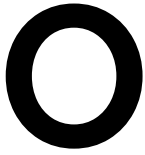


# Freedom of the Press Under Attack in Poland: Self-Censorship, Legal and Political Restrictions



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Official censorship existed in Poland from 1944 throughout the whole communist period. It was dissolved in April 1990 – nearly a year

after the first partially free election since the World War II. Freedom of speech is one of the major civil rights in Poland, like in every other country of the Western, democratic world. It is guaranteed by Article 14 of the Polish Constitution. In practice, however, since the 2015 double electoral victory (presidential and parliamentary) of the populist and rightist Law and Justice Party (PiS), the Polish government has introduced many measures which have indirectly affected the freedom of speech – including freedom of the press.

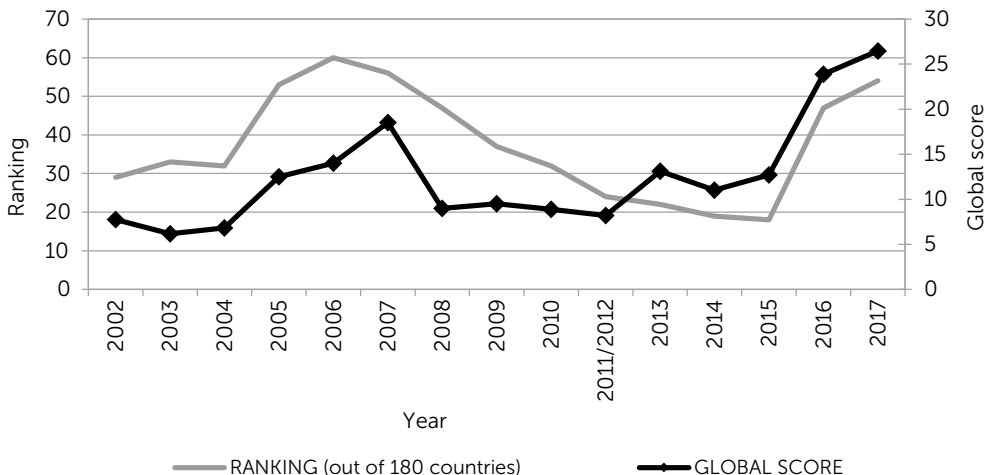
As a result, in 2017, Poland plummeted 7 ranks in the Reporters Without Borders' *World Press Freedom Index*, which was the second year in a row that Poland's ranking decreased (in 2016 the country fell 29 places in comparison to 2015) (See Figure 1). Figure 1 shows the trend for the last fifteen years: The black line stands for



THE FREEDOM HOUSE NOTED THAT THE DEGREE OF FREEDOM IN POLAND HAS BEEN SIGNIFICANTLY DETERIORATING

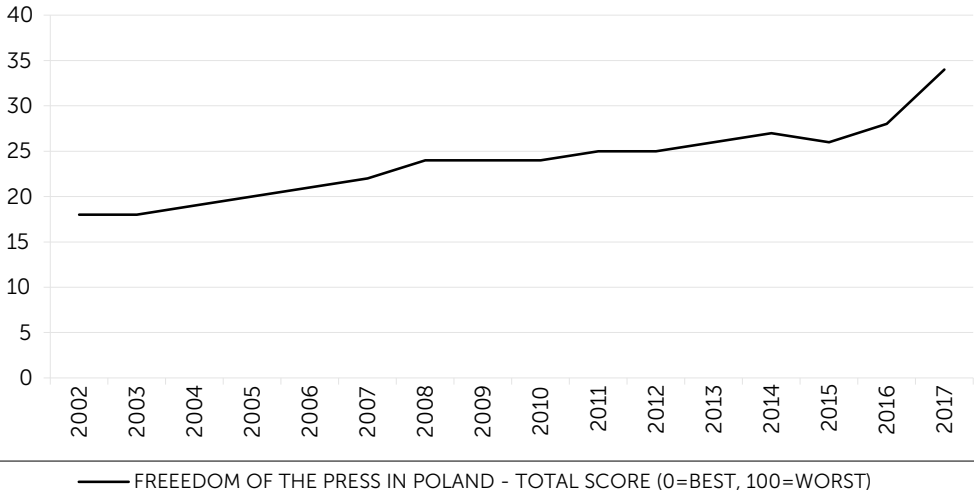
a number of points received (global score – the scale is ranging from 0 – the best possible score, to 100 – the worst) and the grey line stands for the position of Poland in the comparison with 179 other countries (ranking). A significant decrease of the Poland's rank occurred already during the previous PiS government, in 2005-07. [See Figure 1: Press Freedom in Poland, 2002-2017]

