

FPU Submission UPR Poland

1. Free Press unlimited welcomes the opportunity to contribute to the fourth cycle of the Universal Periodic Review (UPR) of Poland. This submission assesses Poland's compliance with its international human rights obligations. It focuses on:
 - Media independence under the PiS regime.
 - Journalists under pressure due to abusive legal actions and arbitrary detentions of journalists reporting from the border area with Belarus.
2. During the period under review media freedom has deteriorated in Poland. According to the annual World Press Freedom index, a ranking initiated by Reporters Without Borders (RSF), Poland dropped in its position from 18 out of 180 in 2015, to 64 in 2021.¹ The situation started to deteriorate when the populist right-wing Law and Justice party came to power. Since then several efforts have been made that increased their ability to politically influence the media landscape.
3. It has shown that under the PiS regime independent media are suffering from a series of threats curbing media freedom in Poland, specifically targeting media that take a critical stance towards the government. The efforts of the PiS party to reform private media are very concerning as they intend to concentrate more media under the control of the ruling PiS party. It is crucial that the remaining independent media outlets are able to operate without any obstructions or political influences. Independent, inclusive, free and diverse media are crucial to provide the public with reliable information. Media freedom is one of the pillars and guarantees of a functioning democracy and the rule of law. Freedom of expression is guaranteed by article 54 of the Polish Constitution which also forbids censorship.
4. During the third UPR cycle Poland accepted two recommendations which directly concern the independence of the media. It agreed to 'take decisive steps to decrease political control over State-owned media and to ensure independence of private and State-owned media' and to 'guarantee freedom and independence of the media and ensure that rules regarding media ownership comply with European Union law'.² We regret to conclude that it cannot be said that the efforts made by the PiS party under their media reform are in alignment with the accepted recommendations of the third UPR cycle. For example the potential purchase of the Polska Press by a state-controlled company and the attempt to pass a law limiting foreign ownership of media outlets, would decrease the independence of private media.³ A proposed media bill, targeting foreign-owned Polish media outlets, would have undermined their commitment to ensure a free, independent and diverse media sector and would therefore not comply with European Union Law like the Charter of Fundamental Rights of the European Union, the Treaty on (the functioning of) the European Union, EU internal

¹ 2021 World Press Freedom Index, RSF, <https://rsf.org/en/ranking>.

² Recommendation 120.104 and 120.105, <https://www.ohchr.org/en/hr-bodies/upr/pl-index>

120.104 Take decisive steps to decrease political control over State-owned media and to ensure independence of private and State-owned media (Sweden);

120.105 Guarantee freedom and independence of the media and ensure that rules regarding media ownership comply with European Union law (no discrimination and no retroactive legislation) (Germany);

120.106 Ensure that the implementation of its legislation in the field of media respects the independence and pluralism of the media, by, inter alia, applying the decision of the Constitutional Tribunal of 13 December 2016, which aims at restoring the competences of the National Broadcasting Council (Switzerland);

³ Recommendation 120.104 <https://www.ohchr.org/en/hr-bodies/upr/pl-index>

market legislation and international human rights and trade law, such as the Audiovisual Media Services Directive to secure the impartiality of media regulatory authorities. Although proposed bills have not passed, risks to media freedom remain. There is no reason to assume the PiS party will further refrain from carrying out efforts under their media reform that could restrict media freedom. It is of high importance that Poland follows up on the abovementioned recommendations and ensures a free and independent media landscape.

5. Recommendation: Adopt a legal framework which fosters the development of free, independent and pluralistic media and implement safeguards limiting political control over media outlets in Poland, including measures that allow for early dismissal of SLAPPs.

1. Media independence suffers from governmental pressure

6. Media Freedom in Poland has been under growing pressure from authorities. The vast majority of the Polish media is already controlled by the government as it passed a controversial law in 2016, enabling the populist right-wing Law and Justice party (PiS) party to appoint senior figures in public radio and television instead of the National Broadcasting Council members. PiS affiliates were appointed for leadership positions. Media outlets transformed into an instrument of the government's agenda with positive coverage of PiS, and an overwhelmingly negative coverage of opposition parties. Since their reelection in July 2020, the PiS party has been making efforts to tighten its grip on privately owned media. The chairman of the party announced his intention of a media reform during an interview with the Polish Press Agency PAP. He stated amongst others that the 'media in Poland should be Polish'.⁴ Multiple efforts have been made to be able to interfere with the independence of the media.

