally various programmes produced by the regional offices of TVP.

- TVP Kultura, TVP Historia, TVP Sport – three national thematic channels (respectively culture, history and sport).

The following radio channels are broadcast by Polskie Radio nationally, in the clear from terrestrial transmitters (not counting DAB+ – Digital Audio Broadcast, the popularity of which is very low):

- Program I, Program II, Program III – three national generalist channels;

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22 *Op. cit.* see footnote 15 above, Section 2.1 A, p. 15 of the work cited.

23 European Commission for Democracy through Law. *Guidelines on Media Analysis during Election Observation Missions by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Venice Commission*. Adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and the Venice Commission at its 79th plenary session (Venice, 12-13 June 2009). Strasbourg/Warsaw, 16 June 2009. Study No. 285 / 2004. CDL-AD(2009)031 [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2009\)031-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)031-e)

- PR24 or Polskie Radio 24 – a continuous news channel.

Each of the 17 regional radio companies broadcasts one regional channel (the regions covered do not always correspond with voivodships and with the regions covered by TVP3). Some of them broadcast extra local channels.

### 3.3 The Polish State-owned broadcasters – funding by the State (2017-2019)

The State-owned broadcasters benefit from specific financial advantages of three kinds:

- they do not pay broadcaster’s licence fees or fees for the usage of radio spectrum; fees of these two kinds are due by commercial broadcasters;
- they receive revenue from subscription fees (*opłaty abonamentowe*) that all users of radio or TV receivers in Poland must pay (equivalent to *redevance audiovisuelle* in France or in Belgium or to the British TV license fee);
- during the period 2017-2019, they receive supplementary funds from the State treasury, paid in part by decision of the government, and in part pursuant *ad hoc* laws.

The first two items above describe permanent advantages granted to State-owned broadcasters. The third item represents special gifts, that had no equivalent before 2017.

The supplementary funds mentioned in the last item include a loan of 800 million Polish zlotys (equiv. 183 million euro<sup>24</sup>) to TVP. Out of this sum, 350 million PLN (80 million euro) were actually paid to TVP, the rest of the loan was not used<sup>25</sup>. This was a very unusual loan: normally, the State treasury does not grant loans.

In this application, we count the 350 million PLN received by TVP together with other sums of money received by State-owned broadcasters from the State Treasury, because – regardless of whether this loan gets reimbursed at some point in the future – this money is now being used in the same way as all other sums of money received by broadcasters from the State treasury: it is used to reimburse previous debt, to invest and to produce programmes (including propaganda).

The sums received (or to be received according to forecasts) by State-owned broadcasters from the State treasury are quoted in Table 1, p. 15.

#### Sources for the table:

- The *ad hoc* law of 2017, i.e., the law of 9 November 2017, awarding a one-time supplementary sum of 980 million Polish zlotys to broadcasters in the period 2017-2018<sup>26</sup>;

24 While quoting the values in euro of amounts of money originally expressed in the Polish zloty (*złoty polski*, PLN), we consistently use the exchange rate 4,37, the last exchange rate known at the time of this writing. Since the beginning of 2016, the exchange rate varied between 4,14 and 4,50.

25 The huge difference between the amount of loan granted and the amount actually used explains why several applications to the European Parliament that refer to this reasoning erroneously quote the amount spent on propaganda as “approximately 700 million euro” instead of “approximately 600 million euro”: the applications were written based on press reports (incorrect, as it appears now), according to which the loan was going to be used in its entirety.

26 Ustawa z dnia 9 listopada 2017 r. o zmianie ustawy o szczególnych rozwiązaniach służących realizacji ustawy budżetowej na rok 2017, Art. 1 item 1, adding Art. 16a to “Ustawa z dnia 2 grudnia 2016 r. o szczególnych rozwiązaniach służących realizacji ustawy budżetowej na rok 2017”. *Dziennik Ustaw*, 2017, poz. 2161. <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20170002161>

**Table 1: State funds received from the State treasury by State-owned broadcasters (actual or planned amounts)**

Categories of funds	TVP	Polskie Radio	Regional radio broadcasters, average per broadcaster	Total (including, <i>inter alia</i> , all 17 regional broadcasters)
<i>In thousands of Polish zlotys (1000 PLN)</i>				
2017 – subscription fees	310 000	167 000	9 294	635 000
2017 – loan from State treasury	350 000			350 000
2017 – <i>ad hoc</i> law of 2017	266 500	15 740	1 455	306 970
<b>2017 – total for the year</b>	<b>926 500</b>	<b>182 740</b>	<b>10 749</b>	<b>1 291 970</b>
2018 – subscription fees	352 000	176 000	9 529	690 000
2018 – <i>ad hoc</i> law of 2017	593 500	46 476	1 944	673 030
<b>2018 – total for the year</b>	<b>945 500</b>	<b>222 476</b>	<b>11 474</b>	<b>1 363 030</b>
2019 – subscription fees	331 380	159 317	9 371	650 000
2019 – <i>ad hoc</i> law of 2019	1 127 258	60 000	4 279	1 260 000
<b>2019 – total for the year</b>	<b>1 458 638</b>	<b>219 317</b>	<b>13 650</b>	<b>1 910 000</b>
<b>Total for years 2017 to 2019</b>	<b>3 330 638</b>	<b>624 533</b>	<b>35 872</b>	<b>4 565 000</b>
<b>Total for years 2017 to 2019, excluding subscription fees</b>	<b>2 337 258</b>	<b>122 216</b>	<b>7 678</b>	<b>2 590 000</b>
<i>In thousands euro (1000 EUR), assuming exchange rate 4.37</i>				
2017 – subscription fees	70 938	38 215	2 127	145 309
2017 – loan from State treasury	80 092			80 092
2017 – <i>ad hoc</i> law of 2017	60 984	3 602	333	70 245
<b>2017 – total for the year</b>	<b>212 014</b>	<b>41 817</b>	<b>2 460</b>	<b>295 645</b>
2018 – subscription fees	80 549	40 275	2 181	157 895
2018 – <i>ad hoc</i> law of 2017	135 812	10 635	445	154 011
<b>2018 – total for the year</b>	<b>216 362</b>	<b>50 910</b>	<b>2 626</b>	<b>311 906</b>
2019 – subscription fees	75 831	36 457	2 144	148 741
2019 – <i>ad hoc</i> law of 2019	257 954	13 730	979	288 330
<b>2019 – total for the year</b>	<b>333 784</b>	<b>50 187</b>	<b>3 123</b>	<b>437 071</b>
<b>Total for years 2017 to 2019</b>	<b>762 160</b>	<b>142 914</b>	<b>8 209</b>	<b>1 044 622</b>
<b>Total for years 2017 to 2019, excluding subscription fees</b>	<b>534 842</b>	<b>27 967</b>	<b>1 757</b>	<b>592 677</b>



- the *ad hoc* law of 2019, i.e., the law of 22 February 2019, awarding a one-time supplementary sum of 1260 million Polish zlotys to broadcasters in 2019<sup>27</sup>;
- resolutions and statements of the National Broadcasting Council on apportioning among State-owned broadcasters of:
  - revenue from subscription fees 2017 (Attachment 4)
  - money granted by the *ad hoc* law of 2017 (Attachment 6)
  - revenue from subscription fees 2018 (Attachment 5)
  - revenue from subscription fees 2019 (Attachment 7)
  - money granted by the *ad hoc* law of 2019 (Attachment 8)
- Reports on the use of revenue from subscription fees
  - by Telewizja Polska, years 2017 and 2018 (Attachments 9 and 10 respectively);
  - by Polskie Radio, years 2017 and 2018 (Attachments 12 and 13 respectively).
- Financial statement for 2017 by Telewizja Polska (Attachment 14), mentioning the loan from State treasury in file “Informacja dodatkowa TVP 2017.pdf” note 38 on p. 38.

**Comments to the table:** Over the three-year period 2016-2019, approximately 1150 million euro are going to be spent on public broadcasting in Poland. This sum includes 700 million euro of extraordinary funding (funding that had no equivalent before 2016). Roughly speaking, the latter amount represents the cost induced by propaganda (directly or not): bad management, because managers are chosen based on their political connections with the ruling party, not on skills; the cost of sacking journalists; high wages for politically connected new hires; and, most importantly, audience diminished due to the quality of programmes being lower than before, leading in turn to diminished advertisement revenue.

Most notably, the advertisement revenue of TVP in 2017 was 799 million PLN (183 million euro), amount described as “13% less than in 2015”<sup>28</sup> or as “smallest in the history of TVP”. At the same time, operating costs increased between 2015 and 2017 by 13 %, to attain 1,8 billion PLN (approx. 410 million euro).<sup>29</sup>

### 3.4 The importance of State-owned media in Polish electoral campaigns

Most studies quoted in this section were done by CBOS (*Centrum Badań Opinii Społecznej* – Centre for Public Opinion Research), a non-profit organization well respected in Poland, the oldest of all firms or organizations in the country which routinely conduct opinion polls (founded in 1982).

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27 Ustawa z dnia 22 lutego 2019 r. o zmianie ustawy o opłatach abonamentowych, adding Art. 1 item 1, adding Art. 11a to “Ustawa z dnia 21 kwietnia 2005 r. o opłatach abonamentowych”. *Dziennik Ustaw*, 2019, poz. 572. <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20190000572>

28 Łukasz Brzezicki. wirtualnemedial.pl. 24.04.2018. <https://www.wirtualnemedial.pl/artykul/2017-rok-w-tvp-zysk-500-tys-zl-nizsze-przychody-reklamowe-wiecej-dyrektorow-i-doradcow>

29 Izabela Trzaska. money.pl. 24.04.2018. <https://www.money.pl/gospodarka/wiadomosci/artykul/tvp-jacek-kurski-juliusz-braun-przychody.238.0.2404078.html>



According to a study by CBOS done in April 2019, for 58% of respondents television is the main source of information about events in Poland and abroad. For further 9% of respondents, radio plays this role (Attachment 16, p. 1).

According to the same study, 63% of respondents watch news and political commentary in the national State-owned channels TVP1, TVP2 and TVP Info (this figure is computed without distinguishing between regular and occasional viewers or between those who watch exclusively TVP and those who watch programmes from various broadcasters). The corresponding figures for the two major Polish private media groups, Polsat and TVN (Discovery), are respectively 62% and 57% (*ibid.*, p. 3).

These three channels are the main source of everyday information about events in Poland and abroad for 35% of respondents (TVP1 accounts for 22%, TVP Info for 10%, TVP2 for 3%). The corresponding figures for media groups Polsat and TVN are respectively 15% and 32% (*ibid.*, p. 4).

TVP is considered as trustworthy by 31% of respondents (almost on par with Polsat and TVN), and as untrustworthy by 38% (Polsat and TVN, respectively: 19% and 29%). In 2012 these figures were, in the case of TVP, respectively, 50% and 12%. The loss of perceived trustworthiness in comparison with the pre-2016 period (i.e., before the transformation of TVP into a propaganda engine) is huge. The media groups Polsat and TVN were also hit by a loss of perceived trustworthiness, but to a lesser extent (*ibid.*, p. 5).

The main national TV news (*Wiadomości* on TVP1, at 19:30 every day) are watched by 2 million viewers on average<sup>30</sup> (down from 6.6 million in 1999 and 3.5 million in 2015<sup>31</sup>). Taking into account the audience of *Teleexpress* (another news broadcast on TVP1, at 17:00) and of the news channel TVP Info, approximately three million viewers daily watch news broadcasts from State-owned TV.

The number of viewers of TVP has decreased sharply since the beginning of 2016 (e.g., as stated just above, the audience of *Wiadomości* decreased from 3.5 million in 2015 to 2 million today). This is most likely due to the transformation of TVP into a propaganda engine, described in the following sections, and to the sharp decrease of the quality of the programmes, that accompanied this process.

State-owned media have a special position among continuous information TV channels. Two private channels, TVN24 and Polsat News, compete against the public television channel TVP Info. The private channels, however, are accessible only to paying customers through encrypted satellite buckets or through cable networks. TVP Info is free to air and accessible through both terrestrial and satellite (HotBird) broadcasting, in addition to being accessible through cable networks.

This special position may be the reason why TVP is the main source of everyday information for as many as 35% of respondents, despite of the media group being judged by respondents as being the most untrustworthy.

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30 Nielsen estimate from September 2018, quoted here: <https://polskatimes.pl/tvp-kontra-nielsen-czyli-ilu-widzow-oglada-telewizje-publiczna/ar/13497429>

31 <https://wiadomosci.wp.pl/telewizja-polska-fatalne-wyniki-ogladalnosci-wiadomosci-6301883355522689a>

## 4 How the Polish State-owned media were transformed into a propaganda engine

In 2016, Polish State-owned media were transformed into a propaganda engine serving the ruling party. We describe the constitutional context in which this occurred (Section 4.1); the legislative and organizational mechanisms through which this transformation was implemented (Section 4.2); the dismissal of officers of State-owned broadcasters (Section 4.3); and pressure exerted upon journalists of State-owned media (Sections 4.4 and 4.5).

### 4.1 The constitutional context: moving away from democracy and from the rule of law

The functioning of the Polish State-owned broadcasters changed dramatically after the October 2015 Polish parliamentary elections, which raised to power the political party PiS (Law and Justice, *Prawo i Sprawiedliwość*): PiS obtained the majority of seats in both houses of the Parliament. The October 2015 elections were preceded by the presidential election of May 2015 won by Andrzej Duda, the candidate of PiS. Duda is now the president of the Republic of Poland.

The new parliamentary majority introduced multiple legislative reforms that seriously weakened the democracy and the rule of law in Poland. The reforms resulted, *inter alia*, in the suppression of the independence of State-owned media.

These reforms are well-known internationally. They were assessed as contrary to the rule of law by various European bodies, including the Venice Commission, the European Parliament and the European Commission. Let us mention some among those assessments.

#### 4.1.1 The Venice Commission

On 11 March 2016, the Venice Commission described the situation of the Polish Constitutional Tribunal as follows:<sup>32</sup>

*135. [...] as long as the situation of constitutional crisis related to the Constitutional Tribunal remains unsettled and as long as the Constitutional Tribunal cannot carry out its work in an efficient manner, not only is the rule of law in danger, but so is democracy and human rights.*

*136. A solution to the current conflict over the composition of the Constitutional Tribunal, which originated from the actions of the previous Sejm, must be found.*

On 11 December 2017, the Venice Commission assessed as follows the reforms of the judiciary that were then being introduced in Poland:<sup>33</sup>

*129. The Venice Commission has examined the Act on Ordinary Courts, the Draft Act on the National Council of the Judiciary, and the Draft Act on the Supreme Court,*

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32 Opinion on amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016)  
[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)001-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)001-e)

33 *Poland. Opinion on the draft act amending the act on the national council of the judiciary, on the draft act amending the act on the Supreme Court, proposed by the President of Poland, and on the act on the organization of ordinary courts.* European Commission for Democracy through Law (Venice Commission). Opinion No. 904 /2017 CDL-AD(2017)031 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)031-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)031-e)

*proposed by the President of the Republic. It has come to the conclusion that the Act and the Draft Acts, especially taken together and seen in the context of the 2016 Act on the Public Prosecutor's Office, enable the legislative and executive powers to interfere in a severe and extensive manner in the administration of justice, and thereby pose a grave threat to the judicial independence as a key element of the rule of law.*

#### **4.1.2 The position of the European Parliament**

The European Parliament adopted three resolutions expressing concern about the deteriorating respect of the rule of law and of democracy in Poland: on 13 April 2016,<sup>34</sup> on 14 September 2016<sup>35</sup> and on 15 November 2017.<sup>36</sup>

According to the resolution of 13 April 2016, the Parliament, *inter alia*,

*3. Is seriously concerned that the effective paralysis of the Constitutional Tribunal in Poland poses a danger to democracy, human rights and the rule of law;*

*[...]*

*5. Calls on the Polish Government to fully implement the recommendations of the Venice Commission [...]*

According to the resolution of 14 September 2016, the Parliament

*2. Reiterates its position as expressed in its resolution of 13 April 2016 on the situation in Poland, in particular concerning the paralysis of the Constitutional Tribunal, which is endangering democracy, fundamental rights and the rule of law in Poland;*

*8. Is concerned, in the absence of a fully functional Constitutional Tribunal, about the recent and rapid legislative developments taking place in other areas without proper consultations [...], in particular:*

- the Act on Public Media, bearing in mind the need for a framework governing public service media which would ensure that they provide independent, impartial and accurate content that reflects the diversity of Polish society, as well as the relevant case law of the European Court of Human Rights and the EU acquis in the audiovisual media field;*

*[...]*

- the Act amending the Civil Service Act, bearing in mind the serious risk of politicisation of the Polish administration, which would undermine the impartiality of the civil service;*

- [...]*

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34 European Parliament resolution of 13 April 2016 on the situation in Poland (2015/3031(RSP)) [http://www.europarl.europa.eu/doceo/document/TA-8-2016-0123\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-8-2016-0123_EN.html)

35 European Parliament resolution of 14 September 2016 on the recent developments in Poland and their impact on fundamental rights as laid down in the Charter of Fundamental Rights of the European Union (2016/2774(RSP)) [http://www.europarl.europa.eu/doceo/document/TA-8-2016-0344\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-8-2016-0344_EN.html)

36 European Parliament resolution of 15 November 2017 on the situation of the rule of law and democracy in Poland (2017/2931(RSP)) <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2017-0442&language=EN>

In the resolution of 15 November 2017, the European Parliament expressed support for “the infringement proceedings taken out by [the European Commission] against Poland for breaches of EU law” and, *inter alia*, said what follows:

*The European Parliament, [...]*

2. *Reiterates its position expressed in its resolutions of 13 April 2016 and of 14 September 2016; reiterates, in particular, its concern over the rapid legislative developments taking place in many areas without proper consultations or the possibility of an independent and legitimate constitutional review, thus risking the systematic undermining of fundamental human rights, democratic checks and balances and the rule of law; reiterates, in particular, its concern regarding such changes in the areas of public media, criminal law, police law, civil service law, the law on counter-terrorism, NGO law, asylum law, freedom of assembly and women’s rights;*

3. *Regrets strongly and with growing concern the fact that no compromise solution has been found to the fundamental problem of the proper functioning of the Constitutional Tribunal (its independence and legitimacy, and the publication and implementation of all its judgments), which seriously undermines the Polish Constitution and democracy and the rule of law in Poland; points out with deep regret that the Polish Government refuses to take into account the constructive criticism coming from the Polish public and from national, international and EU institutions, and that no actions have been announced to address these concerns;*

4. *Is deeply concerned at the redrafted legislation relating to the Polish judiciary, as regards specifically its potential to structurally undermine judicial independence and weaken the rule of law in Poland;*

*[...]*

10. *Calls on the Polish Government to repeal the law on establishing a National Institute for Freedom - Centre for the Development of Civil Society, which hinders access to state funding from critical civil society groups, and to ensure that the distribution of public funds to civil society is carried out in a fair, impartial and transparent manner, ensuring pluralistic representation;*

11. *Expresses its concern at the media reports of police surveillance of opposition and civil society leaders, and urges the Polish authorities to investigate these reports and to fully respect the privacy of all citizens;*

*[...]*

16. *Believes that the current situation in Poland represents a clear risk of a serious breach of the values referred to in Article 2 of the TEU [...]*

### **4.1.3 The European Commission**

On 20 December 2017, The European Commission proposed that the Council decide, pursuant Art. 7(1) TEU, that “there is a clear risk of a serious breach by the Republic of Poland of the rule of law”.<sup>37</sup> The reasoning in support of this proposal contains the following language:

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<sup>37</sup> Proposal for a COUNCIL DECISION on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law. COM/2017/0835 final - 2017/0360 (NLE)  
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017PC0835>

(112) *The fact that the constitutionality of Polish laws can no longer be effectively guaranteed is a matter of particular concern as regards respect of the rule of law since, as explained in the Recommendations of 27 July and 21 December 2016, a number of particularly sensitive new legislative acts have been adopted by the Polish Parliament, such as [...] a law on the National Council of Media [Law of 22 June 2016 on the National Council of Media, published in Official Journal on 29 June 2016, item 929.] [...]*

#### 4.1.4 Other international bodies

On 15 June 2016, the Commissioner for Human Rights of the Council of Europe wrote<sup>38</sup>:

*43. The Commissioner is seriously concerned at the current paralysis of the Constitutional Tribunal which bears heavy consequences for the human rights of all Polish citizens.*

On September 17, 2018, the rights of the Polish National Council of the Judiciary (KRS – *Krajowa Rada Sądownictwa*) as a member of the ENCJ (European Network of Councils for the Judiciary) were suspended for lack of independence.<sup>39</sup>

## 4.2 Mechanisms that were put in place to suppress the independence of State-owned media

This section begins with a description of the legal context in which the loss of independence of State-owned media occurred: the statutory and constitutional rules regarding the independence, impartiality and pluralism of State-owned media (Section 4.2.1) and the rules that governed the appointment of officers of State-owned broadcasters until 2015 (Section 4.2.2). Then, the three major steps through which the independence of State-owned media was suppressed in 2016, are described: the “small media law” transferring to the government the power to appoint the officers of state-owned broadcasters (Sections 4.2.3 and 4.2.4); the law on the Council of National Media, further transferring said power to a newly created council the majority of which consists of politicians of the ruling party (Section 4.2.5); and finally the appointment of an active politician of the ruling party at the head of the National Broadcasting Council (Section 4.2.6).

### 4.2.1 The constitutional and statutory context: the public mission of State-owned media and their independence from politicians

Art. 21 para. 1 of the Polish law on radio and television<sup>40</sup> mandates the State-owned broadcasters to deliver a “public mission” (*misja publiczna*) by offering

**In Polish:**<sup>41</sup>

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38 Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe following his visit to Poland from 9 to 12 February 2016. <https://www.refworld.org/docid/57b43e934.html>

39 Communiqué of the ENCJ <https://www.ency.eu/node/495>. See also *Position Paper of the Board of the ENCJ on the membership of the KRS of Poland*. Adopted by the Board of the ENCJ on 16 August 2018. <https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-ency2017-p/News/ENCJ%20Board%20position%20paper%20on%20KRS%20Poland.pdf>

40 Law of 29 December 1992, *Ustawa z dnia 29 grudnia 1992 r. o radiofonii i telewizji* <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19930070034/U/D19930034Lj.pdf>

41 Unless otherwise indicated, all translations from Polish quoted in this application were prepared under the responsibility of the applicants.

*zróżnicowane programy i inne usługi w zakresie informacji, publicystyki, kultury, rozrywki, edukacji i sportu, cechujące się pluralizmem, bezstronnością, wyważeniem i niezależnością oraz innowacyjnością, wysoką jakością i integralnością przekazu.*

**Translation:**

*varied broadcasts and other services in the area of information, commentary, culture, entertainment, education and sport, characterized by pluralism, impartiality, balance and independence, and also by innovation, high quality and integrity of the message.*

According to Art. 213-215 of the Polish constitution, State-owned broadcast companies report to an independent authority, the National Broadcasting Council (*KRRiT – Krajowa Rada Radiofonii i Telewizji*). These articles read as follows:

**In Polish:**

**KRAJOWA RADA RADIOFONII I TELEWIZJI**

**Art. 213.**

- 1. Krajowa Rada Radiofonii i Telewizji stoi na straży wolności słowa, prawa do informacji oraz interesu publicznego w radiofonii i telewizji.*
- 2. Krajowa Rada Radiofonii i Telewizji wydaje rozporządzenia, a w sprawach indywidualnych podejmuje uchwały.*

**Art. 214.**

- 1. Członkowie Krajowej Rady Radiofonii i Telewizji są powoływani przez Sejm, Senat i Prezydenta Rzeczypospolitej.*
- 2. Członek Krajowej Rady Radiofonii i Telewizji nie może należeć do partii politycznej, związku zawodowego ani prowadzić działalności publicznej nie dającej się pogodzić z godnością pełnionej funkcji.*

**Art. 215.**

Zasady i tryb działania Krajowej Rady Radiofonii i Telewizji, jej organizację oraz szczegółowe zasady powoływania jej członków określa ustawa.