Figure 1: Poland in the World Press Freedom Index, 2002-2017



Source: Reporters Without Borders, *World Press Freedom Index*, Available [online]: <https://rsf.org/en/ranking>.

Figure 2: Poland in the Freedom of the Press Reports, 2002-2017



Sources: Freedom House, *Freedom of the Press Report*; Freedom House. *Freedom of the Press*. Washington. Available [online]: <https://freedomhouse.org/report/freedom-press/freedom-press-2017>

The Freedom House – an organization based in the United States and involved in promotion of democracy and civil liberties – also has negatively evaluated the current state of freedom in Poland, including the condition of media. In the last three annual *Freedom in the World* reports, the Freedom House noted that the degree of freedom in Poland has been significantly deteriorating. The watchdog uses a score from 0 to 100, where zero means a lack of, and one hundred means a full range of civil liberties and freedoms. In 2016, Poland received 93 points,<sup>1</sup> in 2017 – 89 points,<sup>2</sup> and in 2018 – 85 points.<sup>3</sup>

The authors of the Freedom House 2017 report identified the following major factors contributing to the fall of Poland's position in the ranking: changes in the judicial system, partisan control over the public media

and civil service, political pressure such as the so-called historical policy (promoting a very subjective version of Polish history) on scientists and journalists, attempts to tighten the anti-abortion law, and limitations on journalists' access to parliament.<sup>4</sup>

*The Freedom in the World* gives the big picture of a wide range of liberties in a given country. The freedom of media is just one of the subsections. The reason why we mention here the whole report and the aggregate score is because we believe that many other issues raised there (eg. breaking the separation of powers) have an indirect, but serious impact on the freedom of media.

The Freedom House publishes reports that also cover only the condition of the press. The score is worrying here as well:

<sup>1</sup> Freedom House (2016) *Freedom in the World*. Available [online]: <https://freedomhouse.org/report/freedom-world/2016/poland>

<sup>2</sup> Freedom House (2017) *Freedom in the World*. Available [online]: <https://freedomhouse.org/report/freedom-world/2017/poland>

<sup>3</sup> Freedom House (2018) *Freedom in the World*. Available [online]: <https://freedomhouse.org/report/freedom-world/2018/poland>

<sup>4</sup> Freedom House (2017) *Freedom in the World*. Available [online]: <https://freedomhouse.org/report/freedom-world/2017/poland>

**free speech**

**RETURN  
TO GLORY**



SINCE THE FALL  
OF COMMUNISM  
IN 1989  
– THAT IS, FOR NEARLY  
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AND RADIO

in 2015 – 26/100 points,<sup>5</sup> in 2016 – 28/100 points,<sup>6</sup> and in 2017 – 34/100 points<sup>7</sup> (the scale is: 0=Most Free, 100=Least Free). It is a radical deterioration in comparison to the previous years (See Figure 2). Moreover, in 2017 Polish media was for the first time in many years considered as “partly free” (earlier, in the post-communist era, they were considered to be “completely free”) in the Freedom of The Press Report.<sup>8</sup>

<sup>5</sup> Freedom House (2015) *Freedom of the Press*. Available [online]: <https://freedomhouse.org/report/freedom-press/2015/poland>

<sup>6</sup> Freedom House (2016) *Freedom of the Press*. Available [online]: <https://freedomhouse.org/report/freedom-press/2016/poland>

<sup>7</sup> Freedom House (2017) *Freedom of the Press*. Available [online]: <https://freedomhouse.org/report/freedom-press/2017/poland>

<sup>8</sup> Ibid

The Freedom House researcher’s argumentation was clear and simple, “government intolerance toward independent or critical reporting, excessive political interference in the affairs of public media, and restrictions on speech regarding Polish history and identity”<sup>9</sup> were listed as the factors contributing to the overall deteriorating situation in this area.

