

Current challenges to media freedom in Poland

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The Media Environment in Poland: An Overview

The Republic of Poland is an Eastern European country with 16 provinces and a population of over 38 million people with Warsaw as its capital. Poland is a post-communist country. Its democratic system was established in 1989 and Polish politics are shaped by a coalition-based multi-party system (*BBC News* 2016). The Polish system of government is based on the principle that there is separation and balance between legislative, executive, and judicial powers. The legislative power is held by the Sejm (the lower house of Parliament) and the Senate (the upper house of Parliament), the executive power is vested in the President and the Council of Ministers, and the judicial power is vested in courts and tribunals (*The Official Website of the President of Poland* n.d.). Officially renamed the Republic of Poland in January 1990, Poland is now a developed capitalist country and a member state of the European Union (EU) since 2005.

The country's public TV broadcaster *Telewizja Polska (TVP) S.A.* dominates the market with a combined audience share of its channels accounting for more than half of the total TV audience share in Poland (Lara 2009). This indicates that the public media in Poland plays an important role in conveying information and social values to the public. Therefore, ensuring a free media environment in Poland is of significant importance.

Principles of press freedom are enshrined in Poland's Constitution, Article 14 and Article 54 . However, in reality there are many factors that restrict press freedom in Poland, including the prominent standing of religion, the country's history and a recent change of government. Religion is one of the main factors affecting press freedom in Poland. According to Article 196 of the Polish Penal Code, statements that offend religious feelings of other persons are criminal offenses punishable by fines and imprisonment. Though having no state religion, the country's Constitution acknowledges Roman Catholicism to various degrees (Article 25, Article 35, and Article 53), and Poland is thus perceived as one of the most religious countries in Eastern Europe (Cole 2007). The majority of Poland's population Roman

Catholic.

Poland's history shows that "press censorship" is not an unfamiliar term to the Polish public. Under the Communist government, press censorship in Poland was exercised by the Main Office for the Control of the Press, Publications, and Public Performances (GUKPIW). All types of media and printing materials, ranging from radio stations and publishing houses to wedding invitations, were closely monitored by the GUKPIW (Strządala 2013). The strict censorship on the press lasted for four decades until the establishment of the Republic of Poland in 1989. Following this, various laws regarding media freedom protection were promulgated. These laws, including the country's Constitution, the 1990 Anti-Censorship Act, and Broadcast Act of 1992, largely contributed to the current comparatively high level of press freedom in Poland (see below).

However, censorship still exists in today's Poland. An audit conducted by the Polish Bureau of Internal Affairs (known by its Polish initials as BSW) revealed that two informal press surveillance units of the Polish police had monitored certain Polish journalists between 2014 and 2015. The journalists under surveillance were mainly reporters of the country's '2014 tape scandal', a scandal related to the leaking of secretly recorded conversations that took place between leading political figures at a well-known restaurant in Warsaw (Otwiński 2016). Also, in 2015, the Polish journalist Łukasz Masiak who was the founder of a popular local newspaper NaszaMława.pl was beaten to death in the city centre of Mława. This was the first time post-1989 that a journalist was killed in Poland. His death was believed by some to be a direct result of his journalistic work. Before his tragic death, Masiak was attacked and had received death threats multiple times because of the controversial topics he covered (European Federation Journalists 2015).

These scandals indicate that press freedom in Poland is declining. Poland's ranking in the Reporters Without Borders' (RSF) World Press Freedom Index plunged from 18 in 2015 (higher than the United Kingdom at 20 and the U.S. at 49 in the same year) to 47 in 2016. According to a report released by Freedom House in 2016, the score of Poland's independent media increased from 2.50 to 2.75, the highest score in a decade (Freedom

House 2016a).¹ As shown in the table below, press freedom in Poland is currently facing serious threats, notwithstanding the country's 27-year long democratic history.

Independent Media							
2009	2010	2011	2012	2013	2014	2015	2016
2.00	2.25	2.25	2.25	2.50	2.50	2.50	2.75

(Freedom House 2016b)²

Media freedom in Poland has been increasingly constrained since the political changes in 2015 and the recent amendments made to the country's media laws. In October 2015, the right-wing party Law and Justice (PiS) won the overall majority in the Polish Parliament elections, ending the two terms in power of the coalition of the Civic Platform (also known as PO) and the Polish People's Party (PSL), two main center-right parties. PiS found themselves in a unique position. Unlike all the previous governments, PiS were not forced to make compromises with a coalition partner (The Guardian 2015). Winning a majority in the senate also enabled PiS to amend and reject legislation unilaterally. With the backing of President Andrzej Duda, a former party member, PiS has set course to increase control of national institutions – including the judiciary and the media. It is expected that the PiS will act more aggressively against the EU compared to previous governments especially with regard to these aspects.