**Translation:**

**THE NATIONAL BROADCASTING COUNCIL**

**Art. 213**

- 1. The National Broadcasting Council shall safeguard the freedom of speech, the right to information and the public interest in broadcasting.*
- 2. The National Broadcasting Council shall issue regulations and, in individual cases, adopt resolutions.*

**Art. 214**

- 1. The members of the National Broadcasting Council shall be appointed by the Sejm, the Senate and the President of the Republic.*
- 2. A member of the National Broadcasting Council shall not belong to a political party, a trade union or perform public activities incompatible with the dignity of his function.*

## Art. 215

*The rules and the mode of operation of the National Broadcasting Council, its organization and detailed rules for appointing its members, shall be defined by statute.*

### 4.2.2 Until 2015: appointments mostly independent from politicians

**The rules governing the appointment and the dismissals of the officers of State-owned broadcasters, resulting from the laws described and analysed in Sections 4.2.2-4.2.5, are quoted in the table beginning on page 69, Appendix A.**

Each State-owned broadcaster in Poland has two kinds of company officers: members of the supervisory board (*członkowie rady nadzorczej*) and members of the management board (*członkowie zarządu*). The management board has a president (*prezes zarządu*). The management board can possibly have only one member, in which case the member bears the title of president of the management board. All managers and employees report to the management board.

Until 2015, the government was competent to appoint two out of seven members of each supervisory board in the case of national broadcasters (TVP and Polskie Radio), and one out of five members in the case of regional radio broadcasters. All other members of supervisory boards were appointed by the National Broadcasting Council (which, according to the Constitution, is required to be non-political and independent) for a fixed term of office, after a competition. Candidates in these competitions were preselected by collective bodies of academic institutions. The candidates were required to have no criminal convictions and to have appropriate professional experience.

Each supervisory board was, in turn, competent to select the president and the members of the management board.

This system was intended to shield State-own media from political influence.

### 4.2.3 The “small media law”: the government appoints all officers

The law of 30 December 2015, often called “small media law”,<sup>42 43</sup> entered into force on 8 January 2016 and expired on 30 June 2016. This law amended the law on radio and television in the following way: all officers of State-owned broadcasters were now freely appointed by the government, subject only to conditions of professional skill and of absence of criminal convictions. The law lowered the previously existing professional skill criteria required to become an officer. It suppressed fixed terms of office, allowing instead the government to dismiss officers at will, at any time (including the officers who were already serving when the law entered into force).

The new law suppressed the official competitions and the preselection of candidates by academic institutions. Under the small media law, the National Broadcasting Council played no role whatsoever in the appointment or dismissal of officers, and the supervisory boards played no role in the appointment or dismissal of presidents or members of management boards.

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42 Ustawa z dnia 30 grudnia 2015 r. o zmianie ustawy o radiofonii i telewizji. Dziennik Ustaw, 2016, poz. 25.  
<http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20160000025>

43 Sometimes, this law is referred to in English as the “law on Public Service Media governance”.



On 4 January 2016, the situation resulting from the adoption of the small media law was described as follows in an alert published by the Council of Europe on the *Platform to promote the protection of journalism and safety of journalists*, and authored by six international NGOs<sup>44</sup>:

### ***Polish Law on Public Service Broadcasting Removes Guarantees of Independence***

*The law on Public Service Media governance which has been hurriedly adopted by the Polish parliament proposes the removal of guarantees for the independence of public service TV (TVP) and Radio (PR), in breach of Council of Europe norms and of the mandate given by the Polish constitution to the independent broadcasting authority (KRRiT) to uphold the broad public interest in broadcasting. The legislation gives a government minister exclusive powers to appoint and dismiss all members of the Supervisory and Management Boards of TVP and PR, making them wholly dependent on the goodwill and favour of the government. The proposed arrangements represent a shift to direct government control over the strategic and editorial stance of the public broadcasters which is wholly unacceptable in a genuine democracy. The fundamental and drastic changes proposed were put before parliament to be voted on without the necessary inclusive public debate and in spite of strong objections by the KRRiT and many concerned bodies in Poland and abroad. The Polish government's plans directly contradict the commitments made by the Committee of Ministers of the Council of Europe in its 2012 Declaration on Public Service Media Governance; that Declaration stated that PSM must remain independent of political or economic interference, and should be accountable and transparent as they have the obligation to serve the public in all its diversity. The organisations submitting this Alert call on the Polish ruling party to abandon the proposed legislation at once.*

In its response of 25 January 2016 to the alert, the Polish government said, *inter alia*, what follows<sup>45</sup>:

*The State Treasury as the owner of public media companies is free to decide how its ownership is being managed and who is supervising the management process.*

[...]

*The Government of the Republic of Poland wishes to express its astonishment with such stigmatising and biased claims against Poland, as exposed in the alert. It is to be regretted that the civil society mechanisms provided by the Council of Europe are being used in such an irresponsible and offensive way.*

On 5 January 2016, the Commissioner for Human Rights of the Council of Europe issued the following statement<sup>46</sup>:

*I call on the President of the Republic of Poland not to sign the law on Public Service Media governance and to uphold the independence of Poland's public service television and radio.*

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44 Signatories: the Association of European Journalists, Article 19, the Committee to Protect Journalists, the European Federation of Journalists / International Federation of Journalists, Index on Censorship, Reporters without Borders.  
<https://go.coe.int/Huvad>

45 A link to the response is in the alert, as published by the Council of Europe;  
<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805939fb>

46 [https://www.coe.int/en/web/commissioner/-/call-on-polish-president-not-to-sign-new-media-law?redirect=http://www.coe.int/en/web/commissioner/home?p\\_p\\_id=101\\_INSTANCE\\_iFWYWFoeqhvQ&p\\_p\\_lifecycle=0&p\\_p\\_state=normal&p\\_p\\_mode=view&p\\_p\\_col\\_id=column-1&p\\_p\\_col\\_count=4](https://www.coe.int/en/web/commissioner/-/call-on-polish-president-not-to-sign-new-media-law?redirect=http://www.coe.int/en/web/commissioner/home?p_p_id=101_INSTANCE_iFWYWFoeqhvQ&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_count=4)



*The law worryingly places public service media under direct government control by giving the latter the powers to appoint and dismiss the members of the supervisory and management boards of public service television and radio. These arrangements contradict Council of Europe standards which notably require that public service media remain independent of political or economic interference.*

*Rushed through Parliament last week, the law has also not benefited from the public debate which is required in a democratic society when considering such important changes in the field of media freedom.*

The small media law was also criticized by the European Broadcasting Union as being “against basic principles and established standards of public media governance” and as a “retrograde step”.<sup>47</sup>

#### **4.2.4 The small media law survives its own death twice: the declaration of unconstitutionality and the expiry of the law are ignored**

The small media law was referred to the Polish Constitutional Tribunal. By judgment of 13 December 2016<sup>48</sup> (rendered several months after the expiry of the law) the Tribunal declared, *inter alia*, that the stipulations of the law that exclude the National Broadcasting Council from the appointment procedures or that make it possible to dismiss officers at will, at any time were contrary to the constitution.

On 1<sup>st</sup> February 2019, the President of Sejm published an official notice containing the consolidated text of the law on radio and television.<sup>49</sup> The notice almost totally ignores the judgment of 13 December 2016: stipulations of the law on radio and television repealed by the small media law are described as repealed (and their wording is not included in the notice) even in the cases where the repealing provisions were declared unconstitutional. In these cases the declarations of unconstitutionality are mentioned in footnotes, but the text unconstitutionally repealed is not quoted, even though the judgment of the Constitutional Tribunal makes it applicable.

The notice of 1<sup>st</sup> February 2019 has another bizarre feature: it ignores Art. 4 of the small media law, which regulates the expiry of this law as follows:

**In Polish:** *Ustawa wchodzi w życie z dniem następującym po dniu ogłoszenia, a traci swą moc z dniem 30 czerwca 2016 r.*

**Translation:** *The law enters into force the day after its publication and expires on 30 June 2016.*

The expiry of the small media law should be interpreted as follows: when this law expires, the amendments that it introduces into the law on radio and television expire too, and the latter law reverts to its previous wording. The notice of the President of Sejm ignores this: according to the notice (published well after the expiry of the small media law) all amendments introduced by the small media law are still in force, and the expiry of the law is ignored.

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47 Letter of 29 December 2015 to the Speaker of the Sejm <https://www3.ebu.ch/files/live/sites/ebu/files/News/2015/12/EBU%20Letter%20to%20Polish%20Parliament.pdf> ; news of 31 December 2015 <https://www.ebu.ch/news/2015/12/ebu-appeals-to-polish-president> ; news of 30 December 2015 <https://www.ebu.ch/news/2015/12/press-freedom-and-media-organiza>

48 Case K 13/16. <http://trybunal.gov.pl/postepowanie-i-orzeczenia/wokanda/art/9452-ustawa-o-zmianie-ustawy-o-radiofonii-i-telewizji/>

49 Obwieszczenie Marszałka sejmu Rzeczypospolitej Polskiej z dnia 1 lutego 2019 r. w sprawie ogłoszenia jednolitego tekstu ustawy o radiofonii i telewizji. Dziennik Ustaw 2019, poz. 361. <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20190000361>

It is a well-established practice in Poland that every law is enforced based on the most recent notice of the President of Sejm containing its consolidated text. The text of the law as originally published and laws amending this text are looked at only in absence of such a notice. Due to this practice, the notice of the President of Sejm can be viewed as effectively cancelling the judgment of the Constitutional Tribunal of 13 December 2016 and the language in Art. 4 of the small media law which orders the expiry of this law on 30 June 2016.

Many appointments and dismissals of officers occurred in the period 2017-2019, *i.e.*, after the judgment declaring some provisions of the small media law unconstitutional and after the expiry of the law.<sup>50</sup> These appointments and dismissals were done by the government according to the procedures set up by the small media law (procedures further modified by a subsequent law, as described in the next section), and were then registered by officers of courts of law. In short: both the expiry of the small media law and the unconstitutionality of certain of its provisions are being ignored by various Polish authorities.

#### **4.2.5 The law on the Council of National Media**

The law of 22 June 2016<sup>51</sup> created the Council of National Media (*Rada Mediów Narodowych*), a body distinct from the National Broadcasting Council. The competence to appoint and dismiss officers of State-owned broadcasters was transferred from the government to the new body.

The Council of National Media is composed of five members, three of which being elected by the Sejm, and the remaining two appointed by the President of the Republic from a list of candidates proposed by opposition fractions in Sejm. The term of office of the Council of National Media is of six years. Membership in the Council is incompatible with many public functions including, for example, the membership in any council of local self-government and the employment in the public administration. There is, however, no prohibition against being a member of the Council and simultaneously a member of Parliament. Indeed, in the five-member council, the three members elected by Sejm (Krzysztof Czabański, president; Elżbieta Kruk; Joanna Lichocka) are all members of Sejm, and belong to the ruling party (PiS).

#### **4.2.6 Politicians of the ruling party in the National Broadcasting Council (the case of Kołodziejcki)**

Even after being stripped of its appointing powers, the National Broadcasting Council has retained important competences: it grants and renews broadcasting licenses to private broadcasters, has disciplinary powers over broadcasters (both State-owned and private), and is competent to apportion State funds among State-owned broadcasters, and has a large discretionary power in this area (the funds in question are listed in Table 1, p. 15; they are in excess of 1 billion euro over 3 years).

Between 22 July and 12 September 2016 all members of the National Broadcasting Council were replaced by newly elected or appointed persons<sup>52</sup> (this was a routine replacement, authorized by laws enacted before the October 2015 elections). All new members were chosen by the governing majority, based on political criteria. The case of Witold Kołodziejcki, chairman of the Council since 19 September 2016 (see Attachment 17), is most striking: while becoming member then chairman

50 These appointments and dismissals are listed in Appendix B.

51 Ustawa z dnia 22 czerwca 2016 r. o Radzie Mediów Narodowych. Dziennik Ustaw 2016, poz. 929.  
<http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20160000929>

52 <http://www.krrit.gov.pl/krrit/informacje-o-krrit/sklad/>

of the National Broadcasting Council, Kołodziejski was already member of the council of the Mazovian Region (or voivodship) (*radny sejmiku województwa mazowieckiego*), elected after being a candidate of the ruling party (*PiS*),<sup>53</sup> and was a member of the fraction of the ruling party in the latter council. The council of the region is directly elected by popular vote. It adopts the region's budget and local laws and elects the region's executive power.

Kołodziejski remained a regional councillor and a member of the *PiS* fraction there while being the chairman of the National Broadcasting Council. Then, in October 2018, he was elected again to the regional council, after being again a candidate of *PiS*.<sup>54</sup> After this election, he became again a member of the *PiS* fraction of the ruling party. All this happened while Kołodziejski remains the chairman of the National Broadcasting Council.

The situation of Kołodziejski is in obvious breach of the Polish Constitution (Art. 214 para. 2: *A member of the National Broadcasting Council shall not belong to a political party, a trade union or perform public activities incompatible with the dignity of his function*<sup>55</sup>).

As a candidate in a general election in 2018, Kołodziejski was in a very serious conflict of interest because the National Broadcasting Council is competent for controlling the impartiality of public broadcasters (specifically, for verifying whether during an electoral campaign, these broadcasters treat all candidates and political parties equally).

The previous sentence can be illustrated by the exchange of letters that took place between the Election Observatory and Witold Kołodziejski (Attachments 18 and 19). On 25 January 2019, the Election Observatory noted that public broadcasters were going to send financial reports for the fourth quarter of 2018 to the National Broadcasting Council, and expressed the belief, based on media monitoring that it had done and published (Attachment 22) that these reports were likely to contain false information: the reports were probably going to say that broadcasters spend money on the public mission defined by Art. 21 para. 1 of the law on radio and television, while in reality a substantial fraction of the money is being spent on political propaganda, including propaganda related to the October 2018 local elections. The Election Observatory asked the National Broadcasting Council to analyze the financial reports carefully in order to avoid the risk of transferring money to broadcasters based on false information that may be contained therein.

In response, Witold Kołodziejski says:

**In Polish:**

*[...] powyższa sprawa była przedmiotem dyskusji Krajowej Rady Radiofonii I Telewizji. Odniesienie się do wniosków zawartych w przesłanym "Raporcie głównym z obserwacji procesu wyborczego" wymagałoby przeprowadzenia monitoringu porównawczego audycji, które Państwo weryfikowaliście, co nie jest obecnie możliwe do wykonania, ponieważ zgodnie z art. 20 ust. 1 ustawy z dnia 29 grudnia 1992 r. o radiofonii I telewizji nadawcy mają obowiązek przechowywać audycje tylko tylko przez 28 dni od dnia ich rozpowszechnienia, natomiast audycje wymienione przez Stowarzyszenie*

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53 *Dziennik Urzędowy Województwa Mazowieckiego*, 2014, poz. 11649. Obwieszczenie Komisarza Wyborczego w Warszawie z dnia 22 listopada 2014 r. o wynikach wyborów do rad na obszarze województwa mazowieckiego. Rozdział 3. Wybrani radni, p. 259. <http://www.edziennik.mazowieckie.pl/#/legalact/2014/11649/>

54 *Dziennik Urzędowy Województwa Mazowieckiego*, 2018, poz. 10284. Obwieszczenie Komisarza Wyborczego w Warszawie I z dnia 25 października 2018 r. o wynikach wyborów do rad na obszarze województwa mazowieckiego. DZIAŁ V. Wybory do Sejmiku Województwa Mazowieckiego, p. 1431. <http://www.edziennik.mazowieckie.pl/#/legalact/2018/10284/>

55 Boldface added by the applicants.

*nadawane były w terminach dużo wcześniejszych, tj. W okresie od 30 września do 2 listopada 2018 r.*

**Translation:**

*[...] this matter was discussed by the National Broadcasting Council. To take position on the conclusions contained in the “Main report from the observation of the electoral process” that you sent, it would be necessary to conduct a comparative monitoring of the broadcasts that you verified, and this is now impossible because pursuant Art. 20 para. 1 of the law on radio and television, the broadcasters are under the obligation to keep records of programmes only during 28 days following the airing of the latter, and the programmes mentioned by the Association were aired much earlier, i.e., between 30 September and 2 November 2018.*

It results from this letter that the National Broadcasting Council did not monitor media during the campaign before the local elections of October 2018, and that the Council feels unable to monitor programmes of that period after the fact because, as it pretends, there are no recordings available (in fact, the recordings are available; for example, all programmes at issue are available to the general public by internet).

### **4.3 The dismissal of all officers except two and the pressure exerted upon journalists**

All officers of the two national broadcasters (TVP and Polskie Radio) were dismissed on 8 January 2016, *i.e.*, the day after the entry into force of the small media law. New officers were appointed on the same day. In the case of regional radio companies (the importance of which is much smaller – Table 1, p. 15 shows the amounts of money that they receive from the State treasury), all officers were dismissed, too, at various dates (some on 8 January 2016, others up to one year later), with two exceptions: Piotr Jakub Ostrowski, the president of the management board of “Radio Koszalin” appointed in 2010 and Jan Dariusz Kreft, member of the supervisory board of “Radio Gdańsk” appointed in 2011, are still in function.

All these appointments and dismissals are listed in Appendix B.

### **4.4 The situation of the journalists of State-owned media**

#### **4.4.1 Leasing Team and civil law (non-labour) contracts of TVP journalists**

In 2014, the employment of approximately 400 persons, including many journalists, was terminated by TVP. These persons were offered the possibility to continue working for TVP outside labour relations with the latter: they were allowed to continue working either as self-employed undertakers from whom TVP was going to purchase services or as employees of Leasing Team, a company distinct from TVP, from which TVP was going to purchase services, too.

Under Polish law, the termination of employment by the employer is only possible for cause. The termination of contracts with self-employed journalists or with the company Leasing Team was possible at will.

This massive change of contracts with employees was not connotated politically (it occurred while PiS was not the ruling party and persons connected with PiS were not playing any significant role in the management or supervision of TVP). It was part of a trend, strong in Poland at that time, to

shape contracts with workers so that the labour law does not apply (or, at least, so that the worker needs a complicated court battle in order to have the labour law declared applicable).

Later, in 2016 this situation facilitated the transformation of TVP into a propaganda engine: it is relatively easy to coerce a journalist who can be fired any time without cause into participating in propaganda; and when such a journalist resists coercion, his contract can be terminated easily.

The situation around Leasing Team is well known in Poland. Let us just mention a press article that describes it briefly (Attachment 15). Below (Section 4.4.3, p. 30) we quote the description of this situation that the Polish ombudsman made before the committee of petitions of the European Parliament.

#### **4.4.2 The list of dismissed journalists**

The Society of Journalists compiled a list of 239 journalists whose work for State-owned media was terminated in 2016, because of the transformation of said media into a propaganda engine (the list with an introduction: Attachment 42; a cover letter briefly explaining how and by whom the list was compiled: Attachment 43).

The introduction to the list states what follows:

##### **In Polish:**

##### ***Czystka w mediach – nazwiska***

**W pierwszym roku “dobrej zmiany”, kiedy władzę w mediach publicznych przejmowali funkcjonariusze PiS i osoby przez nich wskazane, Towarzystwo Dziennikarskie publikowało listę dziennikarzy radia i telewizji, ofiar czystek.**

*Nie wszystkie wymienione niżej osoby zostały po prostu zwolnione z pracy. Wiele z nich złożyło wypowiedzenia, nie chcąc uczestniczyć w politycznej pacyfikacji mediów, wielu skłoniono do rozwiązywania umowy o pracę za zgodą stron, oferując lepsze warunki rozstania niż w przypadku wypowiedzenia. Na liście są też dziennikarze, którym uniemożliwiono pracę zabierając dyżury i tacy, z którymi rozwiązano umowy zlecenia. Są też przypadki przeniesienia niektórych osób na mniej „wrażliwe” politycznie stanowiska. Wszystkich uznaliśmy za ofiary politycznej czystki w mediach publicznych.*

##### **Translation:**

##### ***Purge in the media – names***

***During the first year of the “good change” [propaganda name given to the policies of the PiS government], while PiS functionaries and persons nominated by them were taking over public media, the Society of Journalists published a list of radio and TV journalists who were victims of purges.***

*Not all persons listed below were simply fired. Many of them resigned, because they did not want to participate in the political pacification of the media, many more were talked into terminating their employment contracts by mutual agreement, on conditions better than those corresponding with a unilateral termination by the employer. Some of the journalists listed had their tours of duty suppressed, which effectively prevented them from working, others had their civil law contracts terminated. There are cases of transfers of certain persons to less politically sensible posts. We consider all these journalists to be victims of a political purge in the public media.*

### 4.4.3 Statement by the Polish ombudsman

The two issues discussed above, to wit the civil law (non-labour) contracts of journalists and the large-scale departures (forced or otherwise) of journalists from media in 2016, were described by dr Adam Bodnar, the Polish ombudsman, before the committee of petitions of the European Parliament<sup>56</sup>:

**In Polish:**

[...]

*Zmiany w mediach publicznych doprowadziły do licznych zmian personalnych, które dotyczyły dziennikarzy. Według szacunków niezależnej organizacji pozarządowej, Towarzystwa Dziennikarskiego, ponad 200 osób straciło pracę w wyniku dokonywanych zmian. I teraz warto zwrócić uwagę na to, że bardzo trudno jest podać precyzyjną liczbę, np. osób, które zostały zwolnione, ponieważ część osób została zwolniona, natomiast bardzo dużo było osób, które po prostu dobrowolnie odchodziły z mediów publicznych ze względu na to, że nie miały możliwości czy nie godziły się na realizowanie określonej polityki redakcyjnej, czyli jeżeli nie były w stanie wykonywać określonych poleceń, to po prostu decydowały się na odejście. Także część osób rozwiązywała umowy cywilno-prawne, o tym za chwilę powiem w odniesieniu do Telewizji Polskiej. Warto też podkreślić, że wielu dziennikarzy w kontekście tej sytuacji nie podejmowało żadnych dalszych działań prawnych, gdyż mogło to dla nich oznaczać trudności ze znalezieniem zatrudnienia w innych redakcjach, także woleli po prostu, można powiedzieć, zapomnieć o sprawie i pracować w innych redakcjach niż wchodzić w długotrwałe procesy sądowe.*

*Jako rzecznik praw obywatelskich byłem stroną postępowania w sprawie z powództwa pana redaktora Jerzego Sosnowskiego. Pan Jerzy Sosnowski został zwolniony z Polskiego Radia za publiczne komentarze dotyczące polityki własnej rozgłośni. Co ważne, był także członkiem związków zawodowych, które działały w Polskim Radio. W prawomocnym wyroku z 10 maja 2018 r. Sąd Okręgowy w Warszawie stwierdził niezgodność z prawem wypowiedzenia mu umowy o pracę. Także uczestniczyłem w pomocy prawnej dotyczącej trzech pracowników Polskiego Radia. Te sprawy zakończyły się ugodami.*

*Warto zauważyć, że w przypadku Telewizji Polskiej sytuacja była troszeczkę inna, ponieważ duża część osób zatrudnionych w Telewizji Polskiej, to są osoby zatrudnione nie na podstawie umowy o pracę, ale na podstawie umowy cywilno-prawnej. To znaczy swojego czasu, to jeszcze było w 2013 roku, została zawarta taka duża umowa z firmą Leasing Team, która, można powiedzieć, pozwoliła na outsourcing umów pracowniczych. To ma konsekwencję taką, że teraz, obecnie, czy w ciągu ostatniego czasu rozwiązanie współpracy z tymi osobami jest znacznie łatwiejsze, bo one nie korzystają z typowej ochrony prawno-pracowniczej, tylko po prostu jest to rozwiązanie umowy umowy cywilno-prawnej i wtedy po prostu można dochodzić swoich praw w sądzie cywilnym.*

[...]