The drop in Poland’s position in the above-mentioned rankings is not accidental. This is one of the results of a deliberate strategy of the ruling party to strengthen its power over democratic restraints.

The PiS party is trying to restrict the freedom of the press, or mass media in general, by using several methods.

### **I THE TAKEOVER OF THE PUBLIC MEDIA**

As in many countries, Poland has public broadcasters in radio (eg. “Jedynka”, “Dwójka”, “Trójka”, “Czwórka” and “Polskie Radio 24”) and television (eg. TVP1, TVP2, TVP.INFO, TVP Polonia). The state is the owner of these media, and their mission is to broadcast politically neutral, high-quality and non-commercial content. In practice, public broadcasters – especially television – in the pursuit of reaching advertisers, often offer content that is not sophisticated but extremely commercial. The major problem, however, is the political allegiance of these institutions.<sup>10</sup>

Since the fall of communism in 1989 – that is, for nearly thirty years now – Poland has not been able to build a politically independent public television and radio. How-

<sup>9</sup> Freedom House (2017) *Freedom of the Press*. Available [online]: <https://freedomhouse.org/report/freedom-press/2017/poland>

<sup>10</sup> Foy, H. and Wasik, Z. (2016) “Poland: An Inconvenient Truth,” [in:] *Financial Times*, May 1. Available [online]: <https://www.ft.com/content/4344ca44-0b94-11e6-9cd4-2be898308be3>

ever, until 2015, the pro-government involvement of these media varied, but never took on such dimensions as it did after the 2015 elections.

The head of public television Jacek Kurski (Telewizja Polska, TVP), a former PiS politician, does not even conceal his political bias, arguing that "his" station is a counterbalance to the liberal media. As the watchdog portal Oko.press points out, such an attitude infringes on national and European law.<sup>11</sup>

The public media, funded by the common subscription fee, are legally bounded to be pluralistic, non-partisan, independent, and should not adjust their content based on the competition from the commercial broadcasters<sup>12</sup>. Noteworthy, the transformation of public media into a propaganda tool took place through the dismissal of hundreds of journalists since the beginning of 2016.<sup>13</sup> These vacancies were filled with employees transferred from private right-leaning media.<sup>14</sup>

The above indicated events do not prove the existence of direct censorship in Poland, but they do provide evidence of an

<sup>11</sup> Szczęśniak, A. (2017) "Jacek Kurski bez ściemy o TVP: Telewizja publiczna nie ma być pluralistyczna. Ma być prorządowa," [in:] OKO.press, October 22. Available [online]: <https://oko.press/jacek-kurski-bez-sciemy-o-tvp-telewizja-publiczna-byc-pluralistyczna-byc-prorzadowa/>

<sup>12</sup> Ibid.

<sup>13</sup> Porter, K. (2017) "The Ongoing Struggle for Media Freedom in Poland," [in:] *Public Media Alliance*, January 6. Available [online]: <https://www.publicmediaalliance.org/ongoing-struggle-media-freedom-poland/>;

"Eroding Checks and Balances," (2017), [in:] *Human Rights Watch*, October 24. Available [online]: <https://www.hrw.org/report/2017/10/24/eroding-checks-and-balances/rule-law-and-human-rights-under-attack-poland>