New Media ownership Law

7. The PiS long suggested to 'repolonize' foreign owned Polish media. After its reelection the Polish parliament passed a media bill which would only allow companies that are majority-owned by entities from the European Economic Area to hold broadcast licenses in Poland. It would bring foreign owned Polish media outlets under Polish control and susceptible for political influence. The bill constituted a major threat to media freedom and pluralism. The bill would have affected amongst others the TVN Group, the country's leading independent broadcast media group which is majority owned by the American company Discovery Inc., to operate. Members of the European Parliament described the bill as "an attempt to silence critical content and a direct attack on media pluralism" that violates EU and international law.⁵ Fortunately, the Polish president Duda vetoed the bill late December 2020, referring to media freedom as enshrined in article 14 of the constitution and stating that it could violate a treaty, protecting investments, signed with the United States on economic and trade relations.⁶ However, the president does see the need for a law like this, provided that it will be adopted in a transparent legislative procedure and with respect for existing investments.

⁴ 'Poland about to censor privately-owned media, like its Hungarian ally', RSF, <https://rsf.org/en/news/poland-about-censor-privately-owned-media-its-hungarian-ally>

⁵ Poland: attacks on media freedom and the EU legal order need to stop, <https://www.europarl.europa.eu/news/en/press-room/20210910IPR11928/poland-attacks-on-media-freedom-and-the-eu-legal-order-need-to-stop>

⁶ Euobserver, <https://euobserver.com/democracy/153945>.

Administrative pressure

8. Meanwhile, the American TVN Group experienced administrative difficulties getting their license extended. The TV channel TVN7 had to wait for over a year before their license was eventually granted. For the license to be extended, four out of five members of the National Broadcasting Council, entirely run by the ruling PiS party, needed to vote in favour. Two members repeatedly kept voting against, supposedly because TVN was violating the Broadcasting Act. To ensure being able to operate, TVN applied for a Dutch license that would allow in accordance with Polish law to continue broadcasting. Eventually the broadcasting license was renewed.⁷ The delay constituted an unreasonable obstruction for the TV channel to operate.
9. Administrative pressure also emerged when, in January 2021, Poland's competition regulator the Office of Competition and Consumer Protection (UOKiK) blocked the merger of radio broadcaster Eurozet by media house Agora SA, due to competition concerns. UOKiK ruled the acquisition would create a "harmful duopoly" in the Polish radio market. Agora produces the daily newspaper 'Gazeta Wyborcza' which takes a critical stance towards the PiS party. According to the MFRR mission -2021, the UOKiK is increasingly being used as a tool of the ruling party to stall and prevent mergers that would strengthen media companies perceived as opponents while approving mergers among pro-government media, facilitating the concentration of pro-government ownership.⁸

State-controlled businesses purchasing decisive shares in media outlets

10. At the same time, a worrying trend regarding media independence has been the purchase of media outlets by the government. In December 2020 the Polski Koncern Naftowy ORLEN Spółka Akcyjna, a state-controlled oil refiner, announced its plan to purchase the Polska Press media organization from the German capital group Verlagsgruppe Passau GmbH. State Treasury holds 27.52 % of the company's capital. Polska Press includes 20 out of 24 Polish leading regional newspapers, 120 weekly magazines, and 500 online portals.⁹ Concerns are that with this move the government is redirecting towards the appointment of pro-government journalists and censorship of critical content. The President of the Office for Competition and Consumer Protection (UOKiK) issued the decision allowing PKN Orlen to make the transaction however Adam Bodnar, the Polish Ombudsman, appealed to court against the decision. The Regional Court in Warsaw then issued an interim injunction suspending the acquisition of Polska Press.¹⁰