Shortly after winning the 2015 election, PiS passed a new media act on 31st December 2015, which granted the government full control of the country's state media system by allowing the Minister of the Treasury to directly appoint and dismiss the heads of public broadcasters. As a consequence, the contracts of all employees of these public media outlets were terminated.

The new media act resulted in both domestic and international discontent. Thousands of citizens gathered to protest outside the main public TV station in Warsaw following the

¹The ratings are based on a scale of 1 to 7, with 1 representing the highest level of democratic progress and 7 the lowest.

²Freedom House (2016b).

signing of the new media act by President Duda. EU Commissioner Gunther Oettinger has also openly accused Poland of infringing “common European values” (Minns 2016, para. 1). While dialogue between the EU and the Polish government is still ongoing, a probe into whether Poland’s media laws breach rules on democracy has already been launched by the European Commission.

Additionally, the media acts received two completely different reactions: they were simultaneously welcomed and opposed by the country’s journalistic community, which has always been fragmented and deeply divided according to political orientation, ethical views, and religious beliefs. Differing opinions from journalists on what they should publish have made press freedom a more complicated and sensitive issue in Poland.

Poland’s Legal Framework on Protecting Press Freedom

Media freedom in Poland is enshrined in the country’s current Constitution which was adopted on 2 April 1997. Article 14 of the Polish Constitution guarantees freedom of the press and other means of social communication. Article 54 further states that the freedom to express opinions, to acquire and to disseminate information shall be ensured to everyone; preventive censorship and the licensing of the press shall be prohibited (The Constitution of the Republic of Poland 1997). Apart from the Constitution, the media sector in Poland is mainly regulated based on two legal Acts: the *1984 Press Law* and *Broadcasting Act of 29th December, 1992* which came into force on 1st March 1993.

- The Press Law of 1984

Article 20 of the 1984 Press Law requires newspaper publishers to register with a regional court where publishers’ domicile is located. Meanwhile, the Law stipulates that state entities must provide all information needed unless the relevant information contains state secrets. Failing to fulfill the registration before publishing may result in “a fine or a criminal sentence of up to 12 months of public service” (European Digital Rights 2011, para 4).

- The Broadcasting Act of 1992

The 1992 Broadcasting Act created the National Council to safeguard freedom of speech in radio and television broadcasting, and to ensure the independence of media service

providers. According to Article 2.1, any entities/natural person wishing to transmit radio and television program services must obtain a broadcasting license in advance. Article 6.2 11) states that “public and open competitions shall be held to select members of Supervisory Boards of public radio and television broadcasting organizations” (Broadcasting Act 1992, chap.2, art.6). As such, media freedom is fully respected and protected under Poland’s legal framework.

Reality: The Polish Media Law Controversy

However and as noted above, the Polish government has introduced sweeping changes to the country’s public media sector since late 2015, which have greatly influenced Poland’s media freedom in terms of press independence and media pluralism. These changes which include amendments to the 1992 Broadcasting Act as well as rules proposed by the Sejm to ban reporters’ access to legislators largely contradict the media freedom protection values presented by Poland’s 1997 Constitution and other existing media laws. Furthermore, the Polish public media is currently supervised by the National Media Council, an organisation that consists of members elected by the president and the Lower House of the Polish parliament. This means that Poland’s public media is under direct control of the government. Restrictions on media freedom resulted in not only the tension between the public and the Polish government, but also international criticism and EU’s discontent. While a lot of factors, including the great division within the Polish journalistic community and the surveillance scandals, affect the press freedom in Poland, the newly approved media acts and the proposed rules to restrict reporters’ access to legislators are of particular importance.