<sup>14</sup> Brzezicki, Ł. (2016) "Trwa desant z TV Republika do mediów publicznych. Odchodzą wydawcy, prowadzący, operatorzy," [in:] *wirtualnemedi.pl*, August 6. Available [online]: <http://www.wirtualnemedi.pl/artykul/trwa-desant-z-tv-republika-do-mediow-publicznych-odchodza-wydawcy-prowadzacy-operatorzy>

indirect restriction of freedom of speech. The criteria of whether a journalist in public media, which should be a model of impartiality, is employed, should not be determined by accepting to be a part of the partisan propaganda or not. This is particularly dangerous due to the large market share of these media, especially public television<sup>15</sup> (eg. in 2016, TVP1 was the second – with 10.79% market share – and in 2017 the third – with 8.94% – the most popular TV station in Poland). The fourth place belonged to TVP2 in both years.<sup>16</sup>

The challenges of building an independent public media in Poland, an on-going issue over the last thirty years, plays a serious role in the debate on privatization and the creation of a more efficient system of promoting ambitious and valuable content.

## II PUBLICLY OWNED BUSINESS ADVERTISING AS A PRESSURE TOOL

According to the Organization for Economic Co-operation and Development (OECD), Poland has the largest share of state-owned enterprises (SOEs) in the economy, in comparison to all other OECD and European Union (EU) countries.<sup>17</sup> As the Polish liberal think tank Civil Development Forum (FOR) indicates, 17 of the 50 largest Polish companies fully

<sup>15</sup> The Chanel One of the Polish Public Television (TVP) has the biggest (however decreasing) share in the Polish television market. See: Kurdupski, M. (2018) "TVP i TVN liderami, udany styczeń TVP2. Duży wzrost TTV i TV Puls," [in:] *wirtualnemedi.pl*, February 2. Available [online]: <http://www.wirtualnemedi.pl/artykul/ogladalnosc-telewizji-styczen-2018>.

<sup>16</sup> Reisner, J. (2017) "Rynek telewizyjny w II kwartale 2017 roku," [in:] *Krajowa Rada Radiofonii i Telewizji*, Available [online]: [http://www.krrit.gov.pl/Data/Files/\\_public/Portals/0/kontrola/program/tv/kwartalne/rynek-tel-ewizyjny-w-ii-kwartale-2017.pdf](http://www.krrit.gov.pl/Data/Files/_public/Portals/0/kontrola/program/tv/kwartalne/rynek-tel-ewizyjny-w-ii-kwartale-2017.pdf)

<sup>17</sup> Trzeciakowski, R. (2016) "Wciąż za dużo państwa w polskiej gospodarce," [in:] *Analiza FOR*, June 9, No. 8/2016. Available [online]: <https://for.org.pl/pl/d/8d5f17a217faf9417fa0ff903122ead3>



AFTER THE CHANGE OF THE POLISH GOVERNMENT IN 2015, THE LARGEST SOES IN POLAND RADICALLY DECREASED THE NUMBER OF ADVERTISEMENTS IN MEDIA THAT WERE INCREASING THEIR SHARE OF THE MARKET, BUT WHICH WERE CRITICAL OF THE GOVERNMENT

or partially belong to the state.<sup>18</sup> The first seven positions on the *Wprost* magazine list of *The 200 Biggest Polish Companies 2017*<sup>19</sup> occupy companies where the state is the largest single stakeholder. In practice, state ownership means that politi-

cians currently in power delegate their representatives to managerial positions in such companies.<sup>20</sup>

One of the results of these political appointments are changes in advertising strategy and, in particular, *where* advertisements are placed. The choice is often not based on efficiency, but political sympathy. After the change of the Polish government in 2015, the largest SOEs in Poland radically decreased the number of advertisements in media that were increasing their share of the market, but which were critical of the government. Further, they increased spending in the press and TV stations whose market share was shrinking, but which were supportive to the PiS. As daily *Gazeta Wyborcza* indicates, the earnings of TVP (controlled by the parliamentary majority) from SOE commercials in 2016 amounted to PLN 32 million (app. EUR 8 million) – more than in 2015, despite its shrinking market share by 5.86%. At the same time, its private competitor, TVN, had a 4% rise on the market, but sold less commercials to these companies by PLN 36 million (app. EUR 9 million).<sup>21</sup>

When comparing 2016 to 2015, a similar situation occurred when weekly magazines critical of the ruling party (such as *Polityka* and *Newsweek Polska*) received much fewer advertisements than the PiS-friendly ones (*wSieci, Do Rzeczy*), despite previously having a larger market share.