Financial threats to viability independent media

⁷ 'How 'licence wars' curb Poland', Łukasz Ostruszka, Gazeta Wyborcza, <https://ipi.media/how-licence-wars-curb-polands-free-media-gazeta-wyborcza/>

⁸ 'Democracy Declining Erosion of Media Freedom in Poland', Media Freedom Rapid Response Press Freedom Mission to Poland (2020), <https://ipi.media/mfrr-report-erosion-of-media-freedom-gathers-pace-in-poland/>

⁹ 'Purchase of Polska Press by state energy giant spells disaster for media freedom in Poland', IPI, <https://ipi.media/purchase-of-polska-press-by-state-energy-giant-spells-disaster-for-media-freedom-in-poland/>

¹⁰ 'Poland: Court suspends takeover of Polska Press by state-controlled company', Article19, <https://www.article19.org/resources/poland-court-suspends-takeover-of-polska-press-by-state-controlled-company/>

11. Since 2015 media outlets which take a critical stance towards the government already have been experiencing a drop in advertising revenue. State-controlled companies have no longer been placing advertisements in media outlets which take a critical stance towards the government. They have been directing financial support to media outlets broadly supporting the PiS party.¹¹ With their finances additionally weakened by the pandemic's economic effects, independent Polish media were now threatened by the introduction of a new advertisement tax.
12. Under the proposed bill by Poland's finance ministry, advertising revenues would be subject to a levy of between 2 and 15 percent depending on the size of the revenues, the type of media in which the advertisements were published, and the product advertised.¹² The tax is supposed to help raise funds for healthcare and culture according to governmental officials. However broadcasters and publishers in Poland regard the new tax as a direct attack on the media, hitting Polish viewers, listeners, readers and Internet users, as well as Polish productions, culture, entertainment, sports and media. In an open letter they stated that the tax will mean weakening or even liquidation of a part of the media operating in Poland, limiting possibilities of financing quality and local content, deepening of the unequal treatment of entities operating on the Polish media market, de facto favouring of companies that do not invest in the creation of Polish, local content at the expense of entities that invest the most in Poland.¹³ This tax would threaten media diversity and dampen critical reporting. The tax could drive some media outlets out of business. These outlets would become an easy target for state controlled companies to take over. The proposed new tax was dropped eventually after sustained protests.¹⁴

2. Journalists under pressure

Journalists have been under pressure due to a series of obstructions. Journalists have suffered from arbitrary detentions after reporting from the border area with Belarus, are targeted by abusive legal action and have been threatened and attacked during the course of their work.

Systematic legal harassment

13. According to the Media Freedom Rapid Response monitoring report (- 2021) systematic legal harassment of independent media in Poland continued in 2021.¹⁵ This is a disappointing trend especially since Poland accepted a recommendation to 'promote the right of access to information by protecting the freedom of press and the use of mass communication' during the third UPR cycle. For example Grzegorz Rzeczkowski, a former journalist at Polityka, one of the major independent weekly magazines in Poland, is currently facing four ongoing legal proceedings. On top of this, his contract at Polityka had abruptly been terminated. This puts him in an extremely difficult financial situation. Three out of the four SLAPPs were filed following the journalist's coverage on the so-called wiretapping scandal in Poland that led to the victory of the PiS party during the elections of

¹¹ In Poland, critical press hit by loss of state advertising, Annabelle Chapman, <https://ipi.media/in-poland-critical-press-hit-by-loss-of-state-advertising/>

¹² <https://www.ft.com/content/2966a238-acaf-4e3a-8402-39ca61e0c681>

¹³ Letter if Broadcasters and publishers regarding the 'solidarity tax', in 'Private Polish media go off air to protest new tax', Karolina Zbytniewska, <https://www.euractiv.com/section/digital/news/private-polish-media-go-off-air-to-protest-new-tax/>

¹⁴ 'Mapping Media Freedom, monitoring report - 2021', Media Freedom Rapid Response, https://www.mapmf.org/uploads/MFRR-Monitoring-Report_2021.pdf

¹⁵ MFRR, https://www.mapmf.org/uploads/MFRR-Monitoring-Report_2021.pdf

2015.¹⁶ Two of them are civil lawsuits brought by the state prosecutor Anna Hopfer. She was promoted to this position when PiS came to power and was responsible for the investigation of the scandal. The other two were brought by a businessman who, according to the article, helped to get people in touch with the Russian mafia and secret service during the wiretapping scandal.¹⁷ Like Rzeczkowski, more journalists face abusive legal actions in Poland. This is very concerning because it is creating a hostile environment for critical journalists. These threats could turn to self-censorship which is unfavorable to the public debate.