Prior to conducting desk research, we sent emails to Aleksandra Rybinska, a Polish journalist for the private conservative Warsaw daily *Rzeczpospolita*, and Beata Klimkiewicz, Assistant Professor at the Institute of Journalism and Social Communication, Jagiellonian University. Interestingly, the two specialists held completely different views on the press freedom status and development trend in Poland. More specifically, in an email to the authors (Dec 2016) Professor Klimkiewicz stated that freedom of expression is still generally respected in Poland and protected under the Constitution, as the amendments do not apply to the commercial and private media sector in the country. As such, the influence of the two media

acts on the overall journalistic community was seen to be only limited in practice. Yet, the country's public service media (PSM) has been visibly influenced by the two new media amendments, which also resulted in a large number of journalists who previously worked for the PSM losing their jobs. It should be noted that this is not the first time the Polish government tried to control public service broadcasters, though previously this was not done with such an intensity and in such a short time, according to Klimkiewicz. Conflicts between a free independent media and the conservative Polish government have always existed in Poland, and have only intensified due to the recent regulatory changes. When asked about her opinions on the EU's role in the incident, Klimkiewicz stated that the EU's interference was justified, as the two amendments entitled the government absolute power to control the country's PSM. Klimkiewicz pointed out that the fundamental role of public service broadcasting was to guarantee a democratic and independent medium which satisfies the democratic, social, and cultural values in a society, as defined by the "Protocol on Public Service Broadcasting to the Amsterdam Treaty". Notably, Klimkiewicz and her students also noted some subtle EU double standards when it comes to its members' media policy. It was mentioned that the EU did not attempt to interfere when France's former President Nicholas Sarkozy directly appointed the Director General of the French public television in 2008. Another instance that was brought up in the email was the interruption of broadcasting of public service television in Greece, in which the EU also did not react as strongly as they did when Poland introduced the new media laws.

In contrast, Rybinska believes that the Polish media is undergoing positive changes and the new media acts do not have any negative influence on press freedom. In her email to the authors (Oct 2016) Rybinska stressed the distinction between private media and public media in the country, stating that the role of the latter is to "inform, educate, and serve the public" – a mission that would be better completed under the supervision of the government. The private media sector, according to Rybinska, was not being censored and not affected by the amendments. Since the new media acts are temporary solutions in the country's transition period towards a more partial and organized media environment, Rybinska remains optimistic on the development of press freedom protection in Poland. As to the tension between the Polish government and the EU, Rybinska believes that rather than media freedom, the ideological conflict between the "liberal European elites" and the

current conservative Polish government is the fundamental reason why the EU took strong measures against Poland. Rybinska stated that the previous management board of the PSM was also close to the ruling party PO, and no complaints were received at that time from Brussels. Furthermore, Rybinska stated that the EU's interference in Poland's issues seemed unjustified and not reasonable, as the two media acts are no different than media laws in other European countries such as Spain and France. The clash of ideologies between the EU and the current Polish government were mentioned by Rybinska as the only reason why the organization is treating the Polish case so differently.

As it can be seen from above, while the two professionals expressed different feelings regarding the recent amendments, they agreed on certain issues such as the limited influence of the new media acts in practice and the double standards held by the EU when dealing with its member states' potential breach of EU's laws. Interestingly, the two also agreed that journalists' work hasn't been significantly affected by the new acts. Most of the journalists who left the PSM managed to find jobs in the private media sector. The new media acts created a big division in Poland's journalistic society, where a large group of journalists support the government's control over the PSM, while another group of highly critical journalists are convinced the new media acts in fact lead to serious limitations of freedom of speech (Larsen 2017).

In order to get a closer look at the conflicts between a free media environment and the government's desire for a sound PSM system, we look into the approval procedure of the two media acts, the real influence on the PSM, nationwide street protests following the signing as well as the role played by the EU in the implementation of the new media acts.

Two Media Acts and Rules Banning Journalists' Access to the Parliament

- The Approval of the Small Media Act

In December 2015, the Polish Senate adopted a so-called "Small Media Act" which substantially amended the 1992 Broadcasting Act (KRRiT 2016b). The Act comprised merely of four Articles that largely reduced press freedom in Poland. Specifically, the Act deprived the National Council of the right to hold competitions for the positions of members of the public media supervisory boards, and transferred the power to "appoint and dismiss

members of the management and supervisory boards of public broadcasting entities to the sole competence of the Minister of the Treasury” (KRRiT 2016b, para. 2). President Duda has signed this controversial new media law on 7th January 2016. Poland's ruling party PiS believed that the introduction of the new law exempts public broadcasting and television from objectivity, and therefore favoured the movement. The country's Treasury Minister was consequently empowered to administer and appoint the heads of Polish public TV and radio stations. The previous Management and Supervisory Boards were immediately dismissed and replaced with people close to the PiS.

