

To: the European Parliament
Committee on Petitions
Ms Dolors Montserrat, chair

Petitioner and representative of other petitioners:
(agrees with the publication of his name by the
European Parliament)

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Petitioner (agrees with the publication of its name
by the European Parliament)
(other petitioners listed on separate sheets)

Stowarzyszenie Obserwatorium Wyborcze
(the Election Observatory)
(same address)

Petition regarding non-free elections to the European Parliament in Poland

This petition is filed by candidates and voters in the Polish elections to the European Parliament of 26 May 2019. The electoral process was defective in the following ways.

1. During the three year period preceding the election day, large-scale political propaganda in favour of the ruling party *Prawo i Sprawiedliwość* (PiS), accompanied with discrimination against other political forces, was organized by the Polish State-owned media, at a cost to the State budget of approximately 600 million euro.
2. During the same period, advertising spending of State-owned companies was discriminatory on a large scale: for no discernible reason much more advertisements were purchased by these companies from media that support the ruling party than from other media.
3. It was impossible to challenge the validity of the election before domestic courts of law based on the two points above; this impossibility results from the following circumstances:
 - 3.1 such challenges are declared inadmissible by statute (Article 82 § 1 of the Polish electoral code);
 - 3.2 the validity of the election was adjudicated by judges of Supreme Court who had been appointed by the political power in breach of the Polish constitution, and who do not offer guarantees of independence that can be considered as sufficient under the law of the European Union.

Each of these three defects is attributable to the Polish authorities and amounts to a violation of the principle of free elections, enshrined in Article 1(3) of the Act of 1976.¹

These defects of the electoral process result from a comprehensive undertaking aiming at the suppression of democracy in Poland. Most notably, the Polish State is now in the process of acquiring 14 regional newspapers and more than 100 local newspapers and news-oriented web sites, creating a clear danger that these news outlets will give extra strength to the State propaganda engine. A legislative project of tax on advertising is being discussed by the Polish government. The

¹ *Act concerning the election of the Members of the European Parliament by direct universal suffrage of 20 September 1976* (as amended), available here: [https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:01976X1008\(01\)-20020923](https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:01976X1008(01)-20020923)

tax, if adopted, will likely weaken the financial situation of private media, increasing the power that the State-owned media have to disseminate political propaganda.

It is to be feared that in the future, both the elections to the European Parliament in Poland and the Polish domestic elections will get increasingly non-free, and ultimately a fully fledged dictatorial regime will be established in Poland. Some other Member States are following the same route. The European Parliament must act strongly in order to prevent this from happening and must invite the European Commission to act alike.

Additionally, the above-mentioned violations of the principle of free elections cast doubt on the democratic legitimacy of the Parliament itself. This is one more reason for the Parliament to act strongly.

What the petitioners request

The petitioners respectfully request that the Parliament take the following actions:

- a. ask the Polish government to take position on this petition;
- b. ask the European Commission to investigate the propaganda and the political discrimination by the Polish State-owned media (item 1 above) and the discriminatory advertisement spending by Polish State-owned companies (item 2 above);
- c. invite the European Commission to proceed as described in Article 258 TFEU, *i.e.*, to deliver a reasoned opinion on the issues described in this petition then, if necessary, bring the matter before the Court of Justice of the European Union to have these issues fixed as soon as possible, and in any case in time for the next elections to the European Parliament.

Information and materials available

Project *Smoki* (Dragons), run jointly by petitioner Election Observatory and by other Polish non-governmental organizations, has been constantly recording Polish radio and television programmes since September 2018. The most popular national radio and TV channels of State-owned broadcasters are recorded, along with almost all regional channels. Certain national channels of private broadcasters are recorded, too: Polsat, TVN, TV Trwam and Radio Maryja (the last two from the media group Lux Veritatis).

The recordings made as part of Project *Smoki* may facilitate the investigation requested in item (b) above. The Election Observatory (contact data: Attachment 32) will offer an unrestricted access to the recordings for the needs of any investigation done in response to this petition.

The petitioners invite the European Parliament to take into account, while proceeding on this petition, the documents and information collected as part of the investigation of the Owczarski petition 0477/2017 (discussed below, Sections 4.4.3-4.5, p. 32). The petitioners 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.

The petitioners appoint Marcin Skubiszewski (contact information above) as their representative in matters related to this petition.

Previous proceedings

An application was filed with the Parliament after the elections of 26 May 2019 (the application: Attachment B; separate documents bearing signatures of applicants: Attachment C). The application requested the Parliament to consider the credentials of its members elected on 26 May 2019 in Poland from the lists of candidates of the Polish ruling party as being disputed pursuant Art. 12 of the Act of 1976, and to declare the credentials invalid. The reasons for the application were similar to those for the present petition.

The Parliament did not consider the merits of the application, and instead inserted the following language in the decision of 30 January 2020 on the verification of credentials (2019/2180(REG)):

[The Parliament] calls for a transparent evaluation of the conduct of the European Elections

(adopted by split vote).

A letter explaining why the application had not been considered on its merits and inviting Marcin Skubiszewski to resubmit the application to the Committee on Petitions was sent by the Chair of the Committee on Legal Affairs (Attachment D). The present petition is being filed in response to this invitation.

The present petition is therefore a continuation of the original application. All signatories of the original application “appoint Marcin Skubiszewski [...] as their representative in matters related to this application”. Acting in the name of these signatories, Marcin Skubiszewski respectfully requests that they be considered by the Parliament as petitioners of the present petition.

Reasons for the petition

Section 1 (immediately below) recalls the importance of democracy as a founding principle of the European Union. It discusses the standing of the petitioners and explains why, from the procedural standpoint, it would be appropriate for the European Commission to proceed as described in Article 258 TFEU.

The reasoning related to items 1 to 3 above (propaganda, discrimination against candidates, discrimination against media close to the opposition, impossibility to challenge the election domestically for these causes) is laid out in Sections 2-6 (p. 7-68). 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. 35) 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 addresses item 3 above). Section 6 (p. 43) describes the State-sponsored propaganda that accompanied the Polish election of 26 May; this covers both propaganda in State-owned media and discriminatory advertisement spending of State-owned companies – the latter amounts to a large-scale political propaganda project.

Section 7 (p. 67) explains why it is necessary that the European Commission conduct its own investigation.

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1 On the admissibility of this petition

1.1 Democracy as a founding principle of the European Union

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*².

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 conviction³. 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, and by taking action whenever this is not the case.

1.2 The petitioners

The petitioners’ signatures are at the end of this document and on separate sheets (Attachment A).

Marcin Skubiszewski, a petitioner and the representative of all petitioners, 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,⁴ 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*

2 27 February 2018, C-64/16, para. 30 and 32. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CJ0064>

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

4 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>

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 petition 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 petitioners were candidates in the election of 26 May in Poland, and were not elected:

Candidate name	Listed as a candidate in Attachment 1,			
	page	constituency	list	position

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

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 statement 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 petitioners.

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.⁵*

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.⁶*

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 effectiveness of an electoral procedure aimed at identifying the will of the people through universal suffrage.⁷

*[...] the Court observes that it has consistently stressed **the need to avoid arbitrary decisions and abuse of power in the electoral context** [...]⁸*

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.⁹*

[...]

5 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).

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

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

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

9 *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)

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 follows¹⁰:

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:*

[...]

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)¹¹ 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;***

[...]

10 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>

11 *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>

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*¹²).

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 [...]*¹³

[...]

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 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 [...]*¹⁴

[...]