Access to Belarusian border

14. Since September 2021, journalists have been unable to report from the Polish border with Belarus. A three-kilometer wide stretch of land along the Belarusian border was placed under a state of emergency. The measure restricts journalists from entering the area which makes it impossible to report about the ongoing migration crisis there. National and international journalists who tried to cover the crises faced arbitrary detentions and intimidation by law enforcement. Those convicted of violating the state of emergency faced up to 30 days in prison or a fine of up to 5000 Polish złoty. Besides, journalists are being attacked by military officials near the border with Belarus. These convictions and attacks constitute a violation of the freedom to collect information about the dire human rights situation along the border and illegal pushbacks by Polish border guards. The ban is contrary to the principle of freedom of expression and constitutes an unlawful obstruction for journalists in the course of their work. A lack of information makes the public prone to disinformation. Therefore, it is crucial that the state refrains from arbitrary detentions and intimidation of journalists. In January 2022 the Polish Supreme Court condemned the Polish government for preventing journalists from accessing the border with Belarus. It stated that the ban was incompatible with Polish law and that there is no justification for admitting that this particular professional group represents a threat to steps taken.¹⁸

Violence against journalists

15. According to the MFRR mission to Poland in 2020 there has been an increase in threats and gender-based insults online, stemming often from members of the public in opposing ideological camps.¹⁹ In January 2022, reports came in from two journalists whose children are receiving death threats. Both journalists, Wojciech Czuchnowski and Tomasz Lis, believe their children have been targeted in response to their work. Czuchnowski's son works as a cinematographer, and Lis' daughter is a columnist. They both have been critically covering the activities of the ruling PiS party.²⁰ Threats like this can have consequences for the continuation of their work. A favourable and safe environment has to be created for journalists to sustain independent media.

¹⁶ Poland: Dismissal of SLAPP-targeted journalist Grzegorz Rzeczkowski sets concerning precedent, IPI, [Poland: Dismissal of SLAPP-targeted journalist Grzegorz Rzeczkowski sets concerning precedent - International Press Institute \(ipi.media\)](#)

¹⁷ 'Poland: ARTICLE 19 to monitor lawsuits against investigative journalist Grzegorz Rzeczkowski', Article19, <https://www.article19.org/resources/lawsuits-rzeczkowski/>

¹⁸ Poland's Supreme Court slams government for restricting media access at Belarus border, euronews, <https://www.euronews.com/2022/01/20/poland-s-supreme-court-slams-government-for-restricting-media-access-at-belarus-border>

¹⁹ Democracy Declining: Erosion of Media Freedom in Poland, MFRR Press Freedom Mission to Poland, November- December 2020, p. 19.

²⁰ 'Polish journalists' children targeted with death threats phone harassment', CPJ, 7 February 2022, <https://cpj.org/2022/02/polish-journalists-children-targeted-with-death-threats-phone-harassment/>

16. Furthermore, increased risks of physical violence were faced by journalists. Incidents have been reported by various journalists in October 2020, covering protests.²¹ Attacks came from protesters and the police. Journalists were beaten up, pepper sprayed and arrested amongst others. According to Adam Bodnar, the Polish Ombudsman, these attacks cannot be regarded as accidental incidents considering journalists often wear a visible 'PRESS' insignia.²²

²¹ 'As violence escalates in Poland journalists come under attack', IPI, 30 October 2020, <https://ipi.media/as-violence-escalates-in-poland-journalists-come-under-attack/>

²² Democracy Declining: Erosion of Media Freedom in Poland, MFRR Press Freedom Mission to Poland, November- December 2020, p. 19, 20.