**Translation:**

[...]

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56 22 January 2019, session at 14:31, petition 0477/2017 by Piotr Owczarski. Time 1:31:50 in the recording <https://www.europarl.europa.eu/ep-live/en/committees/video?event=20190122-1430-COMMITTEE-PETI>

*The changes that touched the public media led to numerous personnel changes concerning journalists. According to estimates by the independent NGO Society of Journalists, more than 200 people lost their jobs as a result of these changes. It is noteworthy that it is very difficult to quote the precise number, e.g., of people dismissed, because while some of them were fired, many others resigned voluntarily from public media because, not being able or not wanting to follow a given editorial policy or being unable to carry out certain instructions, they just decided to quit. Also, some people terminated civil law [non-labour] contracts, I will talk later about this in the context of TVP. Let me stress that many journalists in this situation took no further legal action, because this could jeopardize their chances of finding a job elsewhere; we can therefore say that they simply preferred to forget about the matter and work elsewhere rather than start long court proceedings.*

*As ombudsman, I was party to the court proceedings initiated by journalist Jerzy Sosnowski. He had been fired from Polskie Radio because for commencing publicly the policies of his radio. It is noteworthy that he was also a member of a trade union active at Polskie Radio. In the final judgment of 10 May 2018, the regional court in Warsaw declared his dismissal unlawful. Also, I participated in providing legal aid concerning three employees of Polskie Radio. These cases were settled out of court.*

*Let us note that the situation at TVP was somewhat different, because many people working there do not have employment contracts, but civil law contracts. Some time ago, it was in 2013, a big contract was concluded with the outsourcing company Leasing Team. This contract made it possible to outsource employment contracts. The effect was that now or recently it is much easier to terminate the collaboration with such persons, because they do not benefit from the typical protection of the labour law, it suffices to terminate a civil law contract, and then they can claim their rights before a civil court of law.*

[...]

## 4.5 The Owczarski petition

Piotr Owczarski, a journalist of TVP whose contract was terminated, declares that the termination was caused by his political opinions. *Inter alia*, he said what follows before the commission of petitions of the European Parliament:<sup>57</sup>

### **In Polish:**

*Dziękuję, że zechcieli mnie Państwo zaprosić tutaj do Brukseli, żeby przedstawić bardzo poważny problem. Proszę państwa, telewizja publiczna w Polsce trzy lata temu została brutalnie przejęta przez partię rządzącą w Polsce, a wolność słowa i niezależność dziennikarska została zdeptana (sic) z niewiarygodną dotąd siłą patrząc na historię tej telewizji. W polskiej telewizji nie ma już niezależności i pluralizmu, nie ma wymiany poglądów, każdego dnia jest za to brutalny atak na opozycję, jest język nienawiści i jest szcucie społeczeństwa poprzez podsycanie negatywnych emocji. Telewizja Polska każdego dnia pastwi się nad każdym, kto myśli inaczej niż partia rządząca. I takie są, proszę państwa, fakty.*

*Telewizją publiczną w Polsce rządzi polityk, to jest człowiek, który jest bardzo mocno związany z partią rządzącą od lat, i to jest poważny problem. Każdego dnia dyskryminuje się dziennikarzy, którzy mają inne poglądy niż partia rządząca. Inwigiluje*

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<sup>57</sup> Session and recording mentioned in note 56, time 1:21:10.



się dziennikarzy, przegląda się ich facebooki. Osoby, które są osobami homoseksualnymi i ujawniają to publicznie, są wyrzucane z pracy. Eliminuje się osobowości telewizyjne i osoby, które są doświadczane, dlatego, że potrafią myśleć i potrafią analizować rzeczywistość, a zatrudnia się osoby, które są słabe warsztatowo lub osoby, które są związane z mediami pravicowymi, aby były brutalne w wypowiedziach, które uderzają w opozycję.

W Telewizji Polskiej powszechna jest dyskryminacja i prześladowanie dziennikarzy o innych niż partia rządząca poglądach. Zabiera się takim dziennikarzom dyżury czyli zabiera im się możliwość zarobienia na chleb, wyrzuca się ich z pracy. Telewizja publiczna i serwisy informacyjne są bardzo dokładnie kontrolowane przez osoby wyznaczone przez władze. Dochodzi do sytuacji, że paski scroll, które się pojawiają w serwisach informacyjnych są dyktowane przez władze słowo w słowo bez możliwości ingerencji dziennikarskiej.

Proszę sobie wyobrazić, że kanały regionalne telewizji publicznej, których jest 16, mają za zadanie krytykować władze miast, które są z opozycyjnych partii politycznych. W Telewizji Polskiej oddział Warszawa część serwisów informacyjnych poświęcona jest nagonce na nowego prezydenta miasta. Za ledwie w dwa miesiące od objęcia przez niego stanowiska rozlicza się już go z obietnic wyborczych i krytykuje się, choć nie miał nie miał zbyt wielu możliwości, żeby coś zrobić.

Proszę sobie wyobrazić, że do telewizji publicznej zapraszani są tylko i wyłącznie eksperci, którzy są osobami popierającymi obecną władzę. Reszta gości jest na czarnej liście i tak naprawdę osoby, które zapraszają gości, mają zakaz ich zapraszania. W każdym materiale filmowym w telewizji publicznej muszą wypowiadać się politycy PiS, bez względu na to, czy ich zdanie jest ważne, czy nieistotne, czy sprawa dotyczy jakichś absurdalnych sytuacji typu remont chodnika, czy też ważnych krajowych spraw. Cel jest taki, aby obywatel miał wrażenie, że za wszystko, co dzieje się w Polsce, odpowiada Prawo i Sprawiedliwość, a jego przedstawiciele są wszędzie i za wszystko odpowiadają.

#### **Translation:**

*Thank you for inviting me here to Brussels to talk about a very serious problem. Ladies and Gentlemen, three years ago the Polish public television was brutally taken over by the ruling party, and the freedom of speech as well as the independence of journalists were crushed with a strength unimaginable until then, given this television's history. There is no more independence or pluralism in the Polish television, no exchange of ideas, instead every day there is a brutal attack on the opposition, hate speech and developing aggression in the society through instilling negative emotions. Everyday TVP attacks all those who do not think the same way as the ruling party. Such are the facts, Ladies and Gentlemen.*

*The man at the head of TVP is a politician who has been tightly linked with the ruling party for years, and this is a serious problem. Every day journalists whose opinions are different from those of the ruling party are discriminated against. Journalists are under surveillance, their facebook accounts are scrutinized. Persons who reveal their homosexuality publicly are fired. TV personalities and experienced persons are also eliminated, because they are able to think and analyse the reality, and persons who are professionally weak or connected with right-wing media are hired, because they can brutally attack the opposition.*

*At TVP the discrimination against and the persecution of journalists who do not have the same opinions as the ruling party is generalized. They do not receive tours of duty,*



*and because of this cannot earn enough; their contracts get terminated. hence their possibility to earn for life, or are simply fired. The public television and news programmes are tightly controlled by representatives of the power in place. Sometimes even the exact content of news tickers in news programmes is imposed by the power in place, and journalists have absolutely no say.*

*Just imagine: regional channels of TVP, there are 16 of them, are ordered to criticize the leaders of cities who belong to opposition political parties. In the Warsaw office of TVP part of the information services is dedicated to attacking the new mayor of the city. Just two months after he took office there was a dissection of his electoral promises, and he was criticised even though he had not in a position to have accomplished anything.*

*Just imagine that the only experts invited by public TV are those who support the power in place. All other guests are on a black list and those who invite guests are ordered not to invite them. In each story politicians from PiS speak, regardless of whether their statements are relevant or not, whether the story is about trivial matters like the repair of a sidewalk or matters of national importance. The objective is to give the impression that PiS is responsible for everything that happens in Poland and its representatives are present everywhere and are responsible for everything.*

## **5 The impossibility to obtain redress in Poland regarding State-sponsored propaganda**

Under Polish law, it is impossible to challenge the validity of a general election of any kind based on propaganda during the electoral campaign (including State-sponsored propaganda) or on the discrimination against certain candidates by the media. We describe the reasons of this impossibility: the wording of Art. 82 § 1 of the electoral code (Section 5.1), the outcome of the *Murawko* case (judicial proceedings that were initiated in order to overcome the impossibility discussed here) (Section 5.2); and the way in which certain judges in the Polish Supreme Court were appointed (politically-biased appointments, made in violation of the law of the European Union) (Section 5.3).

From the case law of the ECtHR, it results that the impossibility to challenge the validity of a general election based on propaganda or on the discrimination against certain candidates amounts to a violation of the Act of 1976. This is discussed in Section 5.4.

### **5.1 Art. 82 § 1 of the electoral code: restrictions on the possibility to challenge the validity of an election**

Art. 82 § 1 of the Polish electoral code<sup>58</sup> is worded as follows:

**In Polish:**

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58 Ustawa z dnia 5 stycznia 2011 r. – Kodeks wyborczy <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20110210112> Consolidated text of 22 February 2019: *Dziennik Ustaw*, 2019, poz. 694. <http://dziennikustaw.gov.pl/DU/2019/684/1> Amendment not taken account in the consolidated text (in force since August 10, 2019): Ustawa z dnia 31 lipca 2019 r. o zmianie ustawy – Kodeks wyborczy oraz ustawy o referendum ogólnokrajowym. *Dziennik Ustaw*, 2019, poz. 1504. <http://dziennikustaw.gov.pl/DU/2019/1504/1>

**Art. 82 § 1.** *Przeciwko ważności wyborów, ważności wyborów w okręgu lub wyborowi określonej osoby może być wniesiony protest z powodu:*

- 1) *dopuszczenia się przestępstwa przeciwko wyborom, określonego w rozdziale XXXI Kodeksu karnego, mającego wpływ na przebieg głosowania, ustalenie wyników głosowania lub wyników wyborów lub*
- 2) *naruszenia przepisów kodeksu dotyczących głosowania, ustalenia wyników głosowania lub wyników wyborów, mającego wpływ na wynik wyborów.*

**Translation:**

**Art. 82 § 1.** *A protest against the validity of elections, the validity of elections in a constituency or the validity of the election of a specific person can be lodged founded on:*

- 1) *an offense against elections, defined in chapter XXXI of the criminal code, having an incidence on the course of voting, the determination of the results of the vote or of the elections; or*
- 2) *a breach of the stipulations of the code concerning the vote or the determination of the results of the vote or of the elections, having an incidence on the results of the elections.*

This stipulation is applicable to all general elections in Poland, including elections to the European Parliament. It excludes the possibility to challenge the validity of an election (or to *lodge a protest*, according to the code's terminology) based on any breaches of law not connected with voting, counting or tabulation.

## **5.2 The Murawko case**

### **5.2.1 First phase, before the Supreme Court**

The *Murawko* case was initiated by a protest lodged against the validity of the by-election to the Polish senate held in one single-mandate constituency on 6 March 2016. The protest was founded on the electoral campaign of the winner being supported by public authorities (abuse of administrative resources) and being financed illegally to an extent such that the other candidates had no chance of winning the election while respecting the campaign spending limits; and on harassment of activists by police during the campaign.

As summarised by the Polish Supreme Court (Attachment 23, p. 4),

**In Polish:**

[w poniższym tekście słowo „Konwencja” oznacza Europejską Konwencję Praw Człowieka]

*Autor przedmiotowego protestu wnioskuje do Sądu Najwyższego o przyjęcie jeszcze szerszej interpretacji wzmiankowanego przepisu [art. 82 § 1 kodeksu wyborczego] niż zaprezentowana w postanowieniu z 17 grudnia 2015 r. i uznanie, że przepis ten nie ma na celu wyłączenia stosowania ani art. 101 Konstytucji RP, ani art. 13 i 14 Konwencji oraz art. 3 protokołu dodatkowego do niej i w konsekwencji uznanie, iż protest wyborczy oparty na naruszeniu norm prawa zawartych w Konwencji (w szczególności art. 14 i art. 3 protokołu dodatkowego) oraz w Konstytucji RP (art. 2 i art. 32) jest dopuszczalny w świetle art. 82 ust. 1 Kodeksu wyborczego.*

Gdyby Sąd Najwyższy nie przyjął takiej interpretacji art. 82 ust. 1 Kodeksu wyborczego, która pozwala uznać niniejszy protest wyborczy za w pełni dopuszczalny, wnoszący protest wnioskuję o postawienie Trybunałowi Konstytucyjnemu pytania prawnego co do zgodności art. 82 ust. 1 Kodeksu wyborczego z Konstytucją (w szczególności z art. 77 ust. 2 i art. 101 ust. 2, w związku z art. 2, art. 32, art. 97 ust. 2 i art. 101 ust. 1) oraz z Konwencją (w szczególności z art. 13 w związku z art. 3 protokołu dodatkowego i z art. 14). [...]

**Translation:**

[in the text below, the word “Convention” means “European Convention on human Rights”]

*The author of the protest in question requests that the Supreme Court adopt an interpretation of the stipulation mentioned [Art. 82 § 1 of the electoral code] even wider than the one presented in the judgment of 17 December 2015, and recognise that said stipulation does not aim at excluding the application Art. 101 of Constitution of the Republic of Poland or Art. 13 and 14 of the Convention and Art. 3 of the additional protocol to the Convention, and therefore recognise that the electoral protest founded on a breach of legal norms included in the Convention (in particular, Art. 14 and Art. 3 of the additional protocol) or in the Constitution of the Republic of Poland (Art. 2 and Art. 32) is admissible in the light of Art. 82 § 1 of the electoral code.*

*Should the Supreme Court not adopt an interpretation of Art. 82 § 1 of the electoral code that makes it possible to consider this protest as entirely admissible, the author of the protest requests to refer to the Constitutional Tribunal a question of law concerning the conformity of Art. 82 § 1 of the electoral code with the Constitution (in particular with Art. 77 para. 2 and with art. 101 para. 2, read in conjunction with Art. 2, Art. 32, Art. 97 para. 2 and Art. 101 para. 1) and with the Convention (in particular with Art. 13 read in conjunction with Art. 3 of the additional protocol and with Art. 14). [...]*

The Supreme Court decided to “leave the protest with no further proceedings” (*pozostawić protest bez dalszego biegu*), i.e., declared the protest inadmissible. No question was referred to the Constitutional Tribunal. The judgment was, *inter alia*, motivated as follows (Attachment 23, p. 15):

**In Polish:**

*zważywszy na to, że z racji krótkiego, 90-dniowego terminu wyznaczonego Sądowi Najwyższemu w art. 244 § 2 w związku z art. 258 Kodeksu wyborczego do podjęcia uchwały o ważności wyborów do Senatu, wystąpienie w tym czasie do Trybunału Konstytucyjnego o rozstrzygnięcie zgodności przepisów Kodeksu wyborczego z Konstytucją RP jest nierealne, a nadto [...] nie znajdując podstaw do takiego wystąpienia [...]*

**Translation:**

*considering that, because of the short, 90-day deadline imposed upon the Supreme Court by Art. 244 § 2 in connection with Art. 258 of the electoral code to decide on the validity of elections to the senate, requesting from the Constitutional Tribunal to determine the compatibility of provisions of the electoral code with the Constitution of the Republic of Poland is unrealistic; additionally [...] finding no grounds for making such a request [...]*

## 5.2.2 Second phase, before the Constitutional Tribunal

In response to the above-mentioned judgment, Murawko lodged a constitutional complaint with the Polish Constitutional Tribunal, challenging the constitutionality of Art. 82 § 1 of the electoral code. The proceedings on the complaint were discontinued (*umorzone*) on 4 December 2018, and therefore no judgment on the merits will be rendered (judgment: Attachment 24). The discontinuation was decided by a 5-person panel, composed of three judges of the Constitutional Tribunal and of two persons (Mariusz Muszyński and Justyn Piskorski) who are generally not recognised as being judges, because they were elected in replacement of other judges, elected during the previous term of the parliament, and whose 9-year terms had just started. Most notably, this is what the Venice Commission concluded.<sup>59</sup> Additionally, the Regional Administrative Court in Warsaw (*Wojewódzki Sąd Administracyjny w Warszawie*) said (Attachment 25):

### **In Polish:**

*WSA, dokonując analizy treści wyroków Trybunału Konstytucyjnego z dnia 16 grudnia 2015 r. sygn. akt K 34/15 (Dz. U. z 2015 r., poz. 2129), jak też ogłoszonych w dniu 5 czerwca 2018 r. wyroków Trybunału Konstytucyjnego z dnia 9 marca 2016 r. sygn. akt K 47/15 (Dz. U. z 2018r., poz. 1077) oraz z dnia 11 sierpnia 2016 r. sygn. akt K 39/16 (Dz. U. z 2018 r., poz. 1078) uznał, iż w świetle wskazanych wyroków TK Mariusz Muszyński jest osobą nieuprawnioną do orzekania w składzie Trybunału Konstytucyjnego.*

### **Translation:**

*The Regional Administrative Court, by analysing the judgments of the Constitutional Tribunal of 16 December 2015 file number K 34/15 (Dziennik Ustaw, 2015, poz. 2129), and the judgments of the Constitutional Tribunal published 5 June 2018 of 9 March 2016 file number K 47/15 (Dziennik Ustaw, 2018, poz. 1077) and of 11 August 2016 file number K 39/16 (Dziennik Ustaw, 2018, poz. 1078) judged that in the light of the judgments of the Constitutional Tribunal mentioned here, Mariusz Muszyński is a person having no right to deliver judgments as a member of the Constitutional Tribunal.*

The fact that persons who are legally not judges sit on the bench of the Constitutional Tribunal is the central issue of the constitutional crisis, of which the Venice Commission said (we repeat here a quote from Section 4.1, p. 18 above): *as long as the situation of constitutional crisis related to the Constitutional Tribunal remains unsettled and as long as the Constitutional Tribunal cannot carry out its work in an efficient manner, not only is the rule of law in danger, but so is democracy and human rights.*

The problems of the Polish Constitutional Tribunal go beyond the fact that non-judges sit on the bench: the Venice Commission reports that Polish authorities presented the situation in the Tribunal as follows to members of the Commission:

*the judges were marked in a particular colour in charts presented to the Venice Commission delegation as if they were a group in Parliament.*<sup>60</sup>

The three judges in the 5-person panel that adjudicated the *Murawko* case were Julia Przyłębska, Grzegorz Jędrejek and Zbigniew Jędrzejewski – all three elected to the Tribunal during the current (8<sup>th</sup>) term of the parliament, by members of parliament from the ruling party (*PiS*). Under normal circumstances, this fact would be irrelevant, but in the present situation in Poland, there are strong

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<sup>59</sup> *Op. cit.* in footnote 32, §§ 98-125.

<sup>60</sup> *Op. cit.*, §118, p. 21.

reasons to consider that the Murawko case was judged by three judges of a “particular colour” (as opposed to impartial judges), in addition to being judged by two non-judges.

### 5.3 The lack of independence of the chamber competent in electoral matters

The Extraordinary Control and Public Affairs Chamber (*Izba Kontroli Nadzwyczajnej i Spraw Publicznych*) of the Polish Supreme Court is competent to adjudicate protests against the validity of elections to the European Parliament and to decide on the validity of these elections (this competence results from Art. 241, 244 and 336 of the electoral code<sup>58</sup> and from Art. 26 of the law of 8 December 2017 on the Supreme Court<sup>61</sup>). This chamber was created by the aforementioned law of 8 December 2017 (Art. 133 para. 2), and all its judges were appointed after 8 December 2017.

Before the entry into force of said law, the Labor, Social Security and Public Affairs Chamber (*Izba Pracy, Ubezpieczeń Społecznych i Spraw Publicznych*) was competent for electoral matters. Under the new law, the latter chamber no longer exists, and pursuant Art. 134 of the law, its judges were automatically transferred to the new Labor and Social Security Chamber (*Izba Pracy i Ubezpieczeń Społecznych*). In practice, the creation and suppression of chambers and the transfer of judges between chambers means that previously appointed Supreme Court judges lost their competence in electoral matters, and this competence was given to newly appointed judges.

Judges of the Polish Supreme Court are appointed by the President of the Republic on a proposal from the National Council of the Judiciary (*Krakowa Rada Sądownictwa – KRS*). The proposals are binding, i.e., the president cannot appoint persons other than those proposed by the KRS.

The law of 8 December 2017 modifying the law on the KRS<sup>62</sup> (distinct from the law on the Supreme Court mentioned at the beginning of this subsection) changes the composition of the KRS in a major way. Before, 15 members of the KRS were, as mandated by the constitution, elected by all Polish judges for a fixed term of office lasting four years (the council has 25 members). The new law, ignoring provisions of the constitution, put a premature end to the terms of office of these 15 members, and gave to the Sejm the competence to elect their successors immediately. The KRS as composed according to the law of 8 December 2017 is often named in Poland neoKRS – this name, distinct from “KRS”, is used to stress that this body is not the KRS as mandated by the constitution.

The reform of the KRS (or the replacement of KRS with neoKRS) is generally viewed, both in Poland and abroad, as making the KRS dependent on the political power, and therefore indirectly suppressing the independence of the judiciary. The suppression of the independence is most striking in the case of the two new chambers of the Supreme Court, created by the aforementioned law of 8 December 2017 on the Supreme Court: the Extraordinary Control and Public Affairs Chamber (mentioned above) and the Disciplinary Chamber (*Izba Dyscyplinarna*). All judges in these two chambers were appointed after the entry into force of the two laws of 8 December 2017, on propositions of the neoKRS.

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61 Ustawa z dnia 8 grudnia 2017 r. o Sądzie Najwyższym. <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20180000005> Consolidated text in: Dziennik Ustaw 2019, poz. 825. <http://dziennikustaw.gov.pl/DU/2019/825/1>

62 Full name in English: Law of 8 December 2017 amending the law on the National Council of the Judiciary and certain other laws (*Ustawa z dnia 8 grudnia 2017 r. o zmianie ustawy o Krajowej Radzie Sądownictwa oraz niektórych innych ustaw*). Dziennik Ustaw, 2018, poz. 3. <http://dziennikustaw.gov.pl/DU/2018/3/1>

Most notably, Evgeni Tanchev, Advocate General at the Court of Justice, analysed as follows the role of the KRS and the independence of the Disciplinary Chamber<sup>63</sup>:

[...]

118. [...] even if a body tasked with selecting judges, such as the NCJ [KRS], does not itself carry out the role of a court, the rules regarding, inter alia, its composition and functioning in so far as they bear on those aspects, may be taken into account for assessing whether a national court in which it has had a substantial role in selecting its members offers sufficient guarantees of independence under Article 47 of the Charter.

[...]

130. In the light of the above considerations, I am of the view that the Disciplinary Chamber forming the subject of the main proceedings does not satisfy the requirements of independence set out in Article 47 [of Fundamental Rights of the European Union] of the Charter.

[...]

137. [...] There are legitimate reasons to objectively doubt the independence of the Disciplinary Chamber in light of the role of the legislative authorities in electing the 15 judicial members of the NCJ [KRS] and the role of that body in selecting judges eligible for appointment by the President of the Republic to the Supreme Court. These doubts cannot be dispelled by the, technically speaking, advisory role of the NCJ in this process.

[...]

148. I have come to the conclusion that, in all events, the circumstances of the main proceedings amount to a breach of the second subparagraph of Article 19(1) TEU.

[...]