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.¹⁵

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

12 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>

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

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

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

treatment to electoral participants, also a fundamental principle of democratic elections.¹⁶

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 role in society, state-funded media should provide equitable access to candidates and parties as part of their responsibilities to the public.¹⁷

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 ECtHR¹⁸:

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*

16 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>

17 *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

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

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 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 Protocol¹⁹ (which is part of the primary law of the European Union) reads as follows:

THE HIGH CONTRACTING PARTIES,

19 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=CELE:Citizens are directly represented at Union level in the European ParliamentX%3A12012E%2FPRO%2F29](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELE:Citizens%20are%20directly%20represented%20at%20Union%20level%20in%20the%20European%20ParliamentX%3A12012E%2FPRO%2F29)

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 the 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.

The OSCE ODIHR:

*The underlying idea of public-service broadcasting is that the private sector alone cannot ensure pluralism in the broadcast sphere.*²⁰

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.*²¹

20 *Op. cit.* see footnote 13 above, Section 2.1 A, p. 15 of the work cited.

21 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)

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 five daily 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;
- 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 since 2017

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);
- since 2017 they receive supplementary funds from the State treasury, paid in part by decision of the government, and in part pursuant *ad hoc* laws.

Table 1: State funds received from the State treasury by State-owned broadcasters from 2017 to 2019

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
2017 – total for the year	926 500	182 740	10 749	1 291 970
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
2018 – total for the year	945 500	222 476	11 474	1 363 030
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
2019 – total for the year	1 458 638	219 317	13 650	1 910 000
Total for years 2017 to 2019	3 330 638	624 533	35 872	4 565 000
Total for years 2017 to 2019, excluding subscription fees	2 337 258	122 216	7 678	2 590 000
<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
2017 – total for the year	212 014	41 817	2 460	295 645
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
2018 – total for the year	216 362	50 910	2 626	311 906
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
2019 – total for the year	333 784	50 187	3 123	437 071
Total for years 2017 to 2019	762 160	142 914	8 209	1 044 622
Total for years 2017 to 2019, excluding subscription fees	534 842	27 967	1 757	592 677

The first two items above describe permanent advantages granted to State-owned broadcasters. The third item represents special gifts, that are granted from time to time on a discretionary basis and 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 euro²²) 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. This was a very unusual loan: normally, the State treasury does not grant loans.

In this petition, 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 by State-owned broadcasters from the State treasury from 2017 to 2019 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 2017-2018²³;
- 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 2019²⁴;
- resolutions of the National Broadcasting Council on the apportioning between State-owned broadcasters of subscription fees and of money granted by *ad hoc* laws (Attachment);
- 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 2017-2019, approximately 1040 million euro were spent on public broadcasting in Poland. This sum includes 600 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

22 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.

23 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>

24 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>

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”²⁵ 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).²⁶

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 that routinely conduct opinion polls (founded in 1982).

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

According to the same study, 63% of respondents watched news and political commentary in the national State-owned channels TVP1, TVP2 and TVP Info (this figure was 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 were the main source of everyday information about events in Poland and abroad for 35% of respondents (TVP1 accounted for 22%, TVP Info for 10%, TVP2 for 3%). The corresponding figures for media groups Polsat and TVN were respectively 15% and 32% (*ibid.*, p. 4).

TVP was 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 had been, 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) was huge. The media groups Polsat and TVN were also hit by a loss of perceived trustworthiness, but to a much lesser extent (*ibid.*, p. 5).

The main national TV news (*Wiadomości* on TVP1, at 19:30 every day) were watched by 2 million viewers on average²⁷ (down from 6.6 million in 1999 and 3.5 million in 2015²⁸). Taking into account the audience of *Teleexpress* (another news programme on TVP1, at 17:00) and of the news channel TVP Info, approximately three million viewers daily watch news programmes from State-owned TV.

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

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

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

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

The number of viewers of TVP decreased sharply between the beginning of 2016 and 2019 (e.g., as stated just above, the audience of *Wiadomości* decreased from 3.5 million in 2015 to 2 million in 2019). 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.

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

In 2016, the 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 brought to power the political party PiS (Law and Justice, *Prawo i Sprawiedliwość*): the new ruling party 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:²⁹

²⁹ 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)

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:³⁰

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, 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, *inter alia*, four resolutions expressing concern about the deteriorating respect of the rule of law and of democracy in Poland: on 13 April 2016,³¹ on 14 September 2016,³² on 15 November 2017³³ and on 17 September 2020.³⁴

According to the resolution of 13 April 2016, the Parliament [...]

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

[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)

30 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)

31 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

32 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

33 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>

34 European Parliament resolution of 17 September 2020 on the 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 – 2017/0360R(NLE)) https://www.europarl.europa.eu/doceo/document/TA-9-2020-0225_EN.html

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;*

- *[...]*

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 [...]

In the resolution of 17 September 2020, the Parliament “urges the Council to finally act under the Article 7(1) TEU procedure by finding that there is a clear risk of a serious breach by the Republic of Poland of the values referred to in Article 2 TEU”, and

[...]

8. Denounces the fact that the Polish parliament assumed powers of constitutional revision which it did not have when it acted as the ordinary legislature in adopting the Act of 22 December 2015 amending the Act on the Constitutional Tribunal and the Act of 22 July 2016 on the Constitutional Tribunal, as found by the Constitutional Tribunal in its judgments of 9 March, 11 August and 7 November 2016;

9. Regrets, furthermore, that many particularly sensitive legislative acts have been adopted by the Polish parliament at a time when independent constitutional review of laws can no longer be effectively guaranteed, such as [...] the Act of 22 June 2016 on the National Media Council [...]

[...]

11. Notes with concern that the OSCE concluded that media bias and intolerant rhetoric in the campaign for the October 2019 parliamentary elections were of significant concern and that, while all candidates were able to campaign freely, senior state officials used publicly funded events for campaign messaging; notes, furthermore, that the dominance of the ruling party in public media further amplified its advantage; regrets that hostility, threats against the media, intolerant rhetoric and cases of misuse of state resources detracted from the process of the Polish presidential election in June and July 2020;

12. Is concerned that the new Chamber of Extraordinary Control and Public Matters of the Supreme Court (hereinafter the ‘Extraordinary Chamber’), the majority of whose members are individuals nominated by the new National Council of the Judiciary and which risks not qualifying as an independent tribunal in the assessment of the Court of Justice of the European Union (hereinafter the ‘Court of Justice’), is to ascertain the validity of elections and to examine electoral disputes; notes that this raises serious concerns as regards the separation of powers and the functioning of Polish democracy, in that it makes judicial review of electoral disputes particularly vulnerable to political influence and is capable of creating legal uncertainty as to the validity of such review⁽⁴³⁾;

[...]

15. Recalls that the Acts concerning the Constitutional Tribunal adopted on 22 December 2015 and 22 July 2016, as well as the package of three acts adopted at the end of 2016, seriously undermined the Constitutional Tribunal’s independence and

legitimacy and that the Acts of 22 December 2015 and of 22 July 2016 were declared unconstitutional by the Constitutional Tribunal on 9 March 2016 and 11 August 2016, respectively; recalls that those judgments were not published at the time or implemented by the Polish authorities; seriously deplores the fact that the constitutionality of Polish laws can no longer be effectively guaranteed in Poland since the entry into force of the aforementioned legislative changes; invites the Commission to consider launching an infringement procedure in relation to the legislation on the Constitutional Tribunal, its unlawful composition and its role in preventing compliance with the preliminary ruling of the Court of Justice of 19 November 2019;

[...]

23. Notes the order of the Court of Justice of 8 April 2020 instructing Poland to immediately suspend the application of the national provisions on the powers of the Disciplinary Chamber and calls on the Polish authorities to swiftly implement the order; calls on the Polish authorities to fully comply with the order and calls on the Commission to submit an additional request to the Court of Justice seeking that payment of a fine be ordered in the event of persisting non-compliance; calls on the Commission to urgently start infringement proceedings in relation to the national provisions on the powers of the Extraordinary Chamber, since its composition suffers from the same flaws as the Disciplinary Chamber;

[...]