<sup>18</sup> Ibid.

<sup>19</sup> "200 Największych Polskich Firm 2017," [in:] *wprost.pl*. Available [online]: <http://rankingi.wprost.pl/200-najwieszych-firm>

<sup>20</sup> Mikołajewska, B. (2017) "Miliony złotych dla ludzi PiS w spółkach z udziałem Skarbu Państwa. OKO.press publikuje listę płac. Część I," [in:] OKO.press, March 28. Available [online]: <https://oko.press/miliony-zlotych-dla-ludzi-pis-w-spolkach-z-udzialem-skarbu-panstwa/>

<sup>21</sup> Sudak, I. (2017) "Państwowe spółki nieracjonalnie wydają pieniądze na reklamę w mediach. Decyduje sympatia polityczna, nie racjonalność wydatków," [in:] *wyborcza.pl*, July 4. Available [online]: <http://wyborcza.pl/7,155287,22046074,panstwowe-spolki-nieracjonalnie-wydaja-pieniadze-na-reklame.html>

Table 1: The value of SOE's advertisements in weekly magazines and their circulation

	<i>wSieci</i>	<i>Do Rzeczy</i>	<i>Wprost</i>	<i>Polityka</i>	<i>Newsweek Polska</i>
<b>Value of SOE advertisements in the year 2015 (in millions PLN)</b>	1	1	7	7	4
<b>Average sale of magazine January-June 2015</b>	75 416	52 745	43 992	118 636	111 205
<b>Value of SOE advertisements in the year 2016 (in millions PLN)</b>	11	8	12	3	1
<b>Average sale of magazine January-June 2016</b>	74 463	56 352	26 124	119 915	113 939

Source: [www.wirtualnemedia.pl](http://www.wirtualnemedia.pl)

Table 1 compares the circulation of weekly magazines and the value of SOE advertisements published in them in 2015 and 2016 (pro-PiS magazines are in the gray columns). It shows that changes in advertising budgets for a given weekly magazine were not explained by the readership.

Also, there was a large increase in the number of advertisements placed in *Wprost* with a pronounced simultaneous drop in its market position (see Table 1). This was a weekly magazine, which in 2014 published many illegal recordings compromising numerous politicians of the then-governing liberal Civic Platform (PO). Although the recordings did not contain any evidence of illegal activities, they were publicly believed to have contributed to the electoral defeat of the party in the 2015 elections.<sup>22</sup> *Gazeta Polska*, a weekly magazine sympathizing with the PiS, is another example. Advertising revenues of this magazine increased in 2016 – in comparison to 2015 – by over 300% (despite a slight decrease in sales from 19,000 to 18,000 copies). In absolute terms, it means profits jumped to PLN 3.5 million (app. EUR 0.9 million) – from PLN

1.5 million (app. EUR 0.4 million) to almost PLN 5 million (app. EUR 1.25 million). Since 2016, the main advertisers in Poland are, of course, SOEs.<sup>23</sup>

The marketing policy of the SOEs is not a direct tool of censorship, but it is undoubtedly a form of pressure exerted on journalists. This is a particularly negative phenomenon in a country like Poland with a generally low level of readership. The stream of advertisements from state-owned enterprises is of great importance for the financial stability of publishers. This also can influence journalists: a substantial increase in revenues in exchange for not criticizing the government.