150. The NCJ [KRS] has a significant role to play in the appointment of the judges of that new chamber which, on close analysis, appears at odds with European and international guidelines on the independence of such bodies from the legislative and executive authorities (see points 124 to 135 of this Opinion). This provides a gateway for a high degree of influence of the political authorities on the appointment of Supreme Court judges which affects the structure of the Polish judiciary in generalised terms.

[...]

152. Thus, given the proximity of the problem arising in the present cases and that which I considered in my Opinion in *Commission v Poland (Independence of the Supreme Court)* (C-619/18), it, too, should be viewed as structural and generalised and thus going to the ‘essence’ of judicial independence guaranteed under the second subparagraph of Article 19(1) TEU.

[...]

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63 Opinion delivered before the Court of Justice on 27 June 2019. Joined Cases A.K. (C-585/18) v Krajowa Rada Sądownictwa and CP (C-624/18) DO (C-625/18) v Sąd Najwyższy (C-624/18 and C-625/18), joined party: Prokurator Generalny zastępowany przez Prokuraturę Krajową. <http://curia.europa.eu/juris/documents.jsf?num=C-585/18>

At the time of this writing, no judgment has been rendered based on this opinion.

The Extraordinary Control and Public Affairs Chamber suffers from the same problems as the Disciplinary Chamber, and the words of Tanchev quoted here are applicable to both chambers equally.

To summarise: in addition to the problems discussed in Sections 5.1-5.2 (protests against the validity of elections are inadmissible when founded on propaganda or on discrimination against candidates by media), while seeking a remedy in electoral matters we encounter a supplementary obstacle: these matters are judged by a tribunal that is not independent.

## 5.4 The obligation to offer a domestic remedy under the Act of 1976

The ECtHR says<sup>64</sup>:

*[...] the Court considers that the existence of a domestic system for effective examination of individual complaints and appeals in matters concerning electoral rights is one of the essential guarantees of free and fair elections. Such a system ensures an effective exercise of individual rights to vote and to stand for election, maintains general confidence in the State's administration of the electoral process and constitutes an important device at the State's disposal in achieving the fulfilment of its positive duty under Article 3 of Protocol No. 1 to hold democratic elections. Indeed, the State's solemn undertaking under Article 3 of Protocol No. 1 and the individual rights guaranteed by that provision would be illusory if, throughout the electoral process, specific instances indicative of failure to ensure democratic elections are not open to challenge by individuals before a competent domestic body capable of effectively dealing with the matter.*

As it is noted above (Section 2.1, p. 7), the case law of the ECtHR based on P1-3 can be transposed to the Act of 1976, because P1-3 and the Act both mandate free elections. Therefore, it results from the statement of the ECtHR quoted here that while organizing elections to the European Parliament, Member States of the European Union are under the obligation to organize “a domestic system for effective examination of individual complaints and appeals in matters concerning electoral rights”. As it is explained in Sections 5.1-5.3 above, no such system functioned in Poland following the election of 26 May 2019, at least concerning propaganda and the discrimination against candidates in media. As a result, the election was organized in violation of the Act of 1976 (see item 2 in the introduction to the present application).

## 6 A description of the propaganda

In this section, we cite analyses that describe and evaluate the news and political commentary aired by Polish State-owned broadcasters before the election of 26 May 2019. We show that political propaganda in favour of the ruling party was pervasive, and that political forces other than the ruling party were discriminated against.

In Section 6.1, we explain why we take into account a long period of time before the election (counted in years). In Section 6.2, we describe the recordings of programmes that the applicants have at their disposal. Section 6.3 describes the 190 analyses of individual programmes done by the Election Observatory in 2018 and in 2019, and the two reports based on these analyses. Section 6.4

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64 Aliyev v. Azerbaijan, 8 April 2010, no 18705/06, § 81. <http://hudoc.echr.coe.int/eng?i=001-98187>



(p. 46) cites reports by the Society of Journalists, that cover similar periods and arrive at the same conclusions as the reports of the Election Observatory.

Then, we describe analyses covering the period 2016-2017: a detailed study by the Pontifical University of John Paul II, the only analysis that was commissioned by the National Broadcasting Council since 2016 (Section 6.5, p. 48), and a report of the Council of the Polish Language (Section 6.6, p. 59).

## 6.1 The period of interest

The Polish election of 26 May 2019 was called by a decision of the President of the Republic published on 25 February 2019.<sup>65</sup> On that day, the electoral campaign officially started under Polish law. The registration of lists of candidates was open until 16 April midnight. A candidate can officially campaign only after being registered; all candidates were therefore able to officially campaign starting from 17 April.

Even though the periods of time that begin on 25 February and on 17 April 2019 are of key importance for analysing the role of media in the electoral process, the principle of effective political democracy (see Section 2.1 above, p. 7) leads the applicants to consider that we should analyse all the aspects of media behaviour that contribute to making the election free or non-free – regardless of whether this behaviour occurred during the official electoral campaign or before. Programmes that favour, disparage or discriminate against political parties or politicians who later participate in the election contribute to making the election non-free even if they are aired well ahead of the official campaign (of course, the closer to the election day a programme is aired, the more likely it is to exert undue influence on voters).

We quote analyses that extend back to 2017 and in one case even back to 2016. This is appropriate, because 2016 is the year when State-sponsored political propaganda started as a long-term endeavour. Let us briefly describe a striking example of this long-term action: on 26 February 2016, Grzegorz Schetyna, the leader of the biggest opposition party Civic Platform (*Platforma Obywatelska*), said<sup>66</sup>: “We will be the total opposition, toughest possible. We will fight the total power in a total way.” (*Będziemy opozycją totalną, najtwardszą z możliwych. Będziemy w sposób totalny walczyć z totalną władzą.*). Since that day, Schetyna or other prominent activists from the Civic Platform never publicly repeated these (or similar) words, and never publicly confirmed or referred to being “total” or “tough”; in all likelihood, these politicians (including Schetyna) judged that by uttering these words, Schetyna had not served well the cause of the opposition.

Since 26 February 2016, the channels TVP1 and TVP Info systematically refer to the Civic Platform as “the total opposition” (*opozycja totalna*). This expression has been systematically used in lieu of the name of the party in news programmes since February 2016 until today. It shows the Civic Platform in a light in which the party does not want to be seen.

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65 *Postanowienie Prezydenta Rzeczypospolitej Polskiej z dnia 25 lutego 2019 r. w sprawie zarządzenia wyborów posłów do Parlamentu Europejskiego* (Decision of the President of the Republic of Poland of 25 February 2019 on calling the election of members of the European Parliament). *Dziennik Ustaw*, 2019, poz. 365, publication date 25 February 2019. <http://dziennikustaw.gov.pl/DU/2019/365/1>

66 Quoted, e.g., by *Polska Times*, 26 February 2016. <https://polskatimes.pl/grzegorz-schetyna-będziemy-opozycja-totalna-będziemy-przeszkadzać-w-niszczeniu-kraju/ar/9441037>

## 6.2 Recordings (Project Dragons)

Project *Smoki* (Dragons), run jointly by the Election Observatory and other non-governmental organizations, has been recording radio and television programmes since September 2018. The most popular national radio and TV channels of State-owned broadcasters are recorded (including TVP 1, TVP 2, TVP Info, and radio programs Program I, Program II, Program III, Polskie Radio 24). Almost all regional radio and TV channels of State-owned broadcasters are recorded, too. Certain national channels of private broadcasters are also recorded: Polsat, TVN, TV Trwam and Radio Maryja (the last two from the media group Lux Veritatis).

These recordings were used by the Election Observatory for its media analyses described below. They can be made available to the European Parliament, to anyone working on its behalf or to other bodies or persons who wish to analyse Polish media. Should the European Parliament decide to conduct an investigation (Section 7, p. 61 below explains why this would be appropriate), project Dragons is an essential tools that will facilitate this. From the practical point of view, the recordings can be accessed over the internet or, if a large-scale transfer of data is needed, by placing a computer in the hosting facility where the Dragons main server is located. For access to the recordings, please contact the Election Observatory or the Dragons administrators using the contact data in Attachment 32.

## 6.3 Analyses and reports by the Election Observatory

### 6.3.1 The campaign before the election of 26 May 2019

The Election Observatory analysed 127 programmes of State-owned broadcasters, aired between 17 February and 23 May 2019. This includes 52 editions of *Wiadomości* (“News”, a daily programme at 19:30 on TVP1 and TVP News, with an audience of 2 million), 37 editions of *Gość Wiadomości* (“Guest of News”, broadcast every day after “News”), and 38 other programmes (both radio and TV) from various State-owned broadcasters.

Attachment 29 lists the programmes analysed. Attachments 28 and 30 fully describe the results of this analysis: Attachment 28 is in Polish (original language); in Attachment 30, everything is translated into English, except textual (qualitative) remarks made by observers to describe specific programmes, which remain in the original language. For the sake of completeness, the form that was used by the observers is also attached (Attachment 31). Contact information to persons who were involved in analyzing the programmes is provided, in case that the European Parliament or persons acting on its behalf desire to obtain more information about the way in which the analysis was made (Attachment 32).

#### 6.3.1.1 The events of Gdańsk

In our detailed analysis (Attachments 28 and 30), we attach a special importance to news and commentary concerning the city of Gdańsk. This is due to an extraordinary accumulation of events in that city in the months leading to the elections to the European Parliament. Let us describe these events: the applicants believe that this is necessary for understanding the political situation in which the election of 26 May took place and the role that State-owned broadcasters played in shaping this situation.

On 14 January 2019, the mayor of Gdańsk Paweł Adamowicz was murdered. The murderer was a mentally ill person with previous criminal convictions, coming from a family holding pro-

governmental political opinions. After assaulting Adamowicz, the murderer said in public, in presence of thousands of persons: “I was jailed despite of being innocent. The Civic Platform tortured me. This is why Adamowicz is dead.”<sup>67</sup> (*Siedziałem niewinny w więzieniu. Platforma Obywatelska mnie torturowała. Dlatego właśnie zginął Adamowicz.*).

In the months leading to the death of Adamowicz, TVP was depicting him in extremely negative light, and the future murderer was watching TVP in jail (he was released in December 2018). This situation led to publicly formulated accusations of TVP being, at least indirectly, responsible for the death of Adamowicz.

The successor of Adamowicz was elected on 3 March 2019. It results from the analysis of the Election Observatory that during the campaign (which overlapped in time the campaign before the elections to the European Parliament), the regional branch of TVP in Gdańsk consistently favoured two nationalist candidates (Grzegorz Braun and Marek Skiba) and discriminated against the third candidate Aleksandra Dulciewicz, who had been a close political associate of Adamowicz and who finally got elected.

In January and February 2019, the government attempted to change the status of the ECS (European Solidarity Centre, *Europejskie Centrum Solidarności*), so as to subordinate this institution to the government. The ECS is located in Gdańsk. It commemorates the events of 1980 when in response to a nation-wide strike movement, the government permitted the *Solidarność* trade union to be officially incorporated and to operate legally.

The events commemorated by the ECS are of essential importance to the collective memory of Poles: it was the first time in the world that a communist dictatorial regime permitted a genuinely independent trade union to operate freely; these events are viewed by many as the beginning of the end of communist dictatorial regimes in Europe.

The Polish collective memory of these events is of big political importance because many persons who participated are today politically active (or died recently) and were or are taking sides in today’s political struggle between the ruling party and its opponents.

It results from the analysis of the Election Observatory that TVP consistently favoured the point of view of the government regarding the status of the ECS. On 2 April, “Wiadomości” criticized the ECS for organizing an LGBT-related event (report #57) (the criticism was built around the idea that an institution that commemorates glorious events should not be involved in things as vile as “LGBT”).

### 6.3.1.2 Qualitative conclusions from our analysis

Among the 127 programmes analysed by the Election Observatory before the elections of 26 May, 93 programmes were editions of *Wiadomości* (“News”) or *Gość Wiadomości* (“Guest of News”). Section 1 in Attachment 26 (English translation: Attachment 27) contains detailed qualitative conclusions from the analysis of these 93 programmes. **The reader is invited to read these conclusions and to consider them as an integral part of this application.**

The conclusions show that these “News” and “Guest of News” consisted essentially of propaganda. Most notably:

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67 In the local elections of October and November 2018, Adamowicz was not the candidate of the Civic Platform: this political party supported his competitor Jarosław Wałęsa (son of the founding chairman of *Solidarność*).

In “News”, both the whole program and the individual stories are shaped in such a way that information is subordinated to the electoral campaign of Law and Justice, and to attacking the opposition (mainly the European Coalition, but also Wiosna (“Spring”) [left-wing] and Konfederacja [extreme right]).<sup>68</sup>

[...]

“Guest of the News” is a current affairs program that simulates an interview: the journalist does not represent the viewer, does not ask difficult questions, (s)he instead proposes topics to discuss (not always in the form of questions) in a way that makes it easy for the guest to present him/herself in favourable light [...]<sup>69</sup>

### 6.3.1.3 Quantitative results

As noted by the observers, the total duration of the statements representing the point of view of the ruling party (PiS) was of 6 hours and 19 minutes; in the case of the pro-European opposition the total time was 47 minutes (out of which 39 minutes went to the European Coalition (KE, *Koalicja Europejska*)).

We count as opposition the main opposition force KE, “Wiosna” (*Spring*, left-wing) and various pro-democratic movements that did not have their own candidates. KE is, in turn, composed of the Civic Platform (PO, *Platforma Obywatelska*), the “Modern” party (*Nowoczesna*), the Polish Popular Party (PSL, *Polskie Stronnictwo Ludowe*), the Alliance of Democratic Left (SLD, *Sojusz Lewicy Demokratycznej*), Initiative Poland (iPL, *Inicjatywa Polska*) and the Green Party (*Partia Zielonych*).

**In short: Statements by the ruling party were allowed 8 times more time than statements by the opposition.**<sup>70</sup>

The overall integrity of the programmes was assessed by the observers as very good, good, bad or very bad. The results, broken by category of programme, are as follows (the observers sometimes omitted the assessment of a programme – this is why in the table below the totals assessed are less than the totals observed):

Programme category	Number of programmes, with overall assessment of journalists					
	total observed	total assessed	“very good”	“good”	“bad”	“very bad”
“News”	52	49	1	1	24	23
“Guest of News”	37	35	1	7	18	9
Other than the two above	38	33	1	12	9	11
<b>Total (all programmes)</b>	<b>127</b>	<b>117</b>	<b>3</b>	<b>20</b>	<b>51</b>	<b>43</b>

68 Attachment 27, introduction to Section 1.1.

69 Attachment 27, introduction to Section 1.2.

70 Quantitative results presented in this section differ slightly from those quoted in Attachments 26 and 27, because the attachments take into account only programmes that were analysed before 26 May 2019 (113 programmes); 14 more programmes were analysed after that date.

It is striking that “News” – that has the biggest audience of all news programmes on State-owned TV – were almost always (in 96% of cases) assessed negatively. This corresponds with the opinion – common in Poland – according to which “News” are the flagship programme of the propaganda of the ruling party.

Out of the 127 programmes observed, journalistic bias was analysed by the observers in 94 cases: in 82 cases the ruling party (PiS) was favoured and/or its most important competitor KE (*Koalicja Europejska*, the European Coalition) was discriminated against or disparaged (in 81 PiS was favoured; in 71 cases the KE was disparaged or discriminated against; these two numbers do not add up to 82, because the favouring of PiS and the discrimination against the KE most often went together).

These quantitative results can be broken by category of programme, as follows:

Programme category	Number of programmes...				
	total observed	for which the observer properly analysed bias in the context of the election of 26 May	with PiS favoured	with KE disparaged or discriminated against	with PiS favoured and/or KE disparaged or discriminated against
“News”	52	46	43	39	44
“Guest of News”	37	23	20	19	20
Other than the two above	38	25	18	13	18
<b>Total (all programmes)</b>	<b>127</b>	<b>94</b>	<b>81</b>	<b>71</b>	<b>82</b>

### 6.3.2 The campaign before the local elections of October and November 2018

On 21 October 2018, the councillors of all communities (*gminy*), cities, counties (*powiaty*) and regions or voivodships (*województwa*) in Poland were elected. The mayors of communities and cities were elected in two rounds: on 21 October and on 4 November. On 4 November, elections took place in less than half of the country, because many mayors had been elected in the first round.

During the campaign before these elections, the Election Observatory analysed 63 programmes of State-owned TV broadcasters: 35 of these programmes were regional, and the remaining 28 were national (Attachment 33 contains the detailed analyses; Attachment 34 lists the programmes analysed; for the sake of completeness, in Attachment 35 we provide the questionnaire that our observers used to analyse programmes; Attachment 22 is the observation report that summarises our findings).

As recorded by our observers, the total time devoted during these 63 programs to explaining the points of view of different political forces was: 3h 7min for the ruling party PiS, and 25min for the democratic opposition and local independent candidates, counted together (out of these 25 minutes, 18 were allocated to local independent candidates); the time allocated to political forces other than those quoted here was negligible, below 5 minutes total.

We count the following forces as included in the democratic opposition: the Citizens' Coalition (KO, *Koalicja Obywatelska*) which, for the purpose of the local elections, consisted of the political parties Civic Platform (PO) and Modern (*Nowoczesna*); the Polish People Party (PSL); and the Alliance of Democratic Left (SLD).

**In short: statements by the ruling party were allowed 7.4 times more time than statements by the democratic opposition and by local independent candidates.**<sup>71</sup>

As it is explained in the observation report (Attachment 22), the statements of opposition politicians were in general chosen not to genuinely present their views, but rather so as to support the pro-governmental view, according to which the society wants a change of the local government (describe by State-owned media as the “system”). Overall, the Election Observatory found that during the electoral campaign, news and commentary in State-owned TV and radio channels functioned as a propaganda tool for pro-government political forces, and that the principles contained in the law on radio and television were systematically broken. The Election Observatory considers that elections organized in such a context cannot be considered as fully democratic.

### 6.3.2.1 More quantitative results

The programmes were assessed as follows (same assessment method as the one explained in Section 6.3.1.3, p. 43 above):

Programme category	Number of programmes, with overall assessment of journalists					
	total observed	total assessed	“very good”	“good”	“bad”	“very bad”
“News”	18	16	0	0	8	8
“Guest of News”	9	8	0	3	5	0
Other than the two above	36	32	0	7	17	8
<b>Total (all programmes)</b>	<b>63</b>	<b>56</b>	<b>0</b>	<b>10</b>	<b>30</b>	<b>16</b>

No programme was assessed as “very good”. The ten programmes assessed as “good” did not discuss party politics.

The analysis of journalistic bias (similar to the one in Section 6.3.1.3, p. 43 above) gave the following results:

<sup>71</sup> Quantitative results presented in this section differ somewhat from those quoted in the report from the local elections (Attachment 22), because the reports only takes account 50 of the 63 programmes that we analyse here.

Programme category	Number of programmes...			
	total observed	with PiS favoured	with democratic opposition or local independent candidates disparaged or discriminated against	with PiS favoured and/or democratic opposition or local independent candidates disparaged or discriminated against
“News”	18	16	16	16
“Guest of News”	9	5	5	5
Other than the two above	36	27	24	27
<b>Total (all programmes)</b>	<b>63</b>	<b>48</b>	<b>45</b>	<b>48</b>

Our observations from the campaign before the local elections are very similar to those from the campaign before 26 May: similar political forces were present and they were favoured (or discriminated against) in the same way.

## 6.4 Reports by the Society of Journalists

The Society of Journalists (*Towarzystwo Dziennikarskie*) monitored “News” at 19:30 on TVP1 during the campaigns before the local elections of October and November 2018 and before the elections to the European Parliament of 26 May 2019. These monitoring actions used a methodology different from the one of the Election Observatory, and focused on different aspects of the programmes.

Contact information for some participants in the observation actions by the Society of Journalists is listed in Attachment 36. These persons can be asked for supplementary information about the observation actions that resulted in the reports mentioned here.

### 6.4.1 The campaign before the elections of 26 May 2019

The reader of this application is strongly advised to read in its entirety the report of the Society of Journalists from the campaign before the election of 26 May 2019 (Polish language version: Attachment 37; English language version: Attachment 38). The report is short (14 pages, including more graphically presented content than text). One of the interesting facts shown in this report is that the three politicians whose statements had the longest total durations of picture&voice were all from PiS. The picture&voice time of Jarosław Kaczyński (president of PiS and member of the Sejm holding no other public office) was over three times longer than the one of the next politician (Beata Szydło, vice-prime minister from PiS). The report lists the topics that were mentioned in “News” and explains why showing these topics serves the propaganda objectives of the ruling party.

In its conclusions, the report says, *inter alia*:

*Qualitative and quantitative analysis of “Wiadomości” indicates that the programme ran content which favoured the ruling party and omitted, downplayed, ridiculed or*



*vilified the opposition parties candidates and politicians by the use i.a. of fake news, picture and sound manipulations.*

*[...] “Wiadomości” not only failed to fulfill the legal requirements of impartiality, balance, pluralism and independence, but also ran and exposed the ruling party propaganda materials which constitutes a violation of the Electoral law.*

#### **6.4.2 The campaign before the local elections of October and November 2018**

The report of the Society of Journalists from the campaign before the first round (21 October 2018)<sup>72</sup> contains several commented video sequences representative of how “News” at 19:30 on TVP1 were used as a propaganda engine. The report focuses, among others, on the story “The Ups and Downs of Lech Wałęsa” (*Blaski i cienie Lecha Wałęsy*) (Lech Wałęsa is a well-known opponent of PiS; his son was running in these elections for the office of mayor of Gdańsk). In the report, the story is described as follows:

**In Polish:** *[...] laurka od “Wiadomości” na 75-lecie urodzin. 40 sekund blasków, reszta czarna od nienawiści, ostatnia minuta, to atak na startującego w wyborach w Gdańsku Jarosława Wałęsę. O gratulacjach od 26 liderów Unii Europejskiej, wręczonych przez Donalda Tuska – ani słowa.*

**Translation:** *[...] a puff piece [ironical] from “News” for his 75<sup>th</sup> anniversary. 40 seconds of ups, the rest black from hatred, the last minute is an attack on Jarosław Wałęsa who is a candidate in Gdańsk. The congratulations from 26 leaders from the European Union, handed by Donald Tusk were not mentioned.*

According to the report, on the day after the election “News” devoted five seconds to the victory of Rafał Trzaskowski (Civic Platform) in Warsaw – a fact considered as major news by most private media; on that day, “News” focused on candidates who had stolen, raped or insulted women (one candidate was indicted for 92 counts).

The report from the period between the first and the second round (Attachment 39) notes that the only election observation organization mentioned in “News” is the “Movement of election control” (*Ruch Kontroli Wyborów*), known for its close ties with PiS; other organizations of observers (including the Election Observatory or KOD – *Komitet Obrony Demokracji*, the Committee of Defence of Democracy) are not mentioned. Still according to “News”, organizational problems with the elections were the fault of the city of Warsaw, run by the opposition. The electoral success of the Polish People’s Party (PSL) four years earlier is described as electoral fraud. Candidates from PiS are shown all the time between the two rounds.

While commenting a picture&voice statement by Jarosław Kaczyński at the beginning of the edition of Tuesday, 30 October, the observers note:

**In Polish:** *Coraz bardziej przypomina to sakramentalne otwarcia „Dziennika Telewizyjnego” Macieja Szczepańskiego: „Pierwszy Sekretarz Polskiej Zjednoczonej Partii Robotniczej, towarzysz Edward Gierek...”.*

**Translation:** *This resembles more and more the consecrated formula used at the beginning of “TV Journal” (Dziennik Telewizyjny) under Maciej Szczepański [head of*

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<sup>72</sup> *Kampania wyborcza w mediach – raport specjalny* (Electoral campaign in the media – a special report). Published by *Towarzystwo Dziennikarskie*. Andrzej Krajewski *et al.* This report takes the form of interactive content on the World Wide Web. It is impossible to attach the report to this document, it has to be viewed on line at this URL: <http://towarzystwodziennikarskie.pl/kampania-wyborcza-w-mediach-samorzady-2018/>

the monopolistic State TV under communism]: “*the First Secretary of the Polish Unified Workers’ Party, comrade Edward Gierek...*”<sup>73</sup>

The report concludes that the legal rules requiring pluralism, impartiality, balance, independence, integrity and quality are breached often, voluntarily and systematically.