37. Concurs with the Commission, the Parliamentary Assembly of the Council of Europe and the Group of States against Corruption and the United Nations Special Rapporteur on the Independence of Judges and Lawyers that the aforementioned separate changes to the legislative framework governing the judicial system, considering their interaction and overall impact, amount to a serious, sustained and systemic breach of the rule of law, enabling the legislative and executive powers to interfere throughout the entire structure and output of the justice system in a manner which is incompatible with the principles of separation of powers and the rule of law, thereby significantly weakening the independence of the judiciary in Poland; condemns the destabilising impact on the Polish legal order of the measures taken and appointments made by the Polish authorities since 2016;

[...]

43. Expresses its serious concerns about actions carried out in recent years by the Polish authorities in relation to the public broadcaster, including a re-shaping of the public broadcaster into a pro-government broadcaster, preventing public media and their governing bodies from expressing independent or dissenting voices and exercising control over broadcasting content; recalls the fact that Article 54 of the Polish Constitution guarantees freedom of expression and forbids censorship;

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”.³⁵ The reasoning in support of this proposal contains the following language:

³⁵ 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 wrote³⁶:

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.³⁷

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 television³⁸ mandates the State-owned broadcasters to deliver a “public mission” (*misja publiczna*) by offering

In Polish:³⁹

36 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>

37 Communiqué of the ENCJ <https://www.encj.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-encj2017-p/News/ENCJ%20Board%20position%20paper%20on%20KRS%20Poland.pdf>

38 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>

39 Unless otherwise indicated, all translations from Polish quoted in this petition were prepared under the responsibility of the petitioners.

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 Articles 213 to 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 78, 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”,^{40 41} 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.

40 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>

41 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 NGOs⁴²:

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 follows⁴³:

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 statement⁴⁴:

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.

42 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>

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

44 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”.⁴⁵

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 2016⁴⁶ (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 1st February 2019, the President of Sejm published an official notice containing the consolidated text of the law on radio and television.⁴⁷ 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 1st 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.

45 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>

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

47 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 both 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.⁴⁸ 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 effectively ignored by Polish authorities.

4.2.5 The law on the Council of National Media

The law of 22 June 2016⁴⁹ 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 were or currently are members of Sejm:

- Krzysztof Czabański, president of the Council from its beginning: member of Sejm 2015-2019, in 2019 candidate to Sejm from the ruling party (not elected);
- Elżbieta Kruk, member of the council from its beginning: member of Sejm 2001-2006 and 2007-2019, member of European Parliament since 2019;
- Joanna Lichońska, member of the council from its beginning: member of Sejm since 2015.

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). It 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 were in excess of 1 billion euro over 3 years, 2017-2019).

48 These appointments and dismissals are listed in Appendix B.

49 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>

Between 22 July and 12 September 2016 all members of the National Broadcasting Council were replaced by newly elected or appointed persons⁵⁰ (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 Kołodziejski, chairman of the Council since 19 September 2016 (see Attachment 17), is most striking. Kołodziejski was a member of PiS at least until the parliamentary elections of October 2015, when he was a candidate of this party to Sejm (not elected).⁵¹ While becoming member then chairman of the National Broadcasting Council, Kołodziejski was already member of the council of the Mazovian Region (or voivodship) (*radny sejmiku województwa mazowieckiego*), elected from the list of candidates of the ruling party (*PiS*),⁵² 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 the candidate number one on a list of candidates of *PiS* and the only candidate of this party elected in this constituency (proportional representation).⁵³ ⁵⁴ After this election, he became again a member of the fraction of the ruling party. All this happened while Kołodziejski remains the chairman of the National Broadcasting Council.

The situation of Kołodziejski is clearly contrary to Art. 214 para. 2 of the Polish Constitution (Art. 214 para. 2, which bars KRRiT members from membership in political parties. Kołodziejski officially abandoned his membership in PiS before becoming the chairman of KRRiT, however his continued membership in the PiS fraction of the regional council and his reelection to the regional council as the candidate number one in the party list of candidates clearly show that his withdrawal from the party was fictitious. Besides, said paragraph also says that a member of KRRiT shall not “perform public activities incompatible with the dignity of his function.” Closely working with a political party as a member of its fraction in a regional council is effectively equivalent to membership in the party, and therefore clearly incompatible.

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). This can be illustrated by the exchange of letters

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

51 Lists of candidates, with party membership listed for each candidate, are published by Państwowa Komisja Wyborcza. Official list of candidates in constituency 19 [access 20 March 2021]: https://parlament2015.pkw.gov.pl/344_sejm/19_MAZOWIECKIE_Warszawa.html

52 *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/>

53 *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/>

54 The position of Kołodziejski as candidate number 1 results, e.g., from the following document [access 21 March 2021]: https://wybory2018.pkw.gov.pl/pl/delegatury/panstwowa-komisja-wyborcza/komitet-wyborczy-prawo-i-sprawiedliwosc-3808/140000#electrion_stat

His elections as a councillor from the list of candidates of PiS is mentioned here: *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/>

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 przez 28 dni od dnia ich rozpowszechnienia, natomiast audycje wymienione przez Stowarzyszenie 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 Article 20(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

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 in 2016, 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, were still in function in 2019.

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. 32) we quote the description of this situation that the Polish ombudsman made before the Committee on 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 on Petitions of the European Parliament⁵⁵:

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.

55 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>

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 cywilno-prawnej i wtedy po prostu można dochodzić swoich praw w sądzie cywilnym.

[...]

Translation:

[...]

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 for commenting 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 Committee on Petitions of the European Parliament:⁵⁶

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 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. Zaledwie w dwa miesiące od objęcia przez niego stanowiska rozlicza się już go z obietnic wyborczych i krytykuje się, choć 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

56 Session and recording mentioned in note 55, time 1:21:10.

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 their salaries, and because of this cannot earn enough; their contracts get terminated. Hence they cannot earn a living 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 of the Polish Supreme Court were appointed (politically-biased appointments, made in violation of the law of the European Union) (Section 5.3).

It results from the case law of the European Court of Justice that the rights resulting from the Act of 1976 must be safeguarded effectively by the judiciary of each Member State. 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. These issues are 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 code⁵⁷ is worded as follows:

In Polish:

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.

⁵⁷ 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>

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 wnioskuje 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 time limit 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 to fill non-vacant positions (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.⁵⁸ 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:

⁵⁸ *Op. cit.* in footnote 29, §§ 98-125.

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 on 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.

Statements of the European Parliament describing the anomalous way in which the Polish Constitutional Tribunal operates are quoted above, Section 4.1.2, p. 19. Most notably, in the resolution of 17 September 2020, item 15 (p. 21 above) the Parliament *seriously deplors the fact that the constitutionality of Polish laws can no longer be effectively guaranteed in Poland [...]; invites the Commission to consider launching an infringement procedure in relation to the legislation on the Constitutional Tribunal, its unlawful composition and its role in preventing compliance with the preliminary ruling of the Court of Justice of 19 November 2019.*

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.*⁵⁹

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 (8th) 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, there are strong reasons to consider that the *Murawko* case was judged by three judges of a “particular colour” (as opposed to impartial judges), in addition to two non-judges.

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

The Extraordinary Control and Public Affairs Chamber (often called Extraordinary Chamber; *Izba Kontroli Nadzwyczajnej i Spraw Publicznych*) of the Polish Supreme Court is competent to adjudicate electoral protests, *i.e.*, applications challenging 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 code⁵⁷ and from Art. 26 of the law of 8 December 2017 on the Supreme

⁵⁹ *Op. cit.*, §118, p. 21.

Court⁶⁰). 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 to 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 advice from the National Council of the Judiciary (*Krakowa Rada Sądownictwa – KRS*). The advice is 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 KRS⁶¹ (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 neo-KRS – 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 neo-KRS) is generally viewed, both in Poland and abroad, as making the KRS dependent on the political power, and therefore as 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 advice of the neo-KRS.