The problem of where SOEs place their advertisements has existed long before the PiS took power. During the previous government coalition PO-PSL<sup>24</sup> in the years 2007-2015, many state-owned enterprises did not advertise in media sympathizing with the opposition. Neverthe-

<sup>22</sup> Cienski, J. (2015) "Polish Right Sweeps Parliamentary Elections," [in:] [politico.eu](http://politico.eu), October 25. Available [online]: <https://www.politico.eu/article/polands-government-defeated-in-parliamentary-elections-2/>

<sup>23</sup> Czuchnowski, W. (2016) "Reklamy pod sam korek, czyli jak prawicowe media zarabiają, od kiedy rządzi PiS," [in:] [wyborcza.pl](http://wyborcza.pl), October 15. Available [online]: <http://wyborcza.pl/1,75398,20839408,reklamy-pod-sam-korek-czyli-jak-prawicowe-media-zarabiaja-dzieki.html>

<sup>24</sup> PSL – Polskie Stronnictwo Ludowe (Polish Peasants Party).



less, there were also substantive reasons for this position, as the right-wing media had a smaller market share than those of a more liberal profile. Moreover, the liberal media continued to publish critical articles about the authorities, despite public advertising, which can hardly be said about the present media close to the ruling party. The political involvement of SOEs in the media market is one of the main arguments for their privatization. As long as politicians control these companies, there is an inherent risk that they will be used for political purposes.<sup>25</sup>

### III PROSECUTORS VS. JOURNALISTS

One of the first changes in the judicial system introduced by the current government was an integration of the Attorney General's Office with the Minister of Justice (a system which had also been in force in the period of 1990-2010). This move was a retraction from a legislation<sup>26</sup> introduced by the previous coalition, aimed at separating the Attorney General's Office from direct political influence.<sup>27</sup>

The effects of integrating these two offices are visible on many levels, such as in the activities of the Attorney General's Office against independent journalists. In November 2017, the Society of Journalists (Towarzystwo Dziennikarskie, TD) published an open letter describing this issue,

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<sup>25</sup> Siudak, I. (2017) "Państwowe spółki nieracjonalnie wydają pieniądze na reklamę w mediach. Decyduje sympatia polityczna, nie racjonalność wydatków," [in:] *Gazeta Wyborcza*, July 4. Available [online]: <http://wyborcza.pl/7,155287,22046074,panstwowe-spolki-nieracjonalnie-wydaja-pieniadze-na-reklame.html>

<sup>26</sup> Ustawa z dnia 9 października 2009 r. o zmianie ustawy o prokuraturze oraz niektórych innych ustaw (2009) [in:] *Dziennik Ustaw*, October 27. Available [online]: <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20091781375>

<sup>27</sup> Under the reform legislation, the General Prosecutor was appointed by the President of Poland from two candidates presented by the National Council of the Judiciary and the Prosecutors National Council.

in which it recalled numerous examples of so-called "legal harassment," referring to the abuse of law to persecute specific individuals – in this case: journalists. As the authors point out, state institutions often do not respond to press allegations, or provide corrections or conduct substantive discussions with critics, but instead threaten them with legal sanctions.

Initially, politicians tried to intimidate journalists through the threat of trials for enormous financial compensation. However, due to the low effectiveness of this method, politicians, who are criticized by the media, now submit reports to the Attorney General's Office. Even if the case does not end up in court, the repeated calls for questioning discourage journalists from investigating politicians. Among the authors facing investigation by the Attorney General's Office are Wojciech Czuchnowski (for articles on changes in the judicial system), Tomasz Piątek (for a series of articles and a book about a former minister of national defense) and Andrzej Stankiewicz (for writing about the SKOK<sup>28</sup> semi-banking system associated with PiS politicians).<sup>29</sup>

### IV ELIMINATION OF GOVERNMENT SUBSIDIES FOR INDEPENDENT MAGAZINES

Every year, the Ministry of Culture in Poland allocates grants for niche ambitious magazines covering a wide range of political and cultural topics. The current Polish government radically reduced the number of titles

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<sup>28</sup> SKOK (in Polish: Spółdzielcza Kasa Oszczędnościowo-Kredytowa) – National Association of Co-operative Savings and Credit Unions.

<sup>29</sup> "Towarzystwo Dziennikarskie: to nowa faza szykan wobec dziennikarzy krytycznych wobec władzy," (2017) [in:] OKO.press, November 17. Available [online]: <https://oko.press/towarzystwo-dziennikarskie-nowa-faza-szykan-wobec-dziennikarzy-krytycznych-wobec-wladzy/>



**pump up  
secret talks**

**Challenge  
To Defend**

entitled to this support. The grants were limited mainly to religious and conservative publishers.<sup>30</sup>

As reported by the daily *Gazeta Wyborcza* in 2015, grants were awarded to 50 titles, a year later to 41 titles, and in 2017, only to 17 titles. This small group included such right-wing magazines as *Arcana*, *Teologia Polityczna*, and *Pressje*, but did not include any liberal (eg. *Liberté!*) or leftist (eg. *Krytyka Polityczna*) titles, or even the republican *Nowa Konfederacja*, which has recently been critical of the PiS party.<sup>31</sup> This is just another sign for journalists in Poland, if you are skeptical about the government, you will face financial consequences. This system incentivizes self-censorship.

## V RESIGNATION OR RESTRICTIONS ON PRESS SUBSCRIPTION BY STATE INSTITUTIONS

Another form of exerting pressure on media is reducing or canceling subscriptions to independent newspapers and magazines by ministries, public offices, and other state institutions. As portal *Wirtualnemedi.pl* reported, in the first months after the 2015 change of government, the Ministry of Finance, the Ministry of Economic Development, the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Sport, the Ministry of the Environment, the Ministry of National Education, and the Ministry of Treasury reduced the number

of subscribed copies of *Gazeta Wyborcza*, *Polityka*, and *Newsweek Polska* by more than 50%.

Smaller cuts were carried out in the Ministry of Digitalization, the Ministry of Family, Labor and Social Policy, the Ministry of Agriculture and Rural Development, the Ministry of National Defense, and the Ministry of Culture and National Heritage. Restrictions to subscribing to these titles were introduced by the Ministry of Infrastructure, the Ministry of Health, the Ministry of Science and Higher Education, and other institutions. At the same time, most of these ministries significantly increased their subscriptions to right-wing magazines, supportive of the current government.<sup>32</sup>

In January 2016, the Ministry of Justice removed *Gazeta Wyborcza*, *Newsweek Polska*, and *Polityka* from the list of press titles that may be purchased by the appeal courts in Poland.<sup>33</sup> In the middle of 2017, the Ministry of Finance's guidelines to regional tax and customs offices were disclosed. The document prohibited subscriptions to such magazines as *Polityka* and *Newsweek Polska*, and restricted the purchasing of *Dziennik Gazeta Prawna* and *Rzeczpospolita*.<sup>34</sup>

<sup>30</sup> Mrozek, W. (2017) "Prawica z dotacjami, liberałowie bez pieniędzy. Ministerstwo Kultury publikuje wyniki konkursu," [in:] OKO.press, February 16, Available [online] <https://oko.press/prawica-dotacjami-liberalowie-bez-pieniedzy-ministerstwo-kultury-publikuje-wyniki-konkursu/>

<sup>31</sup> Grzesiczak, Ł., Nurek, G. (2017) „Dotacje Ministerstwa Kultury tylko dla 17 czasopism! Bez pieniędzy *Krytyka Polityczna*, *Liberté!*, *Fronda Lux*, *Jazz Forum*, *Midrasz...*” [in:] *wyborcza.pl*, February 15. Available [online]: <http://wyborcza.pl/7,75410,21378884,dotacje-ministerstwa-kultury-tylko-dla-17-czasopism-bez.html>

<sup>32</sup> "Tylko resorty infrastruktury, zdrowia i nauki zmniejszyły prenumeraty *Gazety Wyborczej*, *Polityki* i *Newsweeka* (analiza)," (2016) [in:] *wirtualnemedi.pl*, October 1. Available [online]: <http://www.wirtualnemedi.pl/artykul/tylko-resorty-infrastruktury-zdrowia-i-nauki-nie-zmniejszyly-prenumeraty-gazety-wyborczej-polityki-i-newsweeka-analiza/page:1>

<sup>33</sup> "Ministerstwo Sprawiedliwości zmienia katalog prasy dla sądów. Z listy znika *Newsweek* i *Gazeta Wyborcza*," (2016) [in:] *wirtualnemedi.pl*, January 1. Available [online]: <http://www.wirtualnemedi.pl/artykul/ministerstwo-sprawiedliwosci-zmienia-katalog-prasy-dla-sadow-z-listy-znika-newsweek-i-gazeta-wyborcza>

<sup>34</sup> "Ministerstwo Finansów do karbówek: zakaz prenumeraty prasy lokalnej, *Polityki*, *Newsweeka* i *Pulsu Biznesu*, mniej *DGP* i *Rz.*" (2017) [in:] *wirtualnemedi.pl*, June 7. Available [online]: <http://www.wirtualnemedi.pl/artykul/ministerstwo-finansow-do-skarbowek-zakaz-prenumeraty-prasy-lokalnej-polityki-newsweeka-i-pulsu-biznesu-mniej-dgp-i-rz>

In the spring of 2017, Andrzej Melak, one of the PiS Members of the Parliament from Warsaw, contacted the Minister of Energy Krzysztof Tchórzewski, who is a supervisor of the Orlen Group, a leading state-owned provider of service stations in Central Europe. Melak asked Tchórzewski to ban the sale of *Gazeta Wyborcza*, *Polityka*, and *Newsweek Polska* at the Orlen gas stations. The Ministry did not sign-off on the ban. However, in March 2017, Orlen canceled a contract with Agora, the publisher of *Gazeta Wyborcza*, for the display of press titles,<sup>35</sup> resulting in consumer complaints about the lack of availability of *Gazeta Wyborcza* at Orlen gas stations.<sup>36</sup> At the same time, the media reported that employees of Lotos (another SOE like Orlen) had received the order to effectively display right-wing magazines at their petrol stations.<sup>37</sup>

## VI MEDIA ACCESS LIMITATIONS TO THE POLISH NATIONAL PARLIAMENT

In December 2016, PiS tried to change the rules governing media access to the Polish national parliament (i.e. limiting number of press passes, reducing the right of recording and live broadcasting, and closing the common areas).<sup>38</sup> Jointly with the oppo-

sition Members of the Parliament and the Ombudsman, who claimed the proposed changes are unconstitutional, many media outlets protested the proposal, including those sympathizing with the government.<sup>39</sup> Eventually, the ruling party withdrew the proposal. However, in the following months, minor changes limiting journalists' access to the parliament were gradually introduced (mostly closing of the common areas).<sup>40</sup>

As publicist Michał Sutdrzyński noted, these attempts to limit media access to the parliament are not only hindering the work of journalists, but, above all, they pose a threat to democracy, which depends on transparency and free access to information about current political events.<sup>41</sup>

## VII A NEW MEDIA LAW DRAFT

Since the last parliamentary election in 2015, the ruling PiS party has been working on the so-called Deconcentration and Polonization Act (in Polish: "ustawa o dekoncentracji struktur właścicielskich w mediach"). This bill is to regulate the media market in Poland. According to the official statements of the parliamentary majority, the proposed changes are supposed

<sup>35</sup> Sudak, I. (2017) "Poset PiS domaga się wycofania ze stacji PKN Orlen m.in. *Gazety Wyborczej*," [in:] *wyborcza.pl*, May 17. Available [online]: <http://wyborcza.pl/7,75398,21827118,posek-pis-andrzej-melak-niechce-gazety-wyborczej-na-orlenie.html>

<sup>36</sup> Lis, T. (2016) "*Newsweek i Gazeta Wyborcza* są chowane na stacjach Orlen. Agora z rozwiązaną umową na ekspozycję tytułów," [in:] *wirtualnemedial.pl*, July 7, Available [online]