## 6.5 The analyses by the Pontifical University of John Paul II

The National Broadcasting Council commissioned a quality analysis of programmes of public broadcasters in 2017. The analysis was performed by the Pontifical University of John Paul II in Kraków (Cracow), Poland. In this section, we describe the scope of the analysis (Section 6.5.1), we explain how to read it, which is difficult (Section 6.5.2), and we summarise the results (Section 6.5.3).

### 6.5.1 The scope of the analysis

Programmes from the following eight channels were analysed

- TVP1 – generalist TV
- TVP2 – generalist TV
- *Polskie Radio Program III* – generalist
- *Polskie Radio 24* (or PR24) – continuous information
- *Radio Dla Ciebie* (RDC) – regional, Warsaw
- *Radio Poznań* – regional
- *Radio Łódź* – regional
- *Radio Katowice* – regional

The applicants do not know why these channels were chosen. It is regrettable that neither the continuous information channel TVP Info or any of the 16 regional TV channels were chosen to be analysed (the continuous information radio PR24 and four regional radios were).

Each channel was analysed four times in 2017: during each quarter of that year, one full week of broadcasts (168 hours) was picked and analysed, resulting in a total of 32 analyses.

### 6.5.2 The structure of the documents

Each of the 32 analyses is described separately, with no reference to the other analyses. It is most notable (and quite regrettable) that no comparisons are made, either between different analyses of the same channel or between channels. There is no summary or conclusions covering the whole project.

For example, in order to check how the quality of a given daily programme evolved over time, the reader of these documents needs to read the four analyses of the programme done in different

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73 The report slightly misquotes the formula that the viewers of the monopolistic State TV used to hear every day: certain words were forgotten. The real formula reads as follows (the words forgotten in the quote are in boldface): “The First Secretary **of the Central Committee** of the Polish Unified Workers’ Party, comrade Edward Gierek ...” – note by the applicants.

quarters of 2017, and to compare the analyses himself. Nowhere in the text is any such comparison made.

The results of each of the 32 analyses takes the form of two texts (PDF files): one with name ending in “realizacja-planow.pdf”, and one with name containing “inf.-i-public” or something similar. The first file (between 160 and 700 pages of text) contains, *inter alia*, the detailed analysis of numerous programmes. The second file contains a succinct (usually below 10 pages) description and assessment of the news and public affairs programmes analysed.

This gives a total of 64 PDF files with an aggregate length well above 10 000 pages.

Each programme received a numerical rating in percent. The authors say<sup>74</sup>:

**In Polish:** *ocena powyżej 90% może być uznana za „bardzo wysoką”, od 80% do 90% za „wysoką”, od 70% do 80% za „niezbyt wysoką” a poniżej 70% za „niską”*

**Translation:** *a rating above 90% is to be considered as “very high”, between 80% and 90% – as “high”, between 70% and 80% – as “not very high”, and below 70% – as “low”*

This rating takes into account various criteria, some of which, but not all, reflect the presence of propaganda or of political discrimination in the programme. *E.g.*, the technical quality of the programme or the use of the broadcaster’s own sources of information are counted along with the presence of infotainment (which decreases the rating), with the separation between news and commentary and with the equal presence of politicians from the ruling party and from the opposition in a public affairs programme.<sup>75</sup>

### 6.5.3 What the analyses say about TVP1, TVP2 and PR24

In this section, we summarise what the analyses by the University of John Paul II say about propaganda and discrimination against political forces on three channels: TVP1, TVP2 and PR24. These three channels are the most important ones among those analysed, as far as political news are concerned. The other channels are Polskie Radio Program III – a national radio channel where news and politics are of less importance; and four regional radios.

The contents of this section is as follows:

6.5.3.1	TVP 1, “News” (Wiadomości) daily at 19:30 (7:30 pm)	50
6.5.3.2	TVP1, “Teleexpress”, daily at 17:00 (5:00 pm)	50
6.5.3.3	TVP 1, “News” (Wiadomości) daily at 12:00 and 15:00 (noon and 3:00 pm)	52
6.5.3.4	TVP 1, “News” (Wiadomości) daily at 8:00 (morning)	52
6.5.3.5	Current Affairs Programmes on TVP1	53
6.5.3.6	TVP2, “Panorama”, daily at 18:00 (6:00 pm)	53
6.5.3.7	TVP2, “Panorama Flash” (Panorama Flesz), “Panorama Domestic” (Panorama Kraj), “A Day in your Region” (Dzień w Twoim Regionie)	55
6.5.3.8	Current affairs programmes on TVP2	56

74 Attachement 40, file lodz-i-kwartal\_analiza-aud.-inf.-i-public..pdf p. 16 (the same formulation can be found in each of the 64 files).

75 File tvp1\_iv-kwartal\_analiza-aud.-inf.-i-public..pdf p. 6-11 (the same formulation can be found in each of the 64 files).

6.5.3.9	News on PR24 (Polskie Radio 24)	56
6.5.3.10	Public affairs programmes on PR24	58

### 6.5.3.1 TVP 1, “News” (*Wiadomości*) daily at 19:30 (7:30 pm)

In these analyses, “News” is considered as the same programme as “Guest of News”.

The programme was in the different quarters respectively at 70%, 74%, 78%, 71%. From the text descriptions corresponding with the four quarters, it results that the program is a propaganda tool for the ruling party. This is most apparent in the description for Q4, the summary of which contains the following statements:<sup>76</sup>

#### **In Polish:**

*Miażdżąca przewaga przedstawicieli jednej partii politycznej (PiS). Łamanie zasady oddzielania informacji od komentarza (komentarze pojawiają się w newsach, w tekstach lektorskich -offach oraz belkach, np. „Polacy cenią tych, którzy dotrzymują słowa”). Ostatni element audycji Gość Wiadomości (rozmowa z zaproszonymi do studia gośćmi) jest w całości komentarzem do aktualnych wydarzeń (brak pluralizmu). Słowa nacechowane, także w belkach („zwyrodnialec”, „totalny”, „buta”, „czyściciel”, „szokujące”, „zero tolerancji”, „bezczelność”, „złodziejska” i inne). Materiały jednostronne. Brak krytycznego podejścia do prezentowanych treści i liczne uogólnienia („Polacy”, „wszyscy”, „każdy”, „ogół Polaków”, „kobiety w Polsce”).*

[...]

*W analizowanym tygodniu **5 razy** gościem był przedstawiciel **PiS** i **ani razu nie było gości z opozycji. Drastyczne złamanie zasad pluralizmu.***<sup>77</sup>

#### **Translation:**

*Overwhelming preponderance of one political party (PiS). Infringement of the principle of separation between news and commentary (comments appear in the news, in texts read by a voice off and in news tickers, e.g., “Poles appreciate those who keep their promises”). The last component of the programme, “Guest of News” (an interview with guests invited to the studio) consists entirely of commentary of current news (no pluralism). Words emotionally charged, also present in news tickers (“degenerate”, “total”<sup>78</sup>, “arrogance”, (intraduisible: persons who use dirty or illegal tricks to coerce tenants into leaving their homes), “shocking”, “zero tolerance”, “insolence”, “thievish”, and others). One-sided stories. No critical approach to the content presented and numerous generalisations (“Poles”, “everybody”, “every one”, “all Poles”, “women in Poland”).*

[...]

*During the week analysed, a representative of **PiS** was invited as guest **5 times**, and **there were no guests from the opposition. A drastic violation of principles of pluralism.***<sup>77</sup>

### 6.5.3.2 TVP1, “Teleexpress”, daily at 17:00 (5:00 pm)

This programme was rated 79%, 71%, 84%, 79% for the four quarters.

<sup>76</sup> File tvp1\_iv-kwartal\_analiza-aud.-inf.-i-public..pdf p. 22-23.

<sup>77</sup> Boldface as in the original document.

<sup>78</sup> About the word “total”, see also Section 6.1, p. 40 above – note by the applicants.

The summary for Q2 states what follows (this is the full text of the summary; the summary for Q1 is similar):<sup>79</sup>

**In Polish:**

*Oglądając audycję w badanym tygodniu można odnieść wrażenie, że Polska to kraj monopartyjny. W materiałach obecna była tylko strona rządząca (PiS). Tylko raz w całym tygodniu pokazano posłankę Nowoczesnej i to w kontekście żartobliwym (Posłanka Nowoczesnej przeciwko podwójnej ciągłej. To strata farby uważa posłanka.).*

**Translation:**

*After watching the programme during the selected week, one can get the impression that Poland is a one-party country. Only the governing side (PiS) was present in the stories. Only once during the whole week a member of parliament from “Modern” was shown, in light-hearted context (The MP from “Modern” is against the double solid line [on the road]. This is a waste of paint, she says.)*

In addition, the description for Q2 contains the following remarks:

**In Polish:**

[...]

- *Miażdżąca przewaga jednej opcji politycznej – partii rządzącej (PiS). Setki, wypowiedzi, cytaty członków rządu i prezydenta RP. Relacje z wizyt i spotkań. Informacje o sukcesach rządu i podległych mu służb.*
- *Nie zawsze właściwy dobór „jedyńki”.*
- *Łamanie zasady oddzielania informacji od komentarza. Zdarzają się komentarze prowadzących oraz zdania komentujące na zakończenie relacji reporterskich wypowiedziane przez lektora.*
- *Słowa i wyrażenia nacechowane w tekstach prowadzących oraz lektora (np.: „na pohybel”, „tajemnica”, „bandyci”, „niezwykłe”, „wyłudzić”, „polegać jak na Zawiszy”, „trudne chwile”)*

[...]

**Translation:**

[...]

- *Overwhelming preponderance of one political force – the ruling party (PiS). Statements by and quotes from members of the government and the president of the republic. Reports from visits and meetings. News of successes of the governments and of services reporting to it.*
- *The first news not always chosen properly.*
- *Breaches of the principle of separation of news from commentary. Sometimes comments of the anchors are present, reportages are followed by sentences of commentary by the anchor.*
- *Emotionally charged words and expressions in introductory texts or read by the anchor (e.g., “wishing death”, “secret”, “bandits”, “extraordinary”, “extort”, “have infallible trust”, “hard moments”)*

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79 Files tvp2-ii-kwartal-analiza-aud.-inf.-i-public..pdf p. 19 and tvp1\_i-kwartal\_analiza-aud.-inf.-i-public..pdf p. 18.

[...]

For Q3 and Q4, the summary says, *inter alia* (same text for both quarters):<sup>80</sup>

**In Polish:**

[...] *Informacje były też zróżnicowane tematycznie (polityczne, gospodarcze, kulturalne, rozrywkowe, sportowe, naukowe), ale mało zróżnicowane, jeśli chodzi o opcję polityczną (przewaga partii rządzącej).*

**Translation:**

[...] *News were diverse as far as topics are concerned (political, economic, cultural, entertainment, sports, scientific), but there was little diversity concerning political forces (preponderance of the ruling party).*

### 6.5.3.3 TVP 1, “News” (*Wiadomości*) daily at 12:00 and 15:00 (noon and 3:00 pm)

Ratings for “News” at 12:00: 70%, 76%, 77%, 76%

Ratings for “News” at 15:00: 76%, 78%, 84%, 76%

For Q1 and Q2, the summary says, *inter alia*, what follows (practically the same text for both editions and for both quarters):

**In Polish:** *Obecność tylko jednej opcji politycznej (PiS). Informacje oddzielone od komentarzy.*

**Translation:** *The presence of only one political force (PiS). News separate from commentary.*

For Q3, the summary says (same text for both programmes):

**In Polish:** [...] *Udział przedstawicieli partii politycznych niezrównoważony. Przewaga jednej opcji politycznej (PiS). Informacje oddzielone od komentarzy. [...]*

**Translation:** [...] *Participation of representatives of political parties imbalanced. Preponderance of one political force (PiS). News separate from commentary. [...]*

For Q4, the summary says that news are not always separate from comments, otherwise the text is the same as for Q3.

### 6.5.3.4 TVP 1, “News” (*Wiadomości*) daily at 8:00 (morning)

Ratings: 68%, 66%, 73%, 71%

For Q1 and Q2, the summary notes (the quoted fragment is present for both quarters):

**In Polish:** *Przewaga jednej opcji politycznej (PiS). Informacje nie zawsze oddzielone od komentarzy.[...]*

**Translation:** *The preponderance of one political force (PiS). News not always separate from commentary.*

For Q3, the summary says, *inter alia* (similar text for Q4):

**In Polish:**

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80 Files tvp1-iii-kwartal\_analiza-aud.-inf.-i-publicys..pdf tvp1\_iv-kwartal\_analiza-aud.-inf.-i-public..pdf p. 20 in each file.

Miażdżąca przewaga jednej opcji politycznej (PiS). W badanym tygodniu tylko w dwóch wydaniach (5 razy w tygodniu) pojawili się przedstawiciele opozycji. Informacje oddzielone od komentarzy. [...] Czytający zachowuje neutralność. Pojedyncze słowa i zwroty nacechowane pojawiają się w offach.

**Translation:**

An overwhelming preponderance of one political force (PiS). During the week analysed, only in two editions (out of 5) representatives of the opposition were present. News separate from commentary. [...] The anchor stays neutral. Isolated emotionally charged words and expressions appear in comments read by a voice off.

### 6.5.3.5 Current Affairs Programmes on TVP1

According to the analyses, the current affairs programmes on TVP1 are of fair or good quality. Inequal treatment of the ruling party and of the opposition or the usage of emotionally charged words by anchors are sometimes noted, but these or other problems are not overwhelming.

This positive assessment does not cover “Gest of News”: this programme, considered as part of “News” at 19:30, received a strongly negative assessment.

### 6.5.3.6 TVP2, “Panorama”, daily at 18:00 (6:00 pm)

Ratings: 67%, 64%, 63%, 74%

The summary for Q3 reads as follows (full text); the summary for Q4 is almost identical, for Q1 and Q2 there is no summary:

**In Polish:**

*Mimo, że newsy o tematyce społecznej, międzynarodowej, regionalnej realizowane są w większości poprawnie, przez łamanie zasad pluralizmu, bezstronności i wyważenia w newsach politycznych ocena ogólna jest niska. Łamana jest zasada oddzielania informacji od komentarza. Dobór i ranga informacji, sposób ich przedstawiania, zróżnicowanie pod względem geograficznym, tematycznym oraz zróżnicowanie pod względem opcji politycznej naruszają zasady pluralizmu i wyważenia. W materiałach o tematyce politycznej dominuje strona rządowa.*

**Translation:**

*Even though the news that concern social, international or regional affairs are presented correctly in their majority, because of violations of the principles of pluralism, impartiality and balance in political news, the overall rating is low. The principle of separation of news from commentary is violated. The selection and importance of news, the way in which they are presented, the geographic and thematic diversity, the diversity regarding political forces violate the principles of pluralism and balance. In stories that concern politics the government side dominates.*

In addition, the description for Q3 contains the following remarks (remarks for the three other quarters are very similar):

**In Polish:**

- *Przewaga jednej opcji politycznej w prezentowanych wypowiedziach – partii rządzącej. W analizowanym tygodniu w głównym wydaniu Panoramy wyemitowano 66 wypowiedzi przedstawicieli partii rządzącej i 31 wypowiedzi przedstawicieli*



opozycji. W głównym wydaniu Panoramy 10 lipca pojawiło się 7 wypowiedzi strony rządowej i ani jednej wypowiedzi przedstawiciela opozycji.

- W czytanych przez lektora offach do materiałów jak i niektórych tekstach prowadzących pojawiają się słowa i wyrażenia nacechowane [... tu 32 przykłady, wśród których „zamach”, „pucz”, „napastnicy”, „patologie”, „gigantyczne pieniądze”, „za wszelką cenę”, „złodzieje w togach”].
- Nacechowane i sugerujące podpisy materiałów na belkach przed materiałami np. „O co ten spór?”, „Protest, ale przeciw czemu?”, „Zamach lipcowy opozycji?”
- Selekcja informacji oraz kolejność ich nadawania budzi spore wątpliwości. Kilukrotnie zaburza kolejność prezentowania informacji.
- Informacje polityczne i gospodarcze zbyt jednostronne. Brak podejścia krytycznego do prezentowanych treści np. bezkrytyczny materiał o najnowszym sondażu wyborczym i sukcesach rządu, podobnie materiał o protestach zestawiony z informacją o dobrych wynikach gospodarczych
- Przewaga setek i wypowiedzi dziennikarzy oraz publicystów kojarzonych z opcją rządzącą czy prawicą („wSieci”, wpolityce.pl, Gazeta Polska Codziennie).
- Powtarzające się nazwiska ekspertów i publicystów w setkach, co daje w większości materiałów te same opinie (np. wszystkie opinie ekspertów dotyczące reformy sądownictwa wskazywały na konieczność przyjęcia zmian).
- Łamanie zasady oddzielania informacji od komentarzy i opinii. Komentarze i oceny były zawarte zarówno w zapowiedziach czytanych przez prowadzących, jak i offach / tekście czytanych przez lektora w trakcie materiału newsowego. Niektóre materiały w całości można zakwalifikować jako felietony filmowe (publicystyka) – nie informują o wydarzeniach a komentują większy problem (np. wszystkie materiały o reformie sądownictwa sugerowały konieczność reformy odnosząc się na przykład do przypominanych afer z udziałem sędziów).
- Używanie w białych i offach zwrotów opiniujących i komentujących przekazywane informacje bez podania źródła sądu, naruszając tym samym zasadę oddzielania informacji od komentarza: [... tu 37 przykładów, wśród których: „mimo to PO jest za ściąganiem uchodźców”, „opozycja wszelkimi sposobami starała się zablokować”, „reformy domaga się większość Polaków”, „dopiero zmiany w prawie, które wprowadził rząd PiS przyniosły efekt”, „senatorowie PO wszelkimi sposobami chcą zablokować...”, „sędziowie stawali się coraz bardziej bezkarni”, „zwykli sklepowi złodzieje w togach”, „uczestnicy grudniowego puczu powracają”, „opozycja nie chce reformy sądownictwa, ale też nie potrafi dobrze uzasadnić swojego sprzeciwu”, „PO jest w trudnej sytuacji”, „Rząd PiS konsekwentnie realizuje program i odnosi sukcesy”].

#### **Translation:**

- *Preponderance of one political force in the statements presented – the ruling party. During the week analysed, in the main edition of Panorama, 66 statements by representatives of the ruling party were aired, and 31 statements by representatives of the opposition. In the main edition of Panorama on 10 July, there were 7 statements from the government side and none from the opposition.*
- *In texts read by a voice off during stories and in some introductory texts, emotionally charged words or expressions appear [... 32 examples here, among others “coup”,*

“putsch”, “attackers”, “pathologies”, “a giant amount of money”, “at any price”, “thieves in judges’ clothes”].

- *Emotionally charged or suggestive story titles on news tickers , e.g., “Dispute about what?”, “Protest against what?”, “The July coup of the opposition”.*
- *The selection and ordering of news raises big doubts. The order of presentation of news disrupted a few times.*
- *Political and economic news excessively one-sided. No critical attitude towards the content presented, e.g., an uncritical story about the latests opinion poll and about the successes of the government, same thing concerning a story about protests juxtaposed with news about good economic results.*
- *Preponderance of statements by journalists and columnists associated with the ruling political force or with the right-wing („wSieci”, wpolityce.pl, Gazeta Polska Codziennie).*
- *Reoccurring names of experts and columnists in picture&voice comments, as a result the same opinions are present in most stories (e.g., all expert opinions about the reform of the judiciary said that the reform was needed).*
- *Violations of the principle of separation of news from commentary and opinions. Comments and judgments were present both in lead-ins read by anchors and in text read by a voice off during stories. Some stories can be considered as entirely consisting of op-ed pieces (commentary) – they do not inform about events, they comment larger problems (e.g., all stories about the reform of the judiciary suggested that the reform was necessary, e.g., by making reference to scandals in which judges are involved).*
- *In introductions to stories and in text read by a voice off, the use of judgmental and commenting expression, without mentioning the source of the judgment; this violates the principle of separation of news from commentary [... 37 examples here, among which: “despite of this the Civic Platform is for bringing refugees [to Poland]”, “the opposition tried by all means to block”, “a majority of Poles demands the reform”, “only the amendments to the law introduced by the PiS government were effective”, “senators from the Civic Platform try by asll means to block...”, “the impunity of judges was increasing”, “ordinary shoplifters in judges’ clothes”, “those who contributed to the December coup are back”, “the opposition is against the reform of the judiciary, but cannot convincingly explain, why”, “the Civic Platform is in a difficult situation”, “the PiS government diligently delivers its program and succeeds”].*

#### **6.5.3.7 TVP2, “Panorama Flash” (Panorama Flesz), “Panorama Domestic” (Panorama Kraj), “A Day in your Region” (Dzień w Twoim Regionie)**

Ratings for “Panorama Flash” (daily): 78%, 69%, 86%, 81%

Ratings for “Panorama Domestic” (daily): 74%, 79%, 63%, 77%

Ratings for “A Day in your Region” (daily): 86%, 82%, 82%, (not rated)

The three programmes mentioned above are very short, they briefly announce news that are then developed in “Panorama” or on TVP3. Their ratings are significantly better than those of “Panorama”. For Q1 and Q2, text comments do not address these three programmes separately

(they are considered as part of “Panorama”). In Q3 and in Q4, text comments assess them as much better than “Panorama”.

#### 6.5.3.8 Current affairs programmes on TVP2

There seems to be no politics-related current affairs programmes on TVP2. The analyses say (same text to be found for each of the four quarters)<sup>81</sup>:

**In Polish:** *Brak w planie programowym i w emitowanym tygodniu audycji przedstawiających stanowiska partii politycznych, organizacji związków zawodowych i związków pracodawców w węzłowych sprawach publicznych.*

**Translation:** *In the programme plan or in the week aired (sic) there are no programmes presenting the positions of political parties, trade unions or unions of employers regarding key public affairs.*

#### 6.5.3.9 News on PR24 (Polskie Radio 24)

Ratings for “News of the Day” (*Informacje Dnia*), every hour 78%, 83%, 91%, 89%

Ratings for “News of the Day in Short” (*Informacje dnia w skrócie*), every hour 91%, 92%, 91%, 86%

PR24 is a continuous information radio. It was founded in 2010. Until 1<sup>st</sup> September 2016 it was only available by satellite, by Internet and by DAB+. Since that day, it has been available on FM radio nationally, to at least 60% of the Polish population).

News programs are aired on PR24 twice per hour: “News of the Day” and “News of the Day in Short” alternate. These programmes are generally assessed as good in the analyses corresponding with all quarters, despite of some strongly negative remarks regarding pluralism and impartiality, quoted below (in the applicants’ opinion, these remarks should exclude a positive assessment of the programmes; in other words, in the applicants’ view the programmes were assessed above what they deserve).

Remarks for Q1 (the first two sentences are also present in the analysis of Q3):

**In Polish:**

*Co bardzo istotne w analizowanych serwisach informacyjnych miażdżącą przewagę jeśli chodzi zarówno o liczbę informacji, jak i przywoływanych cytatów, miała partia rządząca. Politycy opozycji pojawiali się rzadko. Ich głosu brakowało przede wszystkim w wiadomościach opartych tylko na wypowiedziach polityków Prawa i Sprawiedliwości – w tym na wywiadzie prezesa Jarosława Kaczyńskiego dla Polskiego Radia (Program I). Jednostronne przedstawienie problemu widać także w części serwisów, w których była mowa o powołaniu komisji weryfikacyjnej ds. reprivatyzacji. Co istotne w niektórych wydaniach ta sama informacja była uzupełniona komentarzami różnych stron politycznych.*

*Z wspomnianym wywiadem z prezesem Prawa i Sprawiedliwości związany był także jeden z poważniejszych błędów w gatekeepingu. Poszczególne fragmenty rozmowy były bowiem ujmowane w kolejnych wiadomościach. Część z nich dotyczyło faktów (np. zapowiedzi działań partii), część natomiast opinii. Jest rzeczą jasną, że opinie*

81 Files tvp2-i\_kwartal-analiza-aud.-inf.-i-public..pdf tvp2-ii-kwartal-analiza-aud.-inf.-i-public..pdf tvp2-iii-kwartal\_analiza-aud.-inf.-i-public.---kopia.pdf tvp2\_iv-kwartal\_analiza-aud.-inf.-i-public..pdf p. 22 (same page for all files).

wyłaszane przez Jarosława Kaczyńskiego są istotne dla opinii publicznej. Nie jest jednak uzasadnione, by informacja oparta wyłącznie na opinii polityka była umieszczona w serwisie na pierwszym miejscu (tak stało się 10 lutego o godz. 14). Zwłaszcza, że na miejscu drugim umieszczono informację o powołaniu komisji weryfikacyjnej ds. reprivatyzacji (fakt), a na trzecim znów informację o opinii wygłoszonej przez polityka – tym razem był to Mateusz Morawiecki, również z partii rządzącej.

#### **Translation:**

*It should be stressed that in the news programmes analysed, the ruling party had an overwhelming preponderance regarding the number of both news and quoted statements. Opposition politicians appeared rarely. Most importantly, their voice was missing in news based solely on statements by politicians from Law and Justice – including the interview with the president [of said party] Jarosław Kaczyński for Polskie Radio Program I. The one-sided presentation of the problem is also visible in some of the programmes that mentioned the establishment of the commission for the verification of reprivatization [politicians from the Civic Platform are accused by the ruling party of having caused the city of Warsaw to lose billions of euro in real estate through illegal and unjustified reprivatisation – note by applicants]. It is noteworthy that in some other editions the same news was accompanied by comments coming from various political forces.*

*One of the biggest errors in gatekeeping [selection and ordering of news] was linked with the above-mentioned interview with the president of Law and Justice. Different fragments of this interview were quoted in consecutive news programmes. While some of these news were about facts (e.g., political plans of the party), others concerned opinions. It is evident that opinions uttered by Jarosław Kaczyński count for the public opinion. However, it is not appropriate for news based solely on a politician's opinion to be at the head of the programme (as it was the case on 10 February at 14:00). Even more so, given that the establishment of the commission for the verification of reprivatization (fact) was the second news, and an opinion uttered by a politician – this time Mateusz Morawiecki [then vice-prime minister], also from the ruling party – was the third news.*

Remarks for Q2 (common to news and to public affairs programmes):

#### **In Polish:**

- przesunięcie akcentu w newsach na partię rządzącą;
- w audycjach publicystycznych (zwłaszcza w „Debacie poranka”) brak kontroli prowadzącego nad gośćmi, dysproporcje w czasie trwania wypowiedzi poszczególnych rozmówców;
- obecność pytań nieneutralnych w audycjach publicystycznych.

#### **Translation:**

- in the news, accent put on the ruling party
- in public affairs programmes (most notably in “Morning Debate” (Debata Poranka)) no control by the anchor over the guests, disproportion in durations of statements of different guests
- presence of non-neutral questions in public affairs programmes

Remarks for Q4:<sup>82</sup>

**In Polish:**

- widoczna jest znacząca przewaga wiadomości dotyczących koalicji rządzącej
- znacznie częściej cytowani są także politycy koalicji rządzącej – głos partii opozycyjnych stanowi margines  
[...]
- - audycja „Północ-południe” ma bardzo nierówny poziom obiektywizmu, zależny od wydania i prowadzącego;

**Translation:**

- *a significant preponderance of news concerning the ruling coalition is visible*
- *politicians from the ruling coalition are quoted much more often – the voice of opposition parties is marginal*
- *the programme Północ-południe has a strongly varying level of objectivity, depending on the edition and on the anchor;*

**6.5.3.10 Public affairs programmes on PR24**

Various public affairs programmes are aired on PR24. In the analyses by the University of John Paul II, their global assessment (descriptive texts) and ratings in percent are mitigated (the assessment, like the ratings, take into account propaganda and the discrimination against political forces, along with other criteria).

The analyses contain various critical remarks, similar to those quoted above for other channels and programmes. Three anchors, Adrian Klarenbach, Dorota Kania and, to a lesser extent, Filip Memches were criticised with particular strength (the first two are generally known in Poland for being extremely favourable to the ruling party, and often divorced from objectivity). Let us quote the remarks about Klarenbach (those concerning Kania describe a similar degree of absence of professionalism):

“Political Interview” (*Rozmowa Polityczna*), anchor Adrian Klarenbach, Q1:

**In Polish:**

*Widać zróżnicowany stosunek prowadzącego do poszczególnych gości i tematów – w wydaniu poświęconym reformie edukacji padają tylko łatwe pytania, na które Anna Zalewska (PiS) odpowiada politycznymi deklaracjami. Z kolei kiedy gościem był Michał Szczerba (PO) i mowa była o bieżących, spornych tematach (m.in. wypadku Beaty Szydło i kolejnych przypadkach kradzieży, dokonywanych przez sędziów), prowadzący część pytań zadawał w prowokacyjny sposób. [...]*

**Translation:**

*The attitude of the anchor towards different guests and different topics is unequal, and this is visible: in the edition devoted to the education reform only easy questions are asked, that Anna Zalewska (PiS) answers by making political declarations. But when Michał Szczerba (PO – Civic Platform) was the guest and the programme was about current, controversial topics (among others, the car accident of [prime minister] Beata*

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82 File polskie-radio-24\_iv-kw\_analiza-aud.-inf.-i-pub..pdf p. 21-25.

*Szydło and cases of theft by judges), the anchor asked some of the questions in a provocative manner. [...]*

Same programme, same anchor, Q2:

**In Polish:**

*Prowadzący często wypowiada się dosadnie, operuje ironią, nadużywa słownictwa nacechowanego [... tu dziesięć cytowanych wyrażen, m.in. „zaklinać rzeczywistość”, „psychoprawica”, „król Europy”, „prezes spółdzielni”]. Obecność słownictwa nacechowanego ze strony prowadzącego bywa też formą krytyki i negatywnego komentarza („o ile ktoś wam doradza”, „było kluczenie, wątpienie”, „fatalny strzał”).*

*Prowadzący wczuwa się w rolę krytyka poszczególnych działań lub zaniechań. Niekiedy przykrywa tę postawę prowokacyjnymi stwierdzeniami („ja wam kibicuję”, „bo się martwię o was”, „spróbujmy zaatakować PiS”).*

*Dwukrotnie zdarzyły się niestosowne komentarze do wypowiedzi i stanowiska rozmówcy: „od razu muszę wejść w interakcję”, „tyle, to cały komentarz”. Szczególnie ten ostatni złośliwy wtręt, po chwili ciszy ze strony gościa, był niedopuszczalny.*

[...]

**Translation:**

*The anchor often speaks crudely, uses irony, misuses emotionally charged words [... ten expressions quoted here, including “bewitch reality”, “psycho right”, “king of Europe” [likely referring to Donald Tusk], “president of cooperative” [“cooperative” is sometimes used in Polish to refer to a dishonest business]. The presence of emotionally charged vocabulary is sometimes a way for the anchor to express criticism or to comment negatively (“if you have advisers”, “weaving, doubting”, “very bad shot”).*

*The anchor is critical of specific actions or omissions. Sometimes he covers up this attitude with provocative statements (“I support you”, “I am worried about you”, “let’s try to attack PiS”).*

*Statements and positions by guests were commented twice in an inappropriate way: “I must interact now”, “that’s it, this is your entire statement”. Above all, the latter mean remark, that followed a short silence by the guest, was inadmissible.*

[...]

## **6.6 The report of the Council of the Polish Language, 2016-2017**

The Council of the Polish Language (*Rada Języka Polskiego*) is one of the scientific councils of the Polish Academy of Sciences. It has a special status of advisory body, granted by statute. Most notably, the council is obliged by statute to present to both houses of the Parliament at least once every two years a report on the state of the protection of the Polish language<sup>83</sup>.

The report on the state of the protection of the Polish language for 2016-2017 (Attachment 41) bears the subtitle “The language of political information” (*Język informacji politycznej*) and consists of an analysis of “news tickers announcing reports from thirteen political events most important for

83 Art. 12 of *Ustawa z dnia 7 października 1999 r. o języku polskim* (Law of 7 October 1999 on the Polish language). Dziennik Ustaw, 2019, poz. 1480. <http://dziennikustaw.gov.pl/DU/2019/1480/1> or <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20190001480>

Poland in 2016-2017” (paski zapowiadające relacje z 13 wydarzeń politycznych najważniejszych w Polsce lat 2016–2017). Said news tickers were aired during “News” at 19:30 on TVP1 (the report analyses only this programme). 306 news tickers were analysed out of the total number of 8 to 9 thousand aired during “News” in the years 2016-2017.

Let us quote the first the first paragraph of the conclusions from the report (Attachment 41, p. 7)<sup>84</sup>.

#### **In Polish:**

**1. Zdecydowana większość tekstów pasków „Wiadomości” TVP 1 z lat 2016–2017 pełni funkcje nieinformacyjne – głównie perswazyjną (wpływanie na odbiorcę), magiczną (kreacja rzeczywistości) i ekspresywną (wyrażanie emocji i ocen nadawcy).** Powstały więc one z myślą o stworzeniu autorskich wizji wydarzeń i o wpłynięciu na przekonania (w tym: oceny) odbiorcy. Wizja świata prezentowanego przez „Wiadomości” jest skrajnie jednostronna, a jej oś aksjologiczną jest opozycja: „obecna władza” – „ci, którzy jej nie popierają” – działania rządu i partii rządzącej są przedstawiane w sposób bezwzględnie pozytywny, podczas gdy działania partii opozycyjnych, ruchów obywatelskich czy instytucji Unii Europejskiej są oceniane wyłącznie negatywnie, niekiedy osoby i instytucje te są obiektem ogólnie pojętej deprecjacji (ironii, kpiny, ośmieszenia itd.). Oceny dokonywane są apriorycznie – formuły językowe zawierające pierwiastek oceny pojawiają się na pasku poprzedzającym właściwy materiał reporterski, co sprawia, że widz ma mieć ukształtowaną wizję wydarzenia, zanim pozna jego szczegóły. Tylko co czwarty tekst (75 pasków na 306) sygnujący materiał reporterski jest powiadomieniem w sensie ścisłym, tj. informacją intencjonalnie pozbawioną oceny. Wskaźnik ten należy uznać za bardzo niski, a zatem należy stwierdzić, że „Wiadomości” TVP nie przekazują obywatelom obiektywnej informacji, lecz własną wizję omawianych wydarzeń.

#### **Translation:**

**The vast majority of the news tickers in “News” on TVP1 in 2016-2017 plays a non-informational role – most often persuasive (influencing the viewer), magical (creating reality) or expressive (expressing the author’s emotions and judgements).** They are designed to express their authors’ visions of events and to influence convictions (including judgments) of the viewer. The vision of the world presented by “News” is extremely one-sided, and its axiological axis is the opposition between those who rule today rulers and those who do not support them – the actions of the government and of the ruling party are presented in an absolutely positive light, while those of opposition parties, civic movements or the institutions of the European Union are always judged negatively, sometimes those persons or institutions are disparaged (including irony, mockery, ridicule, etc.). The judgments are made a priori – formulations containing judgmental components appear on news ticker before the corresponding stories, so as to give the viewer a given perspective on an event before he learns the details of the event. Only one in four texts (75 news tickers out of 306) referring to a story contains information strictly speaking, .ie., information voluntarily devoid of judgment. This is a very low proportion, we can therefore say that “News” on TVP do offer objective information to citizens, but offer instead their own vision of the events presented.

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84 The use of boldface is reproduced from the original text.

## 7 The need for the European Parliament to conduct its own investigation

This application can be viewed as a complaint against the conduct of domestic authorities of Poland. Usually, a complaint of this kind is investigated domestically, and only then can reach an international body. The international body can then decide on the complaint based, *inter alia*, on facts established and proofs collected during the domestic investigation.

The proceedings concerning this application should have followed this model. Indeed, the Polish Supreme Court has the power to investigate (e.g., call witnesses, order expert opinions, summon documents and recordings of programmes), and the normal course of things would consist in the European Parliament proceeding on this application based both on proofs provided by the applicants and on those gathered by the Polish Supreme Court.

The absence of effective domestic remedies in the present case (and, specifically, the impossibility to bring the matter effectively before the Polish Supreme Court, see Sections 5.1-5.3 above) make this impossible.

Additionally, the Court of first instance said what follows<sup>85</sup> (boldface added by the applicants):

*212. However, only the Member State is able to assess the public service broadcaster's compliance with the quality standards defined in the public service remit. As the Commission points out in its communication COM(1999) 657 final to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions of 14 December 1999 on the principles and guidelines for the Community's audiovisual policy in the digital age, 'content issues are essentially national in nature, being directly and closely connected to the cultural, social and democratic needs of a particular society' and 'in line with the principle of subsidiarity, therefore, content regulation is primarily the responsibility of Member States'. **It is thus not for the Commission to assess compliance with quality standards; that institution must be able to rely on appropriate monitoring by the Member States** (recital 41 of the Communication on broadcasting).*

In 2017, the quality of 8 Polish public channels (out of more than 40) was assessed by the Pontifical University of John Paul II (see Section 6.5, p. 48 above). In 2018-2019, no quality assessment whatsoever was done or commissioned by public authorities.

In addition to contravening to the above described obligations of the Polish State, such an absence of quality assessments is unprecedented; the only plausible explanation of this situation is that the politically involved National Broadcasting Council fears that any new quality assessment would be as damning to the State-owned media as the analyses done in 2017.

The absence of quality assessment in 2018 and in 2019 is well known in Poland. In the context of the campaign before the local elections of October and November 2018, it is explicitly confirmed by the exchange of letters between the Election Observatory and the National Broadcasting Council (see above, Section 4.2.6, p. 26 and Attachments 18 and 19). Additionally, on 29 July 2019, Marcin Skubiszewski wrote to the chairman of the National Broadcasting Council asking, *inter alia*, what follows:

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<sup>85</sup> Court of first instance, fifth chamber, 26 June 2008, T-442/03, SIC – Sociedade Independente de Comunicação, SA, v Commission of the European Communities <http://curia.europa.eu/juris/document/document.jsf?text=&docid=66879&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=7382353>



**In Polish:** *Proszę Krajową Radę Radiofonii i Telewizji o przekazanie mi wykazu działań, jakie od dnia 1 stycznia 2015 r. Rada podjęła lub zleciła w celu skontrolowania realizacji przez media publiczne misji publicznej określonej w art. 21 ust. 1 ustawy o radiofonii i telewizji. Chodzi mi w szczególności o działania polegające na monitoringu i analizie programów mediów publicznych, w ramach których oceniane było przestrzegania tego przepisu.*

**Translation:** *I request that the National Broadcasting Council send me the list of actions that since 1<sup>st</sup> January 2015 the Council took or ordered to verify the delivery by public media of the public mission defined in Art. 21 para. 1 of the law on radio and television. I am specially interested in actions that consisted in monitoring and analysing programmes of public media, and which involved the assessment of the compliance with this provision.*

By electronic message of 12 August 2019 (Attachment 21), the Council informed Marcin Skubiszewski that the answer would be sent no later than 6 September 2019. In reality, as of 19 September (the day when this application is signed) no answer has been received.

In these circumstances, it is necessary for the European Parliament to conduct an investigation in order to keep its power to rule on disputes (Art. 12 of the Act of 1976) effective.

There are three supplementary arguments in favour of conducting an investigation in the present case. First, the matter is of exceptional importance: the violations of democratic principles described in this application amount to the suppression of democracy in a Member State of the European Union, and the remedy requested, to wit the declaration of invalidity of credentials concerning more than twenty MEPs, is far-reaching (in line with the seriousness of the violations).

Second, the facts to investigate, *i.e.*, the content of news and political commentary on forty Polish channels (radio and TV) in the pre-electoral period, are so vast that the proofs provided by the applicants do not (and could not possibly) cover everything. An investigation ordered by the Parliament would extend the knowledge of facts beyond what results from the proofs provided by the applicants.

Third, proofs in support of this application mainly consist in analyses of programmes. Such analyses, when done by experts commissioned as part of an investigation ordered by the Parliament, may be more trustworthy in the eyes of the Parliament (offer better guarantees of impartiality) than analyses quoted by the applicants.

The conduct of any investigation will be greatly facilitated by the fact that recordings of many programmes at issue are readily available from project Dragons (described above, Section 6.2, p. 41).

The applicants invite the European Parliament to take into account, while proceeding on this application, the documents and information collected as part of the investigation of the Owczarski petition 0477/2017. The applicant likewise invite the Parliament to request that the Polish ombudsman, dr Adam Bodnar share with the Parliament the information at his disposal about the functioning of the Polish State-owned media. The testimony that dr Bodnar delivered as part of the debate on the Owczarski petition proves that he is well informed on this topic.

## Attachments

All attachments are provided in electronic form, as files or (in the case of some webpages) as directories on the pendrive delivered with this document.

This application is present on the pendrive in two formats, in files “credentials-validity-dispute.odt” and “credentials-validity-dispute.pdf”

Additional applications by 4 candidates and by 150 voters in the Polish election of 26 May are filed with this application. They are delivered on paper, and their scanned versions are on the pendrive, in files whose names begin with “application”.

### Concerning the attachments listed below:

The name of each file or directory begins with att-*n*- or att-*n\_m*- where either *n* alone or *n* and *m* together represent the number of the attachment. For example, the file named att-23-3324.pdf contains the attachment number 23 (the part of the filename that follows “att-23-”, to wit “3324.pdf”, is either a description of the content or the original name of the file, as retrieved on the internet).

Similarly, the name “att-11\_18-Polskie-Radio-Bydgoszcz.pdf” corresponds with attachment number 11.18.

Some documents are attached in two versions. In this case, the names of the versions start, respectively, with “att-*n*-v1-” and with “att-*n*-v2-”, for example the names can read “att-14-v1-krri-ostrzezenie-sprawozdania.pdf” and “att-14-v2-krri-ostrzezenie-sprawozdania.pdf”

Two versions are present for

- those attachments for which there are two PDFs: one complete (with signature and/or stamp), but from which it is impossible to retrieve the text, the other without stamp or signature but with retrievable text;
- those attachments that are copies of web pages: in this case, a full copy of the webpage (often in the form of a directory containing multiple files) and a PDF image are provided.

Media analyses by the University of John Paul II are an exception to the rules above: they are all stored in the directory “att-40-jp2”, under their original names (as published by the National Broadcasting Council).

Additionally, some attachments are provided in printed form.

- 1 *Obwieszczenie Państwowej Komisji Wyborczej z dnia 27 maja 2019 r. o wynikach wyborów posłów do Parlamentu Europejskiego przeprowadzonych w dniu 26 maja 2019 r.* (announcement of the National Electoral Commission of 27 May 2019 of the results of the election of Members of the European Parliament held on 26 May 2019). Published in *Dziennik Ustaw Rzeczypospolitej Polskiej*, 28 May 2019, *poz.* (document number) 989, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20190000989>  
(also on paper)
- 2 Polish identity card of Marcin Skubiszewski.

- 3 Current copy of the file of the Association Election Observatory in the Polish National Judicial Register (*Krajowy Rejestr Sądowy – KRS*).
- 4 *Uchwała nr 169/2016 z dnia 22 czerwca 2016 roku w sprawie sposobu podziału wpływów z opłat abonamentowych w 2017 roku między jednostki publicznej radiofonii i telewizji* (Resolution of the National Broadcasting Council nr 169/2016 of 22 June 2016 on the manner of apportioning revenue from subscription fees 2017 between entities of public radio and television) [http://www.krrit.gov.pl/Data/Files/\\_public/Portals/0/abonament/2016/uchw-169\\_2016.pdf](http://www.krrit.gov.pl/Data/Files/_public/Portals/0/abonament/2016/uchw-169_2016.pdf)
- 5 Statement of the National Broadcasting Council of 30 June 2017: *KRRiT podjęła uchwałę w sprawie sposobu podziału środków abonamentowych w 2018 r.* (The National Broadcasting Council took a resolution on apportioning revenue from subscription fees 2018). <http://www.krrit.gov.pl/krrit/aktualnosci/news,2509,krrit-podjela-uchwale-w-sprawie-sposobu-podzialu-srodkow-abonamentowych-w-2018-r.html>
- 6 Statement of the National Broadcasting Council of 30 November 2017: *KRRiT podzieliła 980 000 tys. zł między jednostki publicznej radiofonii i telewizji* (The National Broadcasting Council apportioned 980 000 thousand Polish zlotys among entities of public radio and television). <http://www.krrit.gov.pl/krrit/aktualnosci/news,2577,krrit-podzielila-980-000-tys-zl-miedzy-jednostki-publicznej-radiofonii-i-telewizji.html>
- 7 *Uchwała nr 164/2018 z dnia 28 czerwca 2018 roku w sprawie sposobu podziału wpływów z opłat abonamentowych w 2019 roku między jednostki publicznej radiofonii i telewizji* (Resolution of the National Broadcasting Council nr 164/2018 of 28 June 2018 on the manner of apportioning subscription fees 2019 among entities of public radio and television) [http://www.krrit.gov.pl/Data/Files/\\_public/Portals/0/KRRiT/aktualnosci/uchwala-nr-164-z-2018-o-podziale-abonamtu-na-2019.pdf](http://www.krrit.gov.pl/Data/Files/_public/Portals/0/KRRiT/aktualnosci/uchwala-nr-164-z-2018-o-podziale-abonamtu-na-2019.pdf)
- 8 Statement of the National Broadcasting Council of 25 April 2019: *KRRiT podjęła uchwałę o podziale rekompensaty 1 260 000 tys. zł pomiędzy jednostki publicznej radiofonii i telewizji* (The National Broadcasting Council took a resolution on apportioning the compensation of 1 260 000 Polish zlotys to entities of public radio and television) <http://www.krrit.gov.pl/krrit/aktualnosci/news,2812,krrit-podjela-uchwale-o-podziale-rekompensaty-1-260-000-tys-zl-pomiedzy-jednostki-publicznej-radiofo.html>
- 9 Report of TVP on the use of revenue from subscription fees 2017: *Telewizja Polska. Sprawozdanie zarządu z wykorzystania przez Telewizję Polską S.A. wpływów z opłat abonamentowych na realizację misji publicznej w 2017 roku.* <https://centruminformacji.tvp.pl/36385840/sprawozdanie-abonamentowe-tvp-za-2017r> and <https://s.tvp.pl/repository/attachment/3/b/c/3bc4fe7e9ea0ef3881acaa4b2ab807bc1521034084529.pdf>
- 10 Report of TVP on the use of revenue from subscription fees 2018: *Telewizja Polska. Sprawozdanie zarządu z wykorzystania przez Telewizję Polską S.A. wpływów z opłat abonamentowych na realizację misji publicznej w 2018 roku.* <https://centruminformacji.tvp.pl/41761209/sprawozdanie-abonamentowe-tvp-za-2018-r> and <https://s.tvp.pl/repository/attachment/e/4/7/e474b7a0e6d5ced834134ccb0371ccc11552665798631.pdf>

- 11 Full copies (including history) of KRS files concerning the Polish state-owned broadcasters, namely
  - 11.1 Telewizja Polska
  - 11.2 Polskie Radio
  - 11.3 Polskie Radio – Regionalna Rozgłośnia w Białymstoku „Radio Białystok”
  - 11.4 Polskie Radio – Regionalna Rozgłośnia w Olsztynie „Radio Olsztyn”
  - 11.5 Polskie Radio – Regionalna Rozgłośnia w Krakowie „Radio Kraków”
  - 11.6 Polskie Radio – Regionalna Rozgłośnia w Warszawie „Radio dla Ciebie”
  - 11.7 Polskie Radio – Regionalna Rozgłośnia w Zielonej Górze „Radio Zachód”
  - 11.8 Polskie Radio – Regionalna Rozgłośnia we Wrocławiu „Radio Wrocław”
  - 11.9 Polskie Radio – Regionalna Rozgłośnia w Poznaniu „Radio Poznań”
  - 11.10 Polskie Radio – Regionalna Rozgłośnia w Szczecinie „PR Szczecin”
  - 11.11 Polskie Radio – Regionalna Rozgłośnia w Opolu „Radio Opole”
  - 11.12 Polskie Radio – Regionalna Rozgłośnia w Kielcach „Radio Kielce”
  - 11.13 Polskie Radio – Regionalna Rozgłośnia w Lublinie „Radio Lublin”
  - 11.14 Polskie Radio – Regionalna Rozgłośnia w Katowicach „Radio Katowice”
  - 11.15 Polskie Radio – Regionalna Rozgłośnia w Łodzi „Radio Łódź”
  - 11.16 „Polskie Radio Rzeszów” – Regionalna Rozgłośnia w Rzeszowie
  - 11.17 Polskie Radio – Regionalna Rozgłośnia w Koszalinie „Radio Koszalin”
  - 11.18 Polskie Radio – Regionalna Rozgłośnia w Bydgoszczy „Polskie Radio Pomorza i Kujaw”
  - 11.19 Polskie Radio – Regionalna Rozgłośnia w Gdańsku „Radio Gdańsk”
- 12 Report of Polskie radio on the use of revenue from subscription fees 2017: *Polskie Radio. Roczne sprawozdanie zarządu Polskiego Radia S.A. z wykorzystania wpływów z opłat abonamentowych na realizację misji publicznej w 2017 roku* [http://www.prsa.pl/bip/arttykul201642\\_sprawozdanie\\_za\\_rok\\_2017.aspx](http://www.prsa.pl/bip/arttykul201642_sprawozdanie_za_rok_2017.aspx) and <http://www2.polskieradio.pl/files/20180315085252/2018031504061904.pdf>
- 13 Report of Polskie radio on the use of revenue from subscription fees 2018: *Polskie Radio. Roczne sprawozdanie zarządu Polskiego Radia S.A. z wykorzystania wpływów z opłat abonamentowych na realizację misji publicznej w 2018 roku* [http://prsa.pl/bip/arttykul201763\\_sprawozdanie\\_za\\_rok\\_2018.aspx](http://prsa.pl/bip/arttykul201763_sprawozdanie_za_rok_2018.aspx) <http://www2.polskieradio.pl/files/20120315145754/2019031405280329.pdf>
- 14 The financial statement of TVP (Telewizja Polska S.A.), 2017.
- 15 Przeniesienie pracowników z TVP do Leasing Team (The transfer of workers from TVP to Leasing Team). 27 April 2015. infor.pl

<https://kadry.infor.pl/wiadomosci/717032,Przeniesienie-pracownikow-z-TVP-do-Leasing-Team.html>

- 16 *Wiarygodność mediów* (the trustworthiness of media). Komunikat z badań Nr 70/2019, maj 2019. Centrum Badań Opinii Społecznej. [https://cbos.pl/SPISKOM.POL/2019/K\\_070\\_19.PDF](https://cbos.pl/SPISKOM.POL/2019/K_070_19.PDF)  
(also on paper)
- 17 Resolution of the National Broadcasting Council on the election of Witold Kołodziejski to the function of the chairman of the Council: Krajowa Rada Radiofonii i Telewizji. *Uchwała Nr 240 (1)/2016 z dnia 19 września 2016 roku.*
- 18 Letter of 25 January 2019 from the Election Observatory to Witold Kołodziejski, chairman of the National Broadcasting Council.
- 19 Letter of 10 April 2019 from Witold Kołodziejski, chairman of the National Broadcasting Council, to the Election Observatory.
- 20 Letter of 29 July 2019 from Marcin Skubiszewski to Witold Kołodziejski, chairman of the National Broadcasting Council.
- 21 Electronic message of 12 August 2019 from Jolanta Dębska, sent in the name of the National Broadcasting Council to Marcin Skubiszewski.
- 22 *Wybory samorządowe 2018. Raport główny z obserwacji procesu wyborczego* (“Local elections 2018. The main report from the observation of the electoral process”). Obserwatorium Wyborcze. Marcin Skubiszewski (head of observation and editor) *et al.* Warszawa, 12 November 2018. <https://ow.org.pl/raport>  
(also on paper)
- 23 *Postanowienie. Sąd Najwyższy. Dnia 14 kwietnia 2016 r. Sygn. akt III SW 4/16.* (Judgment. Supreme Court. 14 April 2016. File number III SW 4/16.) An anonymised version of the judgment is available on the internet: <https://www.saos.org.pl/judgments/245099>
- 24 *Trybunał Konstytucyjny. Postanowienie z dnia 4 grudnia 2018 r. (wersja zanonimizowana).* Sygn. Akt SK 8/17. (Constitutional Tribunal. Judgment of 4 December 2018, anonymised version. File number SK 8/17.) <https://ipo.trybunal.gov.pl/ipo/view/sprawa.xhtml?&pokaz=dokumenty&sygnatura=SK%208/17>
- 25 Judgment of *Wojewódzki Sąd Administracyjny w Warszawie* (Regional Administrative Court in Warsaw) of 20 June 2018 (anonymized), file number V SA/Wa 459/18 <http://orzeczenia.nsa.gov.pl/doc/08FAE4F7D5>
- 26 *Wybory polskich posłów do Parlamentu Europejskiego 2019. Pierwszy raport z obserwacji procesu wyborczego* (Elections of Polish members of the European Parliament 2019. First report from the observation of the electoral process). Marcin Skubiszewski (ed.). Media analysis by Natalia Jarska, Agnieszka Ślifirska. Published by Obserwatorium Wyborcze. Warszawa (Poland), 27 May 2019. <https://ow.org.pl/raporteuro1>  
(also on paper)
- 27 Conclusions from the observation of the Polish public TV before the election of 26 May 2019 (English translation of Section 1 in Attachment 26).

(also on paper)

- 28 Detailed analyses by the Election Observatory of programmes from the interval between 17 February and 23 May 2019 (in Polish).
- 29 List of programmes analysed in Attachment 28.
- 30 Detailed analyses from Attachment 28, partly translated into English (qualitative verbal comments by observers are in Polish, everything else translated into English).
- 31 The questionnaire used to produce the analyses in Attachment 28.
- 32 Contact information for persons involved in media recording and analysis at the Election Observatory.
- 33 Detailed analyses by the Election Observatory of programmes between 28 September and 31 October 2018 (in Polish).
- 34 List of programmes analysed in Attachment 33.
- 35 The questionnaire used to produce the analyses in Attachment 33.
- 36 Contact information for selected persons involved in media analysis at the Society of Journalists.
- 37 *Raport z monitoringu „Wiadomości” TVP w okresie kampanii wyborczej do Parlamentu Europejskiego 10-24 maja 2019 r.* (Report from the monitoring of „Wiadomości” TVP during the electoral campaign before the elections to the European Parliament, 10-24 May 2019, in Polish). Andrzej Krajewski (ed.). Published by *Towarzystwo Dziennikarskie* (Society of Journalists).  
[http://www.batory.org.pl/upload/files/Programy%20operacyjne/Masz%20Glos/RaportTD13NN\\_7%20czerwca\\_final2.pdf](http://www.batory.org.pl/upload/files/Programy%20operacyjne/Masz%20Glos/RaportTD13NN_7%20czerwca_final2.pdf)
- 38 Monitoring of the 2019 European Parliament election campaign in the main news programme of Polish public TV. Andrzej Krajewski (ed.). Published by *Towarzystwo Dziennikarskie* (Society of Journalists). This the English language version of the report in Attachment 37. [http://www.batory.org.pl/upload/files/Programy%20operacyjne/Masz%20Glos/RaportTDEnglFin\\_June%2010N.pdf](http://www.batory.org.pl/upload/files/Programy%20operacyjne/Masz%20Glos/RaportTDEnglFin_June%2010N.pdf)

(also on paper)

- 39 *Wybory samorządowe 2018 – kampania w mediach między turami* (Local elections 2018 – the campaign between the two rounds). Published by *Towarzystwo Dziennikarskie*. Andrzej Krajewski et al. This report has an interactive part that can be viewed only on the World Wide Web. We attach the non-interactive part of the report to this document, but the reader is advised to preferably access the full report at the its original URL: <http://towarzystwodziennikarskie.pl/wybory-samorzadowe-2018-kampania-w-mediach-miedzy-turami/>
- 40 Reports from 32 analyses of Polish public service channels, by the Pontifical University of John Paul II in Cracow (*Uniwersytet Papieski Jana Pawła II w Krakowie*), 2017, with short introductory text by the National Broadcasting Council. Attached directory att-40-jp2 <http://www.krrit.gov.pl/krrit/bip/raporty-z-monitoringow/raport-uniwerytetu-jana-pawla-ii-w-krakowie/>

- 41 *Sprawozdanie o stanie ochrony języka polskiego za lata 2016-2017* (Report on the state of the protection of the Polish language during the years 2016-2017). *Rada Języka Polskiego* (Council of the Polish language). Katarzyna Kłosińska, Rafał Zimny, Przemysław Żukiewicz. Warszawa, 14 March 2019. Published by the Sejm, nr 3324. on <http://orka.sejm.gov.pl/Druki8ka.nsf/0/C4B224C28DB9367BC12583CB0032CA99/%24File/3324.pdf>
- 42 *Czystka w mediach* (Purge in the media) – a list of 239 journalists who ceased to work for State-owned media in 2016 for political reasons. Krzysztof Bobiński *et al.* List compiled by the Society of Journalists (unpublished).
- 43 Letter from Krzysztof Bobiński to Marcin Skubiszewski briefly explaining the status of the document “Purge in the Media” (Attachment 42).

**The document is signed at its very end, after the appendices.**

## **Appendix A: Legal rules regarding appointments and dismissals of officers of State-owned broadcasters – successive versions**

The table below quotes the key legal stipulations of the law on radio and television that govern the appointment and the dismissal of officers in State-owned broadcasters. We quote the stipulations in four versions:

- as applicable in 2015;
- as amended by the small media law of 30 December 2015 (without regard for the unconstitutionality of some provisions of said law);
- as amended by the small media law of 30 December 2015, taking into account the declaration of unconstitutionality of some provisions of said law (judgment K 13/16 of 13 December 2016 of the Constitutional Tribunal);
- as contained in the notice of the President of Sejm of 1<sup>st</sup> February 2019 – this version takes into account the law on the Council of National Media and is, in practice, the one enforced today.

The last version (the notice of the President of Sejm) should normally take into account, in addition to the text of the small media law and of the law on the Council of National Media, the expiry of the former and the unconstitutionality of some of its provisions. In fact, as it is explained above in Section 4.2.4, the notice ignores totally the expiry and partly the unconstitutionality of the small media law.



## Stipulations of the law on radio and television directly relevant to the procedures of appointment and of dismissal of officers of State-owned broadcasters

As applicable in 2015	As amended by the small media law	As amended by the small media law and judgment of 13.12.2016	According to the notice of 1 <sup>st</sup> February 2019
<b>In Polish:</b>			
<b>Art. 27 [management boards]</b>			
1. Zarząd spółki liczy od jednego do trzech członków.	1. <i>(bez zmian)</i>	1. <i>(bez zmian)</i>	1. <i>(bez zmian)</i>
2. Kadencja zarządu trwa cztery lata.	2. <i>(uchylony)</i>		2. <i>(uchylony)</i>
3. Członków zarządu, w tym prezesa zarządu, Krajowa Rada powołuje w drodze uchwały na wniosek rady nadzorczej oraz odwołuje w drodze uchwały na wniosek rady nadzorczej lub walnego zgromadzenia.	3. Członków zarządu, w tym prezesa zarządu, powołuje i odwołuje minister właściwy do spraw Skarbu Państwa.	3. Członków zarządu, w tym prezesa zarządu, powołuje i odwołuje minister właściwy do spraw Skarbu Państwa.  – przepis niezgodny z Konstytucją w zakresie, w jakim wyłącza udział Krajowej Rady Radiofonii i Telewizji w procedurze powoływania i odwoływania członków zarządu spółek publicznej radiofonii i telewizji, jest niezgodny z art. 213 ust. 1 w związku z art. 14 i art. 54 ust. 1 Konstytucji.	3. Członków zarządu, w tym prezesa zarządu, powołuje i odwołuje Rada Mediów Narodowych.  [Odnosnik 28: Uznany za niezgodny z Konstytucją w zakresie, w jakim wyłącza udział Krajowej Rady Radiofonii i Telewizji w procedurze powoływania i odwoływania członków zarządu spółek publicznej radiofonii i telewizji na podstawie pkt 3 wyroku Trybunału Konstytucyjnego z dnia 13 grudnia 2016 r. sygn. akt K 13/16 (Dz. U. poz. 2210).]



As applicable in 2015	As amended by the small media law	As amended by the small media law and judgment of 13.12.2016	According to the notice of 1 <sup>st</sup> February 2019
<p>4. Do zarządu powołuje się wyłącznie osobę posiadającą kompetencje w dziedzinie zarządzania oraz radiofonii i telewizji, spośród kandydatów wyłonionych w konkursie przeprowadzonym przez radę nadzorczą.</p>	<p>4. Członków zarządu powołuje się spośród osób posiadających kompetencje w dziedzinie radiofonii i telewizji oraz nieskazanych prawomocnym wyrokiem za przestępstwo umyślne ścigane z oskarżenia publicznego lub przestępstwo skarbowe.</p>	<p>4. Członków zarządu powołuje się spośród osób posiadających kompetencje w dziedzinie radiofonii i telewizji oraz nieskazanych prawomocnym wyrokiem za przestępstwo umyślne ścigane z oskarżenia publicznego lub przestępstwo skarbowe.</p> <p>– zmiana przepisu niezgodna z Konstytucją w zakresie, w jakim wyłącza udział Krajowej Rady Radiofonii i Telewizji w procedurze powoływania i odwoływania członków zarządu spółek publicznej radiofonii i telewizji.</p>	<p>4. Członków zarządu powołuje się spośród osób posiadających kompetencje w dziedzinie radiofonii i telewizji oraz nieskazanych prawomocnym wyrokiem za przestępstwo umyślne ścigane z oskarżenia publicznego lub przestępstwo skarbowe.</p>

As applicable in 2015	As amended by the small media law	As amended by the small media law and judgment of 13.12.2016	According to the notice of 1 <sup>st</sup> February 2019
<p>6. Członek zarządu może być odwołany w przypadku:</p> <ol style="list-style-type: none"> <li>1) skazania prawomocnym wyrokiem sądu za przestępstwo umyślne ścigane z oskarżenia publicznego lub przestępstwo skarbowe;</li> <li>2) działania na szkodę spółki;</li> <li>3) zaistnienia okoliczności trwale uniemożliwiających sprawowanie funkcji.</li> </ol>	<p>6. <i>(uchylony)</i></p>	<p>6. Członek zarządu może być odwołany w przypadku:</p> <ol style="list-style-type: none"> <li>1) skazania prawomocnym wyrokiem sądu za przestępstwo umyślne ścigane z oskarżenia publicznego lub przestępstwo skarbowe;</li> <li>2) działania na szkodę spółki;</li> <li>3) zaistnienia okoliczności trwale uniemożliwiających sprawowanie funkcji.</li> </ol> <p><i>(uchylenie przepisu niezgodne z Konstytucją)</i></p>	<p>6. <i>(uchylony)</i></p> <p>[Odnosnik 29: Art. 1 pkt 2 lit. c [małej ustawy medialnej] utracił moc w zakresie, w jakim uchyla art. 27 ust. 6 [ustawy o radiofonii i telewizji] na podstawie pkt 4 lit. b wyroku Trybunału Konstytucyjnego, o którym mowa w odnośniku 28.]</p>

As applicable in 2015	As amended by the small media law	As amended by the small media law and judgment of 13.12.2016	According to the notice of 1 <sup>st</sup> February 2019
<b>Art. 28 [supervisory boards]</b>			
<p>1. Rady nadzorcze spółek "Telewizja Polska - Spółka Akcyjna" i "Polskie Radio - Spółka Akcyjna" liczą po siedmiu członków: pięciu wyłonionych w konkursie przeprowadzonym przez Krajową Radę spośród kandydatów posiadających kompetencje w dziedzinie prawa, finansów, kultury oraz mediów, zgłoszonych przez organy kolegialne uczelni akademickich, jednego powołanego przez ministra właściwego do spraw kultury i ochrony dziedzictwa narodowego oraz jednego powołanego przez ministra właściwego do spraw Skarbu Państwa.</p>	<p>1. Rada nadzorcza spółki liczy trzech członków.</p>	<p>1. Rada nadzorcza spółki liczy trzech członków.</p> <p>– zmiana przepisu niezgodna z Konstytucją w zakresie, w jakim wyłącza udział Krajowej Rady Radiofonii i Telewizji w procedurze powoływania i odwoływania członków rad nadzorczych spółek publicznej radiofonii i telewizji.</p>	<p>1. Rada nadzorcza spółki liczy trzech członków.</p> <p>[Odnosnik 30: Uznany za niezgodny z Konstytucją w zakresie, w jakim wyłącza udział Krajowej Rady Radiofonii i Telewizji w procedurze powoływania i odwoływania członków rad nadzorczych spółek publicznej radiofonii i telewizji na podstawie pkt 5 lit. b wyroku Trybunału Konstytucyjnego, o którym mowa w odnośniku 28.]</p>

As applicable in 2015	As amended by the small media law	As amended by the small media law and judgment of 13.12.2016	According to the notice of 1 <sup>st</sup> February 2019
<p>1a. Rady nadzorcze spółek radiofonii regionalnej liczą po pięciu członków: czterech wyłonionych w konkursie przeprowadzonym przez Krajową Radę spośród kandydatów posiadających kompetencje w dziedzinie prawa, finansów, kultury oraz mediów, zgłoszonych przez organy kolegialne uczelni akademickich działających w danym regionie oraz jednego powołanego przez ministra właściwego do spraw Skarbu Państwa w porozumieniu z ministrem właściwym do spraw kultury i ochrony dziedzictwa narodowego.</p>	<p>1a. (<i>uchylony</i>)</p>	<p>1a. (<i>uchylony</i>)</p>	<p>1a. (<i>uchylony</i>)</p>

As applicable in 2015	As amended by the small media law	As amended by the small media law and judgment of 13.12.2016	According to the notice of 1 <sup>st</sup> February 2019
<p>1d. Członek rady nadzorczej może być odwołany przez organ, który go powołał, w przypadku:</p> <ol style="list-style-type: none"> <li>1) skazania prawomocnym wyrokiem sądu za przestępstwo umyślne ścigane z oskarżenia publicznego lub przestępstwo skarbowe;</li> <li>2) działania na szkodę spółki;</li> <li>3) zaistnienia okoliczności trwale uniemożliwiających sprawowanie funkcji.</li> </ol>	<p>1d. <i>(uchylony)</i></p>	<p>1d. Członek rady nadzorczej może być odwołany przez organ, który go powołał, w przypadku:</p> <ol style="list-style-type: none"> <li>1) skazania prawomocnym wyrokiem sądu za przestępstwo umyślne ścigane z oskarżenia publicznego lub przestępstwo skarbowe;</li> <li>2) działania na szkodę spółki;</li> <li>3) zaistnienia okoliczności trwale uniemożliwiających sprawowanie funkcji.</li> </ol> <p><i>(uchylenie przepisu niezgodne z Konstytucją)</i></p>	<p>1d. <i>(uchylony)</i></p> <p>[Oдноśnik 31: Art. 1 pkt 3 lit. b [małej ustawy medialnej] utracił moc w zakresie, w jakim uchyla art. 28 ust. 1d [ustawy o radiofonii i telewizji] na podstawie pkt 6 lit. b wyroku Trybunału Konstytucyjnego, o którym mowa w odnośniku 28.]</p>
<p><i>(nie było takiego ustępu)</i></p>	<p>1e. Członków rady nadzorczej powołuje i odwołuje minister właściwy do spraw Skarbu Państwa.</p>	<p>1e. Członków rady nadzorczej powołuje i odwołuje minister właściwy do spraw Skarbu Państwa.</p>	<p>1e. Członków rady nadzorczej powołuje i odwołuje Rada Mediów Narodowych.</p>
<p><i>(nie było takiego ustępu)</i></p>	<p>1f. Członków rady nadzorczej powołuje się spośród osób, które złożyły egzamin, o którym mowa w art. 12 ust. 2 ustawy z dnia 30 sierpnia 1996 r. o komercjalizacji i prywatyzacji (Dz. U. z 2015 r. poz. 747 i 978).</p>	<p>1f. Członków rady nadzorczej powołuje się spośród osób, które złożyły egzamin, o którym mowa w art. 12 ust. 2 ustawy z dnia 30 sierpnia 1996 r. o komercjalizacji i prywatyzacji (Dz. U. z 2015 r. poz. 747 i 978).</p>	<p>1f. Członków rady nadzorczej powołuje się spośród osób, które spełniają warunki określone w przepisach o prywatyzacji i komercjalizacji dla kandydatów do rad nadzorczych spółek, w których Skarb Państwa jest jedynym akcjonariuszem.</p>

As applicable in 2015	As amended by the small media law	As amended by the small media law and judgment of 13.12.2016	According to the notice of 1 <sup>st</sup> February 2019
<b>Translation:</b>			
<b>Art. 27 [management boards]</b>			
1. The management board of each company has between one and three members.	1. <i>(unchanged)</i>	1. <i>(unchanged)</i>	1. <i>(unchanged)</i>
2. The term of office of the management board is four years	2. <i>(repealed)</i>	2. <i>(repealed)</i>	2. <i>(repealed)</i>
3. Members of the management board, including its president, are appointed by a resolution of the National Broadcasting Council, adopted on application of the supervisory board, and are dismissed by a resolution of the National Broadcasting Council adopted on application of the supervisory board or of the general meeting. <sup>86</sup>	3. Members of the management board, including its president, are appointed and dismissed by the minister competent for the State Treasury.	3. Members of the management board, including its president, are appointed and dismissed by the minister competent for the State Treasury. – amendment of this stipulation unconstitutional insofar as it excludes the participation of the National Broadcasting Council in the procedure of appointment or dismissal of members of management boards of companies of public radio and television.	3. Members of the management board, including its president, are appointed and dismissed by the Council of National Media. [Note 28: declared unconstitutional insofar as it excludes the participation of the National Broadcasting Council in the procedure of appointment or dismissal of members of management boards of companies of public radio and television, based on Item 3 in the Judgment of the Constitutional Tribunal of 13 December 2016 file nr K 13/16 (Dziennik Ustaw poz. 2210).]

86 The general meeting consists of only one person, the minister competent for the treasury – note by the applicants.

<b>As applicable in 2015</b>	<b>As amended by the small media law</b>	<b>As amended by the small media law and judgment of 13.12.2016</b>	<b>According to the notice of 1<sup>st</sup> February 2019</b>
<p>4. Only a parson skilled in the area of management and broadcasting, being one of candidates selected in a competition conducted by the supervisory board, can be appointed as a member of the management board.</p>	<p>4. Only persons skilled in the area of radio and television, with no final conviction by a court of law for an intentional crime prosecuted by the public prosecutor or for a treasury crime can be appointed as members of the management board.</p>	<p>4. Only persons skilled in the area of radio and television, with no final conviction by a court of law for an intentional crime prosecuted by the public prosecutor or for a treasury crime can be appointed as members of the management board.</p> <p>– amendment of this disposition unconstitutional insofar as it excludes the participation of the National Broadcasting Council in the procedure of appointment or dismissal of members of management boards of companies of public radio and television.</p>	<p>4. Only persons skilled in the area of radio and television, with no final conviction by a court of law for an intentional crime prosecuted by the public prosecutor or for a treasury crime can be appointed as members of a management board.</p>

As applicable in 2015	As amended by the small media law	As amended by the small media law and judgment of 13.12.2016	According to the notice of 1 <sup>st</sup> February 2019
<p>6. A member of a management board can be dismissed in the following cases:</p> <ol style="list-style-type: none"> <li>1) final conviction by court of law for an intentional crime prosecuted by the public prosecutor or for a treasury crime;</li> <li>2) acting to the detriment of the company;</li> <li>3) circumstances that make it permanently impossible for him to exercise his functions.</li> </ol>	<p>6. <i>(repealed)</i></p>	<p>6. A member of a management board can be dismissed in the following cases:</p> <ol style="list-style-type: none"> <li>1) final conviction by court of law for an intentional crime prosecuted by the public prosecutor or for a treasury crime;</li> <li>2) acting to the detriment of the company;</li> <li>3) circumstances that make it permanently impossible for him to exercise his functions.</li> </ol> <p><i>(repeal of this disposition unconstitutional)</i></p>	<p>6. <i>(repealed)</i></p> <p>[Note 29: Art. 1 item 2 letter c of the [small media law] was repealed insorfar as it repeals Art. 27 para. 6 of the [law on radio and television], based on item 4 letter b of the Judgment of the Constitutional Tribunal mentioned in note 28]</p>



As applicable in 2015	As amended by the small media law	As amended by the small media law and judgment of 13.12.2016	According to the notice of 1 <sup>st</sup> February 2019
<b>Art. 28 [supervisory boards]</b>			
<p>1. The supervisory boards of the companies "Telewizja Polska - Spółka Akcyjna" and "Polskie Radio - Spółka Akcyjna" have seven members each: five members selected in a competition conducted by the National Broadcasting Council among candidates competent in law, finance, culture and media, submitted by collective bodies of academic institution of higher education, one member appointed by the minister competent for culture and national heritage and one member appointed by the minister competent for the State Treasury.</p>	<p>1. The supervisory board of a company has three members.</p>	<p>1. The supervisory board of a company has three members. – amendment of this disposition unconstitutional insofar as it excludes the participation of the National Broadcasting Council in the procedure of appointment or dismissal of members of supervisory boards of companies of public radio and television.</p>	<p>1. The supervisory board of a company has three members. [Note 30: Declared unconstitutional insofar as it excludes the participation of the National Broadcasting Council in the procedure of appointment or dismissal of members of supervisory boards of companies of public radio and television, based on item 5 letter b of the Judgment of the Constitutional Tribunal mentioned in note 28]</p>

As applicable in 2015	As amended by the small media law	As amended by the small media law and judgment of 13.12.2016	According to the notice of 1 <sup>st</sup> February 2019
<p>1a. The supervisory boards of the companies of regional audio broadcasting count five members each: four members selected in a competition conducted by the National Broadcasting Council among candidates skilled in law, finance, culture and media, submitted by collective bodies of academic institution of higher education from the region in question and one member appointed by the minister competent for the State Treasury in agreement with the minister competent for culture and national heritage.</p>	<p>1a. <i>(repealed)</i></p>	<p>1a. <i>(repealed)</i></p>	<p>1a. <i>(repealed)</i></p>

As applicable in 2015	As amended by the small media law	As amended by the small media law and judgment of 13.12.2016	According to the notice of 1 <sup>st</sup> February 2019
<p>1d. A member of supervisory board can be dismissed by the organ that appointed him in the following cases:</p> <ol style="list-style-type: none"> <li>1) final conviction by court of law for an intentional crime prosecuted by the public prosecutor or for a treasury crime;</li> <li>2) acting to the detriment of the company;</li> <li>3) circumstances that make it permanently impossible for him to exercise his functions.</li> </ol>	<p>1d. <i>(repealed)</i></p>	<p>1d. A member of supervisory board can be dismissed by the organ that appointed him in the following cases:</p> <ol style="list-style-type: none"> <li>1) final conviction by court of law for an intentional crime prosecuted by the public prosecutor or for a treasury crime;</li> <li>2) acting to the detriment of the company;</li> <li>3) circumstances that make it permanently impossible for him to exercise his functions.</li> </ol> <p><i>(repeal of this disposition unconstitutional)</i></p>	<p>1d. <i>(repealed)</i></p> <p>[Note 31:  Art. 1 pkt 3 lit. b ustawy wymienionej jako pierwsza w odnośniku 29 utracił moc w zakresie, w jakim uchyla art. 28 ust. 1d ustawy  wymienionej jako druga w odnośniku 29 na podstawie pkt 6 lit. b wyroku Trybunału Konstytucyjnego, o którym mowa w odnośniku 28.</p>
<p><i>(there was no such paragraph)</i></p>	<p>1e. The members of the supervisory board are appointed and dismissed by the minister competent for the State Treasury.</p>	<p>1e. The members of the supervisory board are appointed and dismissed by the minister competent for the State Treasury.</p>	<p>1e. The members of the supervisory board are appointed and dismissed by the Council of National Media.</p>

<b>As applicable in 2015</b>	<b>As amended by the small media law</b>	<b>As amended by the small media law and judgment of 13.12.2016</b>	<b>According to the notice of 1<sup>st</sup> February 2019</b>
<i>(there was no such paragraph)</i>	1f. Only persons who passed the examination mentioned in Art. 12 Para. 2 of the law of 30 August 1996 on transformation of State undertakings into companies and privatisation (Dziennik Ustaw, 2015, poz. 747 and 978) can be appointed as members of a supervisory board.	1f. Only persons who passed the examination mentioned in Art. 12 Para. 2 of the law of 30 August 1996 on transformation of State undertakings into companies and privatisation (Dziennik Ustaw, 2015, poz. 747 and 978) can be appointed as members of a supervisory board.	1f. Only persons who satisfy the conditions for candidates to supervisory boards of companies having the State Treasury for sole owner, defined in the dispositions on privatisation and on transformation of State undertakings into companies, can be appointed as members of a supervisory board.

## Appendix B: Appointments and dismissals of officers of State-owned broadcasters

The table below lists all appointments, suspensions and dismissals of officers (members of supervisory boards or of management boards, including presidents of management board) of the Polish State-owned broadcasters.

We only cover events that occurred on or after 7 January 2016 (the day when the “small media law” entered into force).

The table is based on information published in KRS (the Polish National Judicial Register – *Krajowy Rejestr Sądowy*), and in some cases on information from other sources available on the Internet.

The KRS publications that were used to compile table are attached to this application, and listed in the attachment list under the number 11 (see above, page 63).

The following columns in the table need explanations:

- **Date:** the date of the event. However, in most cases KRS does not record dates of events; instead, the date when the event was published in KRS is recorded – and this is typically two weeks later (sometimes more, up to three months later).

When the exact date of an event is known, it is indicated in bold, with a footnote containing a link to the source of information about the date. Dates that are recorded in KRS and are not exact are written in plain characters.

- **Record #:** the number of the record in the KRS file where the event is recorded.

**How to read a full (historical) KRS file concerning a company:** the file begins with a list of records. Each record corresponds with an event concerning the company such as, *inter alia*, the appointment or the dismissal of one or more officers. The list of records has no title of its own, and does not explain the nature of each event. Each record listed has, among others, a number (position *Nr wpisu*) and a date of publication (position *Data dokonania wpisu*).

The list of members of the management board is in

- *Dział 2* (Section 2)
  - *Rubryka 1 – Organ uprawniony do reprezentacji podmiotu* (Position 1 – Body empowered to represent the entity)
    - *Podrubryka 1 Dane osób wchodzących w skład organu* (Sub-position 1 Detail of members of the body) – this is the table of members of the management board

For each member, position 5. *Funkcja w organie reprezentującym* gives the positions successively held by this person in the management board (e.g., member of the board – *członek zarządu* or president of the board – *prezes zarządu*). For each function, the record numbers corresponding with the appointment and with the dismissal are listed, respectively, in columns *wprow.* and *wykr.* From the record numbers it is possible to deduce the date when the appointment or the dismissal was published.

If a member of the management board was suspended, this is marked by the word *TAK* in position 6. *Czy osoba wchodząca w skład zarządu została zawieszona w czynnościach?* In this case, the columns *wprow.*

and *wykr.* in the line where the word *TAK* appears, contain the numbers of the records corresponding respectively with the suspension and with the end of the suspension.

The list of members of the supervisory board is in

- *Dział 2* (Section 2)
  - *Rubryka 2 – Organ nadzoru* (Position 1 – Supervisory body)
    - *Podrubryka 1 Dane osób wchodzących w skład organu* (Sub-position 1 Detail of members of the body) – this is the table of members of the supervisory board

The list of members of the supervisory board is similar to the list of members of the management board, yet simpler: functions within the boards are not listed, and members of supervisory boards cannot be suspended. For each member, the event numbers representing his or her appointment or dismissal are written in the columns *wprow.* and *wykr.* respectively.

Date	Reco rd #	Office	Officers dismissed (or suspended)	Officers appointed
<b>Telewizja Polska</b>				
8.01.2016 <sup>87</sup> 20.01.2016	84	President of management board	Janusz Rajmund Daszczyński	Jacek Olgierd Kurski
		Member of management board		Maciej Seweryn Stanecki
4.02.2016	85	Members of supervisory board	Leszek Rowicki Stanisław Jekiełek Tadeusz Stanisław Kowalski Ryszard Jan Skrzypczak Marzena Ewa Barańska Lech Włodzimierz Jaworski Juliusz Michał Maliszewski	Przemysław Rafał Tejkowski Dariusz Lasocki Radosław Krzysztof Włoszek
10.03.2017	91	Member of supervisory board	Dariusz Lasocki	Maciej Jan Łopiński
29.03.2019	97	Members of management board	Maciej Seweryn Stanecki	Marzena Ewa Paczuska Tętnik Piotr Tomasz Pałka
15.05.2019	98, 99	Member of management board	Piotr Tomasz Pałka	Mateusz Piotr Matyszkowicz
<b>Polskie Radio</b>				
08.1.2016 <sup>88</sup> 22.03.2016	46,49	President of the management board	Andrzej Krzysztof Siezieniewski	Barbara Stanisławczyk Żyła
		Members of management board	Henryk Cichecki	Jerzy Zbigniew Kłosiński Marcin Palade

<sup>87</sup> <https://www.pb.pl/kurski-prezesem-tvp-stanislawczyk-polskiego-radia-817780>

<sup>88</sup> <https://www.pb.pl/kurski-prezesem-tvp-stanislawczyk-polskiego-radia-817780>

<https://www.polskieradio.pl/5/3/Artykul/1567315,Barbara-Stanislawczyk-nowa-prezes-Polskiego-Radia>

[https://pl.wikipedia.org/wiki/Barbara\\_Stanis%C5%82awczyk](https://pl.wikipedia.org/wiki/Barbara_Stanis%C5%82awczyk)

<b>Date</b>	<b>Record #</b>	<b>Office</b>	<b>Officers dismissed (or suspended)</b>	<b>Officers appointed</b>
22.01.2016	45	Member of supervisory board	Robert Andrzej Safiański	
1.02.2016	46	Members of supervisory board	Janusz Włodzimierz Adamowski Artur Andrysiak Krzysztof Piotr Czyżewski Krzysztof Kazimierz Czeszejko Grzegorz Borowiec	
23.03.2016	47	Members of supervisory board		Zbigniew Kazimierz Hajłasz Maciej Paweł Jankiewicz Artur Kubaj
15.12.2016	53	Members of supervisory board	Artur Kubaj	Andrzej Tomasz Rogoyski
6.03.2017	55	Member of management board		Mariusz Artur Staniszewski
31.03.2017	56	President of the management board	Barbara Stanisławczyk Żyła	Jacek Adam Sobala
2.06.2017	57	Members of supervisory board	Maciej Paweł Jankiewicz	Grzegorz Kłoczko
22.03.2018	59	Members of supervisory board	Zbigniew Kazimierz Hajłasz	Maciej Kazimierz Rodowicz
6.08.2018	64, 65, 66, 67	President of the management board	Jacek Adam Sobala	Andrzej Tomasz Rogoyski
18.04.2019	68	Member of management board	Mariusz Artur Staniszewski	
		Member of supervisory board		Albert Mikołaj Dreger
<b>Polskie Radio – Regionalna Rozgłośnia w Białymstoku „Radio Białystok”</b>				
23.03.2016	36	President of the management board	Jolanta Gadek	Wojciech Straszyński
		Members of supervisory board (all members: one post was vacant)	Piotr Konrad Fiedorczyk Maria Niedźwiecka Robert Ciborowski Mariola Skłodowska Hończar	Jan Kazimierz Orłowski Marek Bobel Romuald Łanczkowski
<b>Polskie Radio – Regionalna Rozgłośnia w Olsztynie „Radio Olsztyn”</b>				
26.10.2015	38	Member of management board	Henryk Mirosław Łańko	
5.05.2016	42	President of the management board	Mariusz Maciej Bojarowicz	Leszek Rafał Sobański
28.07.2016	44	Members of supervisory board	Bogumił Adam Osiński	Mariusz Wojciech Oszmian
			Krzysztof Krukowski Czesław Stanisław Hołdyński	Jacek Drelich Jacek Janusz Mrozek

Date	Reco rd #	Office	Officers dismissed (or suspended)	Officers appointed
			Agnieszka Maria Kazalska Sylwia Stachowska	
<b>Polskie Radio – Regionalna Rozgłośnia w Krakowie „Radio Kraków”</b>				
6.04.2016	37	President of the management board	Mariusz Marin Pulit	Przemysław Andrzej Bolechowski
12.04.2016	38	Members of supervisory board	Stanisław Młyński Stanisław Dziedzic Urszula Podraza Karol Kościński Krzysztof Gurba	Andrzej Drogoń Anna Borówko Bogdan Wasztyl
25.02.2019	49	Members of supervisory board	Bogdan Wasztyl	Katarzyna Falkowska Gołębiewska
3.06.2019	50	President of the management board	Przemysław Andrzej Bolechowski	Mariusz Bartkowicz
		Members of supervisory board	Andrzej Drogoń	
11.06.2019	51	Members of supervisory board		Łukasz Marek Kmita
<b>Polskie Radio – Regionalna Rozgłośnia w Warszawie „Radio dla Ciebie”</b>				
11.02.2016 <sup>89</sup> 25.05.2016	47	President of the management board	Jolanta Teresa Kaczmarek	Tadeusz Zbigniew Deszkiewicz
25.05.2016	47	Members of supervisory board	Piotr Dmochowski Lipski	Jakub Jan Roszkowski
6.09.2016	49	Members of supervisory board	Bolesław Krzysztof Samoliński Dominika Cieślak Wojciech Borowik Barbara Kwiatkowska Przybyła	Juliana Kapalska Marek Pietrzak
<b>Polskie Radio – Regionalna Rozgłośnia w Zielonej Górze „Radio Zachód”</b>				
6.04.2016	28	President of the management board	Dariusz Frejman	Piotr Bednarek
6.04.2016	28	Members of supervisory board	Ewa Rudzka Agnieszka Wala Jan Tadeusz Andrykiewicz Krzysztof Seweryn Szymański Roman Stryjski	Artur Grygiel Jan Stanisław Pasierbowicz Wojciech Perczak
19.07.2019	40	Members of supervisory board	Wojciech Perczak	Jarosław Czuba
<b>Polskie Radio – Regionalna Rozgłośnia we Wrocławiu – Radio Wrocław</b>				
9.09.2016	42	Members of supervisory board	Edward Bratek Katarzyna Kuźniar Żyłka	Robert Maciej Chmielarczyk Małgorzata Joanna Juzyszyn

<sup>89</sup> <http://warszawa.wyborcza.pl/warszawa/1,34862,19614563,wirtualne-media-tadeusz-deszkiewicz-nowym-prezesem-polskiego.html>



Date	Record #	Office	Officers dismissed (or suspended)	Officers appointed
			Ryszard Balicki Robert Banasiak Rafał Grzegorz Biernat	Zbigniew Jerzy Leszko
6.12.2017	46	Members of supervisory board	Robert Maciej Chmielarczyk	Joanna Beata Dadas
9.11.2017 <sup>90</sup> 27.12.2017	47	President of the management board – suspension	Tomasz Marcin Duda	
		President of the management board (temporary)		Małgorzata Joanna Juzyszyn
30.01.2018	48	President of the management board	Tomasz Marcin Duda (was already suspended)	Jolanta Renata Piątek
		President of the management board (temporary)	Małgorzata Joanna Juzyszyn	
<b>Polskie Radio – Regionalna Rozgłośnia w Poznaniu „Radio Poznań”</b>				
19.04.2016	33	President of the management board	Mariusz Szymyślik	Filip Michał Rdesiński
		Members of supervisory board	Tomasz Naganowski Leszek Podosek Przygoda Piotr Michałak Jędrzej Antoni Skrzypczak Piotr Wojciech Frydrysek	Ryszard Stryjski Lidia Wosiak Michał Król
28.11.2018	42	President of the management board	Filip Michał Rdesiński	Piotr Bernatowicz
<b>Polskie Radio – Regionalna Rozgłośnia w Szczecinie „PR Szczecin”</b>				
4.05.2016	30	Members of supervisory board	Kinga Luiza Flaga Gieruszyńska Bartłomiej Henryk Toszek Marek Kunasz Grzegorz Wesołowski Arkadiusz Malkowski	Paweł Waldemar Bakun Robert Eugeniusz Naklicki Edward Kosmal
10.02.2017	32	President of the management board	Adam Stanisław Rudawski	Artur Kubaj
<b>Polskie Radio – Regionalna Rozgłośnia w Opolu „Radio Opole”</b>				
22.04.2016	33	Members of supervisory board	Bogusław Walenty Nierenberg Waldemar Skomudek Joachim Foltys Katarzyna Płoszaj Lech Andrzej Rubisz	Piotr Paweł Piłat Roland Józef Mutwin Artur Rafał Kamiński
28.04.2016	34	President of the management board	Paweł Frącz	Piotr Mirosław Moc

<sup>90</sup> <https://www.wirtualnemediaw.pl/artykul/tomasz-duda-zawieszony-prezes-radio-wroclaw-o-jego-losie-zadecyduje-rada-mediow-narodowych>

<b>Date</b>	<b>Reco rd #</b>	<b>Office</b>	<b>Officers dismissed (or suspended)</b>	<b>Officers appointed</b>
<b>Polskie Radio – Regionalna Rozgłośnia w Kielcach „Radio Kielce”</b>				
31.05.2016	38	President of the management board	Jarosław Piotr Kusto	Janusz Knap
		Members of supervisory board	Ryszard Michał Czarny Paweł Gągorowski Roman Ostrowski Jerzy Tadeusz Zięba Dariusz Urbański	Tadeusz Żmuda Zbigniew Dariusz Duda Dariusz Nowak
<b>Polskie Radio – Regionalna Rozgłośnia w Lublinie „Radio Lublin”</b>				
10.03.2016	33	President of the management board	Andrzej Stefan Szwabe	Mariusz Bernard Deckert
		Members of supervisory board	Bogusław Władysław Wróblewski Lech Mateusz Bartkow Magdalena Dorota Najdyhor Marcin Leopold Szewczak  Krzysztof Karman	Leszek Zbigniew Burakowski Krzysztof Stanisław Bednarz Marcin Wojciech Taracha
12.07.2017	37	Members of supervisory board	Krzysztof Stanisław Bednarz	Karol Zgódka
<b>Polskie Radio – Regionalna Rozgłośnia w Katowicach „Radio Katowice”</b>				
1.06.2016	28	President of the management board	Henryk Bronisław Grzonka	Piotr Maria Ornowski
		Members of supervisory board	Wiesław Jan Rola Miroslaw Jerzy Czerwiński Mariola Skłodowska Hończar Jerzy Stanisław Gołuchowski Robert Tomanek	Piotr Aleksander Pietrasz Henryk Jan Górak Alfred Andrzej Pyrk
<b>Polskie Radio – Regionalna Rozgłośnia w Łodzi „Radio Łódź”</b>				
8.04.2016	34	President of the management board	Marek Krzysztof Składowski	Dariusz Wojciech Szewczyk
		Members of supervisory board	Wioletta Pawłowska Józef Wieńczysław Kobos Krzysztof Jan Jędrzejczak Andrzej Tadeusz Szablewski Jan Adam Jeżak	Emilia Banaszczyk Andrzej Maciej Hanczka Ryszard Tadeusz Krych
<b>„Polskie Radio Rzeszów” – Regionalna Rozgłośnia w Rzeszowie</b>				
30.05.2016	28	President of the management board	Henryk Pietrzak	Przemysław Rafał Tejkowski
		Members of supervisory board	Lech Lichołaj Bożena Domino Joanna Wiażewicz	Janusz Magoń Magdalena Rodecka Grzegorz Jan Pietrusza

Date	Record #	Office	Officers dismissed (or suspended)	Officers appointed
			Teresa Kubas Hul Stanisław Gędek	
<b>Polskie Radio – Regionalna Rozgłośnia w Koszalinie „Radio Koszalin”</b>				
18.08.2010	15	President of the management board		Piotr Jakub Ostrowski
16.12.2015	27	Member of management board	Cezary Wojciech Szewczyk	
17.03.2016	29	Members of supervisory board	Roman Radziwonowicz Jan Antoni Kania Monika Barbara Kaczmarek Jacek Wojciech Piętniewicz Jerzy Buziałkowski	Henryk Bieńkowski Dariusz Robert Jankowski Leszek Turalski
<b>Polskie Radio – Regionalna Rozgłośnia w Bydgoszczy „Polskie Radio Pomorza i Kujaw”</b>				
20.04.2016	33	Members of supervisory board	Kazimierz Kozłowski Sylwester Bejger Roman Backer Mieczysław Karol Naparty	Jarosław Wenderlich Wojciech Jaranowski
29.04.2016	34	Members of supervisory board	Jolanta Ewa Kuligowska Roszak	Andrzej Walkowiak
		President of the management board	Cezary Tomasz Wojtczak	Jolanta Ewa Kuligowska Roszak
11.07.2017	37	Members of supervisory board	Andrzej Walkowiak	Monika Wyszomirska Łapczyńska
<b>Polskie Radio – Regionalna Rozgłośnia w Gdańsku „Radio Gdańsk”</b>				
13.04.2016	31	President of the management board	Lech Tomasz Parell	Andrzej Liberadzki
		Members of supervisory board	Zbigniew Jasiewicz Andrzej Maciej Trojanowski Karol Zgódka Dorota Sobieniecka	Piotr Gierszewski Krystyna Kmiecik
7.08.2018	36	President of the management board	Andrzej Liberadzki	Dariusz Jacek Wasilewski

The list of attachments is on page 63.

Done in Warszawa (Warsaw), Poland, on 19 September 2019

Marcin Skubiszewski