When it comes to the reason why the law was enacted, Presidential aide Malgorzata Sadurska responded that most of the current news reports in Poland expressed merely the subjective opinions of journalists rather than objective facts. Some senior politicians, including the PiS MP Elzbieta Kruk and Polish Premier Beata Szydło, also showed their support for the new law, arguing that the public media in Poland ignore their mission, and tend to merely echo negative opinions about the country (Cienski 2015).

The Polish legislative process is normally a seven stage process, with three stages dedicated to readings and revisions of bills. However, the media act was approved by president Duda just two days after the first draft was submitted to Parliament (Khan 2015). The swift approval of the media act without public discussion raised concerns over the decision-making processes of the ruling party, which has absolute majority in Parliament.

- Postponement and Bridge Media Law

The temporary version of the Small Media Act expired in June 2016. A revised official document was planned to officially enter into force on 1st July 2016. However, the implementation of the act was postponed by the Polish government mainly due to the mounting pressure from the EU. Poland's Deputy Minister of Culture Krzysztof Czapanski, who was later elected President of the newly-formed National Media Council, told the Polish press agency PAP that he still supported the idea of a complete overhaul of the current system, but that the far-reaching changes would require notifying the EU. The notification process usually takes eight to 18 months and even longer in cases of significant changes (Eriksson 2016). This time-consuming and complicated notification process largely

contributed to the Polish government's postponement of the launch of the official Small Media Act.

However, this move cannot be simply seen as a compromise made by the Polish government. Along with the postponement of the media law reform package, the Polish government established a new National Media Council in July 2016 to temporarily supervise public media. This new organisation was formed based on a bridge law³- the Act of June 22 2016 on the National Media Council – which again, received criticism from both the public and the EU because it leaves is the Council under a form of supervision by Polish government. According to the Act, the National Media Council would consist of five members appointed by the Sejm and the President. The Council, rather than the Minister of Treasury, shall directly appoint the management and supervisory boards of state-owned broadcaster TVP, Polish Radio, and the PAP news agency. Previously, open and public competitions were held to select members of Supervisory Boards of public radio and television broadcasting organizations (KRRiT 2016a).

According to Czubanski, this transitional law was promulgated to pave the way for the passing of a bigger and wider media law, which would cover state television, radio, as well as the Polish Press Agency. The new media law, expected to come into force in 2017, is currently being reviewed by the Sejm with no specific details released to date. But it is certain that this media law will also be subject to the approval of the EU.

- Rules Restricting Journalists' Access to Politicians

In its latest move to protect senior politicians from the “harassment” of journalists, the Sejm proposed rules to ban all recording of parliamentary sessions except by five selected television stations and limit the number of journalists allowed in the building (Day 2016). Rules proposed by the head office of the Sejm would ban all recording of parliamentary sessions except by five selected television stations. Furthermore, the new rules would limit the number of journalists allowed in the parliament building once enacted

³ A bridge law here refers to the temporary law promulgated by the Polish government in 2016 in an attempt to pave the way for the upcoming more extensive media regulations.

in 2017. Agnieszka Wisniewska, editor of *Krytyka Polityczna*, said that the proposed measure was "the easiest way to cut media freedom" (Aljazeera and News Agencies 2016, para.13).

Restrictive laws and rules have already greatly influenced the impartiality of the PSM. In July 2016, the major evening news program on Poland's state-run TVP turned the U.S. President Obama's criticism on the state of Polish democracy into praise by twisting and mistranslating President Obama's remarks on the country's constitutional tribunal during the North Atlantic Treaty Organization (NATO) summit (Scally 2016). This incident indicated that the country's new media act may be turning its public broadcasters into a mouthpiece of the government.

Nationwide Street Protests and Escalating Tension between the EU and Poland

Up to 20,000 Polish citizens gathered to protest outside the main public TV station in Warsaw following the signing of the new media act by President Duda. The protest was followed by a nationwide march spread across 20 Polish cities including Poznan, Wrocław, and Krakow. Most of the demonstrations took place outside the local state radio and television buildings, where protesters vowed to boycott the government's new media initiatives. In Łódź, several hundred people gathered carrying the red-white Polish flag and EU symbols (*BBC News* 2016). The organizers of the protest claimed that once the new media act is enacted, Polish public TV stations and Polish radio stations would become the governmental radio, rather than public radio. Most recently on 16th December 2016, thousands of Warsaw citizens joined in a spontaneous protest in front of Poland's parliament against the plan proposed by the PiS to limit journalists' access to legislators (Aljazeera and News Agencies 2016). The march lasted for hours until the police used tear gas to forcibly remove protesters blocking the parliament exit. New rounds of protest took place the next day, with several thousand demonstrators chanting "Free media" (Aljazeera and News Agencies 2016, para.6) and "Stop the devastation of Poland" (Day 2016, para.3).