In the resolution A9-0138/2020 of 17 September 2020 on the 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, the European Parliament declared itself

concerned that the [Extraordinary Chamber], the majority of whose members are individuals nominated by the new National Council of the Judiciary and which risks not qualifying as an independent tribunal in the assessment of the Court of Justice of the European Union [...], is to ascertain the validity of elections and to examine electoral disputes; notes that this raises serious concerns as regards the separation of powers and the functioning of Polish democracy, in that it makes judicial review of electoral disputes particularly vulnerable to political influence and is capable of creating legal uncertainty as to the validity of such review.

60 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>

61 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>

In the judgment of Grand Chamber of 19 November 2019⁶² (procedure of Article 267 TFEU, reference for a preliminary ruling) the European Court of Justice judged that a court is not an independent and impartial tribunal when

the objective circumstances in which that court was formed, its characteristics and the means by which its members have been appointed are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of that court to external factors, in particular, as to the direct or indirect influence of the legislature and the executive and its neutrality with respect to the interests before it and, thus, may lead to that court not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society must inspire in subjects of the law.

The resolution of 23 January 2020 of combined chambers of the Polish Supreme Court⁶³ taken in response to the above judgment states what follows:

In Polish:

1. [...] sprzeczność składu sądu z przepisami prawa w rozumieniu art. 379 pkt 4 k.p.c. zachodzi także wtedy, gdy w składzie sądu bierze udział osoba powołana na urząd sędziego Sądu Najwyższego na wniosek Krajowej Rady Sądownictwa ukształtowanej w trybie określonym przepisami ustawy z dnia 8 grudnia 2017 r. o zmianie ustawy o Krajowej Radzie Sądownictwa oraz niektórych innych ustaw [...]

[...]

3. Wykładnia [...] art. 379 pkt 4 k.p.c. przyjęta w punktach 1 i 2 niniejszej uchwały nie ma zastosowania do orzeczeń wydanych przez sądy przed dniem jej podjęcia [...].

In English:⁶⁴

1. [...] a court formation is unlawful within the meaning of Article 379(4) of the Code of Civil Procedure also where the court formation includes a person appointed to the office of a judge of the Supreme Court on application of the National Council for the Judiciary formed in accordance with the Act of 8 December 2017 amending the Act on the National Council for the Judiciary and certain other Acts [...]

[...]

3. The interpretation of [...] Article 379(4) of the Code of Civil Procedure provided in points 1 and 2 hereof shall not apply to judgments given by courts before the date hereof [...]"

Paragraph 1 of this resolution clearly implies that court formations of the Extraordinary Chamber are unlawful, i.e., to use the wording of the European Court of Justice, cannot be “seen to be independent or impartial”. Paragraph 3, however excludes the applications of this rule to judicial decisions rendered before 23 January 2020 (makes it non-retroactive).

62 C-585/18, C-624/18, C-625/18 <http://curia.europa.eu/juris/document/document.jsf?text=&docid=220770&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1774454>

63 BSA I-4110-1/20 <https://sip.lex.pl/orzeczenia-i-pisma-urzedowe/orzeczenia-sadow/bsa-i-4110-1-2020-uchwala-sadu-najwyzszego-522863947> or <http://www.sn.pl/sites/orzecznictwo/Orzeczenia2/BSA%20I-4110-1-20.pdf>

64 Translation published by the Supreme Court http://www.sn.pl/aktualnosci/SiteAssets/Lists/Wydarzenia/AllItems/BSA%20I-4110-1_20_English.pdf

The final resolution of the Supreme Court declaring the Polish 2019 elections to the European Parliament valid was taken by the Extraordinary Chamber on 2 August 2019 (Attachment S), and it is therefore not possible to put into question its validity based on the resolution of 23 January 2020.

On 20 April 2020, the Constitutional Tribunal judged the resolution of 23 January 2020 contrary to the Polish constitution, to Articles 3 and 4 (3) TEU and to Article 6 (1) of the European Convention of Human Rights.⁶⁵ This judgment suffers from the same problems as the Murawko judgment discussed in Section 5.2.2, p. 38 above: judges had political affiliations and non-judges (in this case: Mariusz Muszyński and Jarosław Wyrembak) were sitting on the bench. Additionally, the judgment decides issues undoubtedly outside the competence of the Constitutional Court: its effect is to annul a resolution of the Supreme Court, while the Constitutional Court has no appellate jurisdiction over the Supreme Court. Pursuant to Article 190 of the constitution, the powers of the Constitutional Tribunal are limited to assessing the conformity of legal norms with other norms, of constitutional value or otherwise having a higher hierarchical position. Until this judgment, the annulment of judicial decisions by the Constitutional Tribunal was never demanded or even discussed.

The Constitutional Tribunal judgment of 20 April 2020 cannot be seriously considered as being part of the legal order, Polish or European. It is no more than an attempt by the political power to undermine the legal order.

To summarise: in addition to the problems discussed in Sections 5.1-5.2 (protests against the validity of elections based on propaganda or on discrimination against candidates by media are inadmissible), there is a supplementary major problem regarding the adjudication of the validity of the 2019 elections to the European Parliament: the competent body is not an independent or impartial tribunal.

5.4 The obligation to offer a domestic remedy

In the *Donnici and Italy vs Parliament* judgment of 30 April 2009,⁶⁶ the European Court of Justice stated what follows:

*62. Accordingly, under that legislative framework, the electoral procedure for electing Members of the Parliament which took place on 12 and 13 June 2004, and for appointing substitutes for seats which fall vacant, was still governed in each Member State by the relevant national provisions, in the present case the Law of 24 January 1979 (see, to that effect, order of 15 November 2007 in *Donnici v Parliament*, paragraph 66).*

*63. Moreover, in the absence of Community rules in this field, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from Community law, provided, first, that those rules are not less favourable than those governing rights which originate in domestic law (principle of equivalence) and, secondly, that they do not render virtually impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness) (see, to that effect, *Case C-300/04 Eman and Sevinger* [2006] ECR I-8055, paragraph 67).*

65 U 2/20 <https://ipo.trybunal.gov.pl/ipo/view/sprawa.xhtml?&pokaz=dokumenty&sygnatura=U%202/20>

66 C-393/07 and C-9/08

<http://curia.europa.eu/juris/document/document.jsf?jsessionid=A0A636DACDBC66C1A26F34516E3876A1?text=&docid=73333&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1858129>

These statements imply that Poland was under the obligation to offer an effective procedure safeguarding the rights that individuals (voters and candidates) derive from Community law in the context of elections to the European Parliament. The deficiencies of the Polish procedure described in Sections 5.2 (p. 37 above) and 5.3 (p. 39 above), to wit: the inadmissibility of electoral protests based on the conduct of the electoral campaign and the on the lack of independence and of impartiality of the Extraordinary Chamber of the Polish Supreme Court, imply that there is no such effective procedure. This fact alone should trigger proceedings under Article 258 TFEU, regardless of how we assess the State-sponsored propaganda that accompanied the Polish 2019 elections.

The ECtHR says⁶⁷:

[...] 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”. Poland did not organize such a system. This is a supplementary argument to consider that Poland breached Community law in connection with the 2019 European elections, and to trigger proceedings under Article 258 TFEU.

6 A description of the propaganda

In this section, we cite analyses showing that State-sponsored propaganda in favour of the ruling party was pervasive in Poland before 26 May 2019 elections, and remains so today.

In Section 6.1, we explain why we take into account a long period of time (counted in years) before the elections. Section 6.2 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 6.3 (p. 50) cites reports by the Society of Journalists, that cover similar periods and arrive at the same conclusions as the reports by 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 6.4, p. 51), and a report of the Council of the Polish Language (Section 6.5, p. 63).

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

In Section 6.6 we describe the discriminatory advertising spending of State-owned companies.

We finally mention reports by OSCE ODIHR, by the Election Observatory and by the Society of Journalists covering periods that follow the 2019 European elections (Section 6.7). These reports show that the situation did not improve recently – and therefore that the urgent need to suppress State-sponsored political propaganda and to restore free elections in Poland remains intact.

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 2019.⁶⁸ On that day, the electoral campaign officially started under Polish law. The registration of lists of candidates was open from that day to 16 April midnight. A candidate can officially campaign only after being registered; each candidate was therefore able to officially campaign starting from some date between 25 February and 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 petitioners 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 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*), said⁶⁹: “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.

68 *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>

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

6.2 Analyses and reports by the Election Observatory

6.2.1 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).

6.2.1.1 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 petitioners 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.”⁷⁰ (*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.

⁷⁰ 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 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".

6.2.1.2 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:

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]).⁷¹

[...]

"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 [...]⁷²

6.2.1.3 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*).

71 Attachment 27, introduction to Section 1.1.

72 Attachment 27, introduction to Section 1.2.

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.⁷³

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
Total (all programmes)	127	117	3	20	51	43

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:

⁷³ 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.

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
Total (all programmes)	127	94	81	71	82

6.2.2 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 programmes 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: 7.4 times more time was allotted to statements by the ruling party than to statements by the democratic opposition and by local independent candidates.⁷⁴

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

⁷⁴ 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 into account 50 of the 63 programmes that we analyse here.

(described 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.

6.2.2.1 More quantitative results

The programmes were assessed as follows (same assessment method as the one explained in Section 6.2.1.3, p. 47 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
Total (all programmes)	63	56	0	10	30	16

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 6.2.1.3, p. 47 above) gave the following results:

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
Total (all programmes)	63	48	45	48

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

6.3 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.

6.3.1 The campaign before the elections of 26 May 2019

The reader of this petition 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, a majority of this space being devoted to graphical representation of information). 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 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 fulfil 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.

6.3.2 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)⁷⁵ 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

⁷⁵ *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/>

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 75th 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.

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, towarzyszu 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 the monopolistic State TV under communism]: “the First Secretary of the Polish Unified Workers’ Party, comrade Edward Gierek...”⁷⁶*

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

6.4 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 6.4.1), we explain how to read it, which is difficult (Section 6.4.2), and we summarise the results (Section 6.4.3).

⁷⁶ 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 forgotten words are in boldface): “The First Secretary **of the Central Committee** of the Polish Unified Workers’ Party, comrade Edward Gierek ...” – note by the petitioners.

6.4.1 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 petitioners 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. A total of 32 analyses was done.

6.4.2 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 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 say⁷⁷:

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”*

⁷⁷ 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).

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.⁷⁸

6.4.3 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:

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6.4.3.1 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 rated in the different quarters respectively at 70%, 74%, 78%, 71%. From the text descriptions corresponding with the four quarters, it results that it 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:⁷⁹

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

78 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).

79 File tvp1_iv-kwartal_analiza-aud.-inf.-i-public..pdf p. 22-23.

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 gościa z opozycji. Drastyczne złamanie zasad pluralizmu.*⁸⁰

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”⁸¹, “arrogance”, czyściciel (intraduisible: person who uses 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.*⁸⁰

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

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

The summary for Q2 states what follows (this is the full text of the summary; the summary for Q1 is similar):⁸²

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:

80 Boldface as in the original document.

81 About the word “total”, see also Section 6.1, p. 44 above – note by the petitioners.

82 Files tvp2-ii-kwartal-analiza-aud.-inf.-i-public..pdf p. 19 and tvp1_i-kwartal_analiza-aud.-inf.-i-public..pdf p. 18.

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 wypowiediane 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”)*

[...]

For Q3 and Q4, the summary says, *inter alia* (same text for both quarters):⁸³

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).*

83 Files *typ1-iii-kwartal_analiza-aud.-inf.-i-publicys..pdf* *typ1_iv-kwartal_analiza-aud.-inf.-i-public..pdf* p. 20 in each file.

6.4.3.3 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.

6.4.3.4 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:

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.

6.4.3.5 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 “Guest of News”: this programme, considered as being a part of “News” at 19:30, received a strongly negative assessment.

6.4.3.6 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 latest 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 all 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”].*

6.4.3.7 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”.

6.4.3.8 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)⁸⁴:

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.*

84 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).

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.*

6.4.3.9 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 1st 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 petitioners’ opinion, these remarks should exclude a positive assessment of the programmes; in other words, in the petitioners’ 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 wygłaszane 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 petitioners]. 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” (Debate 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 Q4:⁸⁵

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;*

85 File polskie-radio-24_iv-kw_analiza-aud.-inf.-i-pub..pdf p. 21-25.

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;*

6.4.3.10 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 częściej pytał 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 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 wyrażení, 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 remark, that followed a short silence by the guest, was inadmissible.

[...]

6.5 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 Polish Parliament at least once every two years a report on the state of the protection of the Polish language⁸⁶.

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 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)⁸⁷.

In Polish:

1. Zdecydowana większość tekstów pasków „Wiadomości” TVP 1 z lat 2016–2017 pełni funkcje nieinformacyjne – głównie perswazyjną (wpływanie na odbiorcę),

86 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>

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

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 osią 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 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 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, i.e., information voluntarily devoid of judgment. This is a very low proportion, we can therefore say that “News” on TVP do not offer objective information to citizens, but offer instead their own vision of the events presented.

6.6 Discrimination against private media close to the opposition

The public authorities favour private media close to the ruling party, and discriminate against those close to the opposition. This phenomenon appeared in 2016 and has been constantly increasing since then. The biased allocation of advertisement spending by State-owned companies (SOC) is its most important aspect. This aspect is described in detail in the reports by prof. Tadeusz Kowalski from the University of Warsaw (report covering the period 2015-2019 in Polish: Attachment K; same report in English: Attachment L; extended version, covering the period 2015-2020 in Polish: Attachment M).

According to the reports, the spending of SOCs on advertisement was estimated at 300 million euro in 2019, and at one billion euro over the 2015-2019 period. Between 2015 and 2019, the estimated spending increased by approx. 76%.

The reports show for example that the advertisement spending of SOCs in *Gazeta Polska* (private weekly, in fact a propaganda outlet of the ruling party) increased 180-fold between 2015 and 2019, and in 2019 advertising by SOCs represented 49% of the advertising revenue of the weekly. Over the same period, the advertising spending by SOCs in *Gazeta Wyborcza* (the leading daily newspaper close to the opposition) and in *Newsweek Polska* (a weekly close to the opposition) was divided by 25, and was negligible in 2019.

In 2019, the daily newspaper *Gazeta Polska Codziennie*, the daily version of *Gazeta Polska* noted for the wholehearted support of the ruling party and for the promotion of LGBT-free zones in Poland, received 53% of its advertising revenue from State-owned companies. In fact the economic survival of both *Gazeta Polska* and *Gazeta Polska Codziennie* is possible only thanks to the money of SOCs.

Further examples: in 2019, the two dailies *Super Ekspres* (daily with a limited bias in favour of the ruling party) and *Nasz Dziennik* (strongly pro-governmental) received respectively 19,4% and 13,5% of advertisement revenue from SOCs; *Gazeta Wyborcza*, the leading opposition newspaper, received 0,27%; the average for all newspapers surveyed was 8,8% (pp. 8-9). Between 2015 (the last year when *PiS* was not the ruling party) and 2019, the spending of State-owned companies on advertising in *Super Ekspres* increased by a factor of 3; in the case of *Gazeta Polska Codziennie* the increase was 57-fold.

The reports by Tadeusz Kowalski conclude: *the dynamics of SOC [State-owned companies] advertising expenditure did not match the results of newspaper sales and their market positions* (Attachment L, p. 10).

In the markets of radio and TV advertising, State-owned companies strongly prefer State-owned broadcasters and discriminate against channels that carry the point of view of the opposition (see Attachment L, pp. 23-27). For example, while the State-owned radio channels PR1 and PR3 received respectively 7,75% and 9,52% of their 2019 advertising revenue from SOCs, private radios not connected with the opposition received between 3 and 4%, and the opposition radio TOK FM (same group as *Gazeta Wyborcza*) received nothing (all the radios surveyed received 3,5% on average). The State-owned TV channels TVP 1, TVP 2 and TVP Info received respectively 8,05%, 6,16% and 6,49% of their 2019 advertising revenue from SOCs, while TVN and TVN24 (group Discovery, representing the point of view of the opposition) received respectively 0,92% and 0,35% (average for all TV channels surveyed: 2.9%).

The OSCE ODIHR report from the October 2019 elections to the Polish parliament (Attachment N) says:

[...] the selective allocation of paid advertisements by government institutions and government-affiliated companies was perceived by many ODIHR LEOM interlocutors as promoting editorial policies which favor the government.

These facts lead to the conclusion that during the years and months leading to the 2019 elections to the European Parliament, the discrimination by SOCs strongly favoured media favourable to the ruling party, and significantly contributed to making it economically unprofitable to spread political ideas unfavourable to the government. This contributed to making the 2019 elections non-free.

6.7 Reports covering the period that follows 26 May 2019

After the elections of 26 May 2019, programmes of the Polish State-owned media were analysed and assessed twice by the Office for Democratic Institutions and Human Rights of the Organization for the Security and Cooperation in Europe (OSCE ODIHR): one observation mission took place in connection with the parliamentary elections of 13 October 2019 (report: Attachments N and O), another in connection with the presidential election of 28 June and 12 July 2020 (report: Attachment P). The same programmes were also assessed by the Polish civil society, e.g., by the Society of Journalists in connection with the parliamentary elections (report: Attachment Q) and by the Election Observatory in connection with the presidential election (report: Attachment R).

After the 2019 parliamentary elections, the OSCE ODIHR concluded (Attachment N, p. 19):

[...] in their newscasts, TVP1 and TVP Info displayed a clear bias against KO and PSL [opposition parties] candidates, contrary to their legal obligations and public mandate. Journalists on these newscasts often referred to opposition candidates with such terms as “pathetic”, “incompetent” or “lying.”

After the 2020 presidential election, OSCE ODIHR concluded (Attachment P, p. 1, 3 and 20):

[...] Candidates were able to campaign freely in a competitive run-off, but hostility, threats against the media, intolerant rhetoric and cases of misuse of state resources detracted from the process.

[...]

The media landscape is sharply polarized with distinct editorial bias. The refusal of the candidates to engage with media they consider hostile led to lack of genuine debate, limiting the opportunity for voters to contrast the candidates’ policies through a public debate. The public broadcaster (TVP) failed in its legal duty to provide impartial coverage, which could offset the editorial bias of the private media. Instead, TVP acted as a campaign vehicle for the incumbent. The National Broadcasting Council does not monitor campaign coverage despite having the legal mandate to do so. Additionally there are no legal mechanisms for determining and sanctioning imbalanced campaign coverage as it is taking place. Instances of intolerant rhetoric, often by the public broadcaster itself, and increased threats against journalists were reported.

[...]

Throughout the campaign, the TVP failed in its legal duty to provide balanced and impartial coverage. Instead, it acted as a campaign vehicle for the incumbent and frequently portrayed his main challenger as a threat to Polish values and national interests. Some of the reporting was charged with xenophobic and anti-Semitic undertones.

Similar conclusions were reached by Reporters Without Borders in the 2020 World Press Freedom Index. Poland, after declining in the ranking every year since the PiS government came to power, has now fallen to number 62 out of 180 countries assessed. This is a new historical low. The country report for Poland provided the following⁸⁸:

Partisan discourse and hate speech are still the rule within state-owned media, which have been transformed into government propaganda mouthpieces. Their new directors tolerate neither opposition nor neutrality from employees and fire those who refuse to

88 Reporters Without Borders, *Poland*, 21 April 2020, available at: <https://rsf.org/en/poland>

comply. Many protests have been staged outside the offices of the management of the state-owned TV broadcaster TVP. After one of these protests in February 2019, the TVP evening news programme “Wiadomosci” broadcast video footage and personal details of ten of the demonstrators. TVP also filed a complaint against Polish ombudsman Adam Bodnar, who said its references to Gdansk mayor Pawel Adamowicz amounted to hate speech and implied that this could have encouraged the person who murdered Adamowicz in January 2019.

These statements are representative of what various recent reports of independent observers say about the media situation in Poland. The statements clearly imply that the Polish State-owned broadcasters continue to harm the democracy today. To protect democracy in Poland and specifically to ensure that the 2024 elections to the European parliament are free, it is urgent to bring remedies to this situation.

7 The need to assess the programmes of the State-owned media

This petition 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 take a decision based, *inter alia*, on facts established and proofs collected during the domestic investigation.

In the present case, the unavailability of effective domestic remedies made this impossible. Specifically, no electoral protest was (or reasonably could have been) filed with the Polish Supreme Court for the reasons explained in Sections 5.1-5.3 above.

Additionally, the Court of first instance said what follows⁸⁹ (boldface added by the petitioners):

*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 evaluated by the Pontifical University of John Paul II (see Section 6.4, p. 51 above). Before 2017, various evaluations took place, too. Since 2018, however, no analysis was done or commissioned by public authorities to verify, analyse or measure any of the following: the presence of party propaganda in programmes; the equal treatment of the several political forces; the way in which media report on

⁸⁹ 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>

electoral campaigns; the time allocated to present the points of view of political force (let us use the expression *political honesty* to collectively name these criteria).

Proofs showing the absence of analyses of political honesty since 2018 are described in Subsection 7.1, below.

The recordings stored as part of project Dragons (see p. 2 above) make it possible to monitor the programmes aired by the Polish State-owned broadcasters since 2018. It would be appropriate and even necessary for the European Commission to conduct its own monitoring of these programmes, to assess the political honesty of the Polish State-owned broadcasters.

7.1 Documents confirming the lack of analyses of political honesty since 2018

7.1.1 Year 2018: fourth quarter and the electoral campaign

The absence of monitoring related to the coverage of politics in Q4 2018, during the campaign before the 2018 local elections, is apparent from the exchange of letters of January-April 2019 between the Election Observatory and the chairman of the National Broadcasting Council (KRRiT) Witold Kołodziejcki (Attachments 18 and 19, discussed in Section 4.2.6, p. 28 above).

7.1.2 Year 2018 (full year)

By letter of 29 July 2019 (Attachment 20) to chairman Kołodziejcki, Marcin Skubiszewski made, *inter alia*, the following request:

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 przestrzeganie tego przepisu.

Proszę o przekazanie mi sprawozdań i wniosków, które w ramach wyżej wymienionych działań zostały sformułowane przez KRRiT, jej pracowników lub podmioty zewnętrzne.

Translation:

I request that the National Broadcasting Council send me the list of actions that the Council performed or commissioned since 1st January 2015 in order to verify the realisation by the public media of the public mission defined in Article 21(1) of the law on radio and television. I am particularly interested in actions that consisted in monitoring and analysing programmes of public media, and which include the evaluation of the respect of this stipulation.

Please send me the reports and conclusions that were formulated by the National Broadcasting Council, its agents or external entities while performing these actions.

To understand the scope of this request, let us quote the above-mentioned Article 21(1)⁹⁰:

90 Translation provided by the National Broadcasting Council
https://www.krrit.gov.pl/Data/Files/_public/Portals/0/angielska/Documents/Regulations/broadcasting_act_28022013.pdf

In Polish:

Publiczna radiofonia i telewizja realizuje misję publiczną, oferując, na zasadach określonych w ustawie, całemu społeczeństwu i poszczególnym jego częściom, 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:

Public radio and television shall carry out their public mission by providing, on terms laid down in this Act, the entire society and its individual groups with diversified programmes and other services in the area of information, journalism, culture, entertainment, education and sports which shall be pluralistic, impartial, well balanced, independent and innovative, marked by high quality and integrity of broadcast.

The wording of this stipulation implies that all analyses of political honesty were covered by the above-mentioned request.

The request was answered on 11 October 2019 by Anna Szydłowska-Żurawska. A CD-ROM was enclosed with her letter (Attachments E and F). The answer lists all reports from media monitoring from 2015 to 2018, and these reports are included in the CD-ROM.

Media monitoring actions conducted, commenced or commissioned in 2019 are not discussed in the letter in the CD-ROM, as if they were not covered by the request by Marcin Skubiszewski (under Polish law, the National Broadcasting Council was under the obligation to answer the request completely). The letter lists six monitoring actions performed in 2018, four of which cover multiple radio or TV channels. The corresponding reports are present on the CD-ROM (Attachment F to this petition, directory **att-F-monitoring-reports** on the pendrive). The reports are in the directories

Raporty/dokumenty_P_ Skubiszewski/rok 2018/raporty_opracowanie DMP
Raporty/dokumenty_P_ Skubiszewski/rok 2018/zlecenia zewnetrzne

The reports cover various aspects of programmes, e.g., the presence of music, of educational and cultural programmes and of programmes in minority languages. The issues related to political honesty are not covered at all.

7.1.3 Years 2019 and 2020

By letter of 9 February 2021 to chairman Kołodziejski (Attachment G), Marcin Skubiszewski repeated the same request as the one quoted in Section 7.1.2 above. This time, the period covered by the request was from year 2019 (inclusively) until the date of the letter. The request was answered on 25 February 2021 (Attachment H). The answer contains a description of the analyses made or commissioned by the National Broadcasting Council. The description is not a precise list (*inter alia*, it does not quote the titles of the several analyses). It is not accompanied with reports from the analyses, despite of the fact that the reports had been requested and that the National Broadcasting Council was under a legal obligation to answer this request.

Regarding the analyses that took place in 2019, the letter of 25 February refers to the “Report of the National Broadcasting Council of its Activity in 2019” (*Sprawozdanie Krajowej Rady Radiofonii I Telewizji z działalności w 2019 r.*; Attachment I) and to the “Information on fundamental problems

of Radio and Television in 2019” (*Informacja o podstawowych problemach radiofonii i telewizji w 2019 r.*; Attachment J). There are no similar references regarding analyses done in 2020.

The first of the documents referred to devotes 25 pages to describing the analyses, monitoring and control of broadcasters and to penalties imposed (Chapter IV, pages 52-76). The second document, contrary to what the letter from Anna Szydłowska-Żurawska says, does not discuss monitoring or analyses, control of broadcasters or penalties.

It results from these documents that there was no monitoring or analyses that concern the realisation of the public mission defined in Article 21(1) of the law on radio and television or that can be qualified as “analyses of political honesty” (expression coined above, p. 67).

To sum up this subsection: documents transmitted by the National Broadcasting Council clearly show that no analyses of political honesty have been conducted since 2018. This is an enormous shortcoming, given that in this period four nationwide electoral campaigns took place (nationwide local elections in 2018; elections to the European Parliament and elections to both houses of the Polish parliament in 2019; presidential election in 2020).

Attachments

All attachments are provided in electronic form, as files or as directories on the pendrive delivered with this document. Directories are used to represent webpages (it is often technically impossible to represent a webpage by a single file) and to represent the content of a CD-ROM that was received from the Polish National Broadcasting Council (Attachment F).

This petition is present on the pendrive in two formats, in files “election-violations-petition.odt” and “election-violations-petition.pdf”.

Signature sheets for this petition (signatures by 4 candidates and by ... voters in the Polish elections of 26 May 2019) are filed with this petition. They are delivered on paper, and their scanned versions are on the pendrive, in files whose names begin with “petition”.

Signature sheets that accompanied the original application (see section *Previous proceedings*, p. 3 above) were previously sent to the Parliament (Committee on Petitions). Copies of the sheets are filed with this petition (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-krrit-ostrzezenie-sprawozdania.pdf” and “att-14-v2-krrit-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.

- A. Sheets of signatures for this petition.
- B. Application disputing the validity of credentials of the members of the European Parliament elected in Poland from lists of candidates registered by *Prawo i Sprawiedliwość* (Law and Justice) (document of 19 September 2019)
- C. Sheets of signatures for the application Attachment B.
- D. Letter of 31 January 2020 from Chair of the Committee on Legal Affairs Lucy Nethsingha to Marcin Skubiszewski
- E. Letter of 11 October 2019 from Anna Szydłowska-Żurawska from the National Broadcasting Council to Marcin Skubiszewski, in response to the letter of 29 July 2019 (Attachment 20).
- F. Content of the CD-ROM attached to the letter of 11 October 2019 from Anna Szydłowska-Żurawska (Attachment E). Contains reports from the monitoring of State-owned media, 2015-2018. In electronic form, directory **att-F-monitoring-reports**
- G. Letter of 9 February 2021 from Marcin Skubiszewski to Witold Kołodziejski, chairman of the National Broadcasting Council.
- H. Letter of 25 February 2021 from Anna Szydłowska-Żurawska from the National Broadcasting Council to Marcin Skubiszewski, in response to the letter of 9 February 2021 (Attachment G).
- I. “Report of the National Broadcasting Council of its Activity in 2019” (*Sprawozdanie Krajowej Rady Radiofonii I Telewizji z działalności w 2019 r.*)
- J. “Information on fundamental problems of Radio and Television in 2019” (*Informacja o podstawowych problemach radiofonii i telewizji w 2019 r.*)
- K. *Analiza wydatków reklamowych spółek skarbu państwa (SSP) w latach 2015-2019*. Tadeusz Kowalski.
https://www.researchgate.net/publication/339800640_Analiza_wydatkow_reklamowych_spolek_skarbu_panstwa_SSP_w_latach_2015-2019
- L. *Advertising expenses’ analysis of state-owned companies (SOC) in the years 2015-2019*. Tadeusz Kowalski (English-language version of the previous attachment).

- M. *Analiza wydatków reklamowych spółek skarbu państwa (SSP) w latach 2015-2020*. Tadeusz Kowalski (an extended and updated version of Attachment K).
- N. Republic of Poland parliamentary elections 13 October 2019 ODIHR Limited Election Observation Mission. Final Report.
- O. ODIHR LEOM Media Monitoring Results. Parliamentary Elections, 13 October 2019, Republic of Poland.
- P. Republic of Poland. Presidential election 28 June and 12 July 2020. ODIHR Special Assessment Mission Final Report.
- Q. *Raport z monitoringu „Wiadomości” TVP, „Wydarzeń” Polsatu, „Faktów” TVN oraz serwisów Polskiego Radia w okresie kampanii wyborczej do Sejmu i Senatu 27 września -11 października 2019 r.* (Report from the monitoring of TV and radio, during the Sejm and Senat electoral campaign, 27 September – 11 October 2019). Society of Journalists. Andrzej Krajewski (head of project).
- R. *Wybory Prezydenta RP 2020: Raport po pierwszej turze*. Obserwatorium Wyborcze. Natalia Jarska, Agnieszka Ślifirska, Agnieszka Borowiec, Marcin Skubiszewski *et al.* <https://ow.org.pl/2020/07/08/raport-po-pierwszej-turze-wyborow-prezydenta-rp-2020/>
- S. *Uchwała Sądu Najwyższego z dnia 2 sierpnia 2019 r. w sprawie ważności wyborów do Parlamentu Europejskiego przeprowadzonych w dniu 26 maja 2019 r.* (Resolution of 2 August 2019 of the Supreme Court on the validity of the elections to the European Parliament held on 26 May 2019) http://www.sn.pl/aktualnosci/SitePages/Komunikaty_o_sprawach.aspx?ItemSID=298-b6b3e804-2752-4c7d-bcb4-7586782a1315&ListName=Komunikaty_o_sprawach&rok=2019
- T. Resolutions of the National Broadcasting Council on the apportioning between State-owned broadcasters of subscription fees and of money granted by *ad hoc* laws, from the year 2014 to 11 February 2021.
- 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 elections 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
- 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
 - 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 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://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
- (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
- 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
(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 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 *Czysta 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 1st 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 st February 2019
In Polish:			
Art. 27 [management boards]			
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 st 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 st February 2019
<p>6. Członek zarządu może być odwołany w przypadku:</p> <ol style="list-style-type: none"> 1) skazania prawomocnym wyrokiem sądu za przestępstwo umyślne ścigane z oskarżenia publicznego lub przestępstwo skarbowe; 2) działania na szkodę spółki; 3) zaistnienia okoliczności trwale uniemożliwiających sprawowanie funkcji. 	<p>6. <i>(uchylony)</i></p>	<p>6. Członek zarządu może być odwołany w przypadku:</p> <ol style="list-style-type: none"> 1) skazania prawomocnym wyrokiem sądu za przestępstwo umyślne ścigane z oskarżenia publicznego lub przestępstwo skarbowe; 2) działania na szkodę spółki; 3) zaistnienia okoliczności trwale uniemożliwiających sprawowanie funkcji. <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 st February 2019
Art. 28 [supervisory boards]			
<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 st 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 st February 2019
<p>1d. Członek rady nadzorczej może być odwołany przez organ, który go powołał, w przypadku:</p> <ol style="list-style-type: none"> 1) skazania prawomocnym wyrokiem sądu za przestępstwo umyślne ścigane z oskarżenia publicznego lub przestępstwo skarbowe; 2) działania na szkodę spółki; 3) zaistnienia okoliczności trwale uniemożliwiających sprawowanie funkcji. 	<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"> 1) skazania prawomocnym wyrokiem sądu za przestępstwo umyślne ścigane z oskarżenia publicznego lub przestępstwo skarbowe; 2) działania na szkodę spółki; 3) zaistnienia okoliczności trwale uniemożliwiających sprawowanie funkcji. <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 st February 2019
Translation:			
Art. 27 [management boards]			
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. ⁹¹	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).]

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

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 1st February 2019
<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 st February 2019
<p>6. A member of a management board can be dismissed in the following cases:</p> <ol style="list-style-type: none"> 1) final conviction by court of law for an intentional crime prosecuted by the public prosecutor or for a treasury crime; 2) acting to the detriment of the company; 3) circumstances that make it permanently impossible for him to exercise his functions. 	<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"> 1) final conviction by court of law for an intentional crime prosecuted by the public prosecutor or for a treasury crime; 2) acting to the detriment of the company; 3) circumstances that make it permanently impossible for him to exercise his functions. <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 st February 2019
Art. 28 [supervisory boards]			
<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 st 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 st 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"> 1) final conviction by court of law for an intentional crime prosecuted by the public prosecutor or for a treasury crime; 2) acting to the detriment of the company; 3) circumstances that make it permanently impossible for him to exercise his functions. 	<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"> 1) final conviction by court of law for an intentional crime prosecuted by the public prosecutor or for a treasury crime; 2) acting to the detriment of the company; 3) circumstances that make it permanently impossible for him to exercise his functions. <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>

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 1st February 2019
<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 70).

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
Telewizja Polska				
8.01.2016 ⁹² 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
Polskie Radio				
08.1.2016 ⁹³ 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

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

93 <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

Date	Record #	Office	Officers dismissed (or suspended)	Officers appointed
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
Polskie Radio – Regionalna Rozgłośnia w Białymstoku „Radio Białystok”				
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
Polskie Radio – Regionalna Rozgłośnia w Olsztynie „Radio Olsztyn”				
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	
Polskie Radio – Regionalna Rozgłośnia w Krakowie „Radio Kraków”				
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
Polskie Radio – Regionalna Rozgłośnia w Warszawie „Radio dla Ciebie”				
11.02.2016 ⁹⁴ 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	Juliana Kapalska
			Dominika Cieślak Wojciech Borowik Barbara Kwiatkowska Przybyła	Marek Pietrzak
Polskie Radio – Regionalna Rozgłośnia w Zielonej Górze „Radio Zachód”				
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
Polskie Radio – Regionalna Rozgłośnia we Wrocławiu – Radio Wrocław				
9.09.2016	42		Edward Bratek	Robert Maciej Chmielarczyk

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

Date	Reco rd #	Office	Officers dismissed (or suspended)	Officers appointed
		Members of supervisory board	Katarzyna Kuźniar Żyłka Ryszard Balicki Robert Banasiak Rafał Grzegorz Biernat	Małgorzata Joanna Juzyszyn Zbigniew Jerzy Leszko
6.12.2017	46	Members of supervisory board	Robert Maciej Chmielarczyk	Joanna Beata Dadas
9.11.2017 ⁹⁵ 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	
Polskie Radio – Regionalna Rozgłośnia w Poznaniu „Radio Poznań”				
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 Frydryszek	Ryszard Stryjski Lidia Wosiak Michał Król
28.11.2018	42	President of the management board	Filip Michał Rdesiński	Piotr Bernatowicz
Polskie Radio – Regionalna Rozgłośnia w Szczecinie „PR Szczecin”				
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
Polskie Radio – Regionalna Rozgłośnia w Opolu „Radio Opole”				
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

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

Date	Reco rd #	Office	Officers dismissed (or suspended)	Officers appointed
28.04.2016	34	President of the management board	Paweł Frącz	Piotr Mirosław Moc
Polskie Radio – Regionalna Rozgłośnia w Kielcach „Radio Kielce”				
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
Polskie Radio – Regionalna Rozgłośnia w Lublinie „Radio Lublin”				
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
Polskie Radio – Regionalna Rozgłośnia w Katowicach „Radio Katowice”				
1.06.2016	28	President of the management board	Henryk Bronisław Grzonka	Piotr Maria Ornowski
		Members of supervisory board	Wiesław Jan Rola Mirosław Jerzy Czerwiński Mariola Skłodowska Hończar Jerzy Stanisław Gołuchowski Robert Tomanek	Piotr Aleksander Pietrasz Henryk Jan Górak Alfred Andrzej Pyrk
Polskie Radio – Regionalna Rozgłośnia w Łodzi „Radio Łódź”				
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
„Polskie Radio Rzeszów” – Regionalna Rozgłośnia w Rzeszowie				
30.05.2016	28	President of the management board	Henryk Pietrzak	Przemysław Rafał Tejkowski
		Members of supervisory board	Lech Lichołaj Bożena Domino	Janusz Magoń Magdalena Rodecka

Date	Reco rd #	Office	Officers dismissed (or suspended)	Officers appointed
			Joanna Wiażewicz Teresa Kubas Hul Stanisław Gędek	Grzegorz Jan Pietrusza
Polskie Radio – Regionalna Rozgłośnia w Koszalinie „Radio Koszalin”				
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
Polskie Radio – Regionalna Rozgłośnia w Bydgoszczy „Polskie Radio Pomorza i Kujaw”				
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
Polskie Radio – Regionalna Rozgłośnia w Gdańsku „Radio Gdańsk”				
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 70.

I agrees with the publication of my name by the European Parliament

Done in Warszawa (Warsaw), Poland, on ... March 2021

Marcin Skubiszewski