Apart from the street protests held by the public, the country is also facing pressure from international media freedom protection organizations and potential sanctions from the EU. In particular, as a member state of the EU, Poland received sharp criticism from the European Commission as the law is deemed as a violation of one of the fundamental EU

rights and core principles – commitment to free media. This requirement is stipulated by Article 11 of the EU Charter of Fundamental Rights, which serves as the guiding principle for media freedom within the EU:

11.1: Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

11.2: The freedom and pluralism of the media shall be respected.

On 13th January 2016, the European Commission took an unprecedented move to launch an investigation into whether Poland's media laws breach rules on democracy (Cendrowicz 2016). This investigation is also known as the "Rule of Law Probe" (La Baume 2016, para. 1). The "Rule of Law" (European Commission 2017, para. 1) mechanism is a monitoring system introduced at EU level in 2014 with the aim to identify and monitor "systematic threats" (European Commission 2017, para. 2) to the EU members' laws and regulations. This means that once the European Commission activates this mechanism against Poland, Warsaw could eventually lose its voting rights at the European Council if the law remains in place (News Wires 2016). The rule of law probe was unsurprisingly encountered with strong disagreement from the Polish Government, which insisted that the freedom and pluralism of the media was fully respected in Warsaw.

After the preliminary assessment in Brussels, the EU executive confirmed that there was a "systemic threat to the rule of law in Poland" (Rankin 2016, para. 2), and thus gave Warsaw three months (from July until 27th October 2016) to meet the EU's democratic standards. The European Commission is now taking the next step in a process that could lead to sanctions against Poland's new nationalist government. Meanwhile, Poland accused the European Commission of the probe and claimed that the investigation lacked objectivity while showing little understanding of the Polish legal system. The Polish government also stressed the point that though Poland is part of the EU, it does not appreciate external intermissions in internal affairs (Eriksson 2016).

EU's interference in Poland's media law reforms started in December 2015 when the Vice President of the European Commission Frans Timmermans wrote to the Polish government to seek further information regarding the proposed reform to the management of Poland's Public State Broadcasters (Baczynska and Strupczewski 2016). In his letter, Timmermans asked if the EU's laws and requirements to promote media pluralism were presented in the so-called "Small Media Act". Timmermans also explicitly asked the Polish government to reconsider the law. However, a response from Poland on 7th January 2016 denied the existence of any negative effect on the country's media pluralism. The Media Act was then swiftly signed and approved despite various concerns, which has directly led to the rule of law probe launched only six days after the signing.

Conclusion

Although media freedom is protected under the country's Constitution, there is a discrepancy between its legal framework and reality when it comes to the actual level of press freedom in Poland. The journalists' surveillance scandal as well as the unresolved circumstances surrounding the death of a journalist point to an overall stricter supervision of the media sector. In particular, the current media law poses a threat to the future development of media freedom in the young democratic nation.

Public opinions on press freedom in Poland are polarised. On the one hand, thousands of people in Poland have already realised the potential danger posed to the public media sector and have thus held street protests against the restrictions. On the other hand, however, a large number of people and some professional journalists in Poland hold different opinions towards the recent changes made to the media laws and believe that bringing the public media under the government's control benefits the long term development of a partial and vibrant media environment in the country. Main reasons for the great divergence include the ideological differences that still exist in the post-communist Poland, the religious beliefs of the Polish citizenry and, most importantly, the distinctive political culture in the country.

The recent changes made to the media laws, considered to be endangering the EU's fundamental rights and core values – particularly its' commitment to free media – have led

to the tension between the Polish government and the EU. In our view, the interference of the EU is surely reasonable and necessary. Arguably though, the EU seems to have different standards for its member countries in terms of taking strong measures when a member potentially breaches the EU's laws. The EU, for the first time since its establishment, launched the Rule of Law Probe in Poland and threatened to impose sanctions if the amendments remain in place. In contrast, countries such as Spain and France, which have also had similar arrangements allowing the government to appoint the heads of public broadcasters, did not receive the same level of criticism or attention. One possible reason behind is the ideological conflict between the liberal EU and a comparatively conservative Polish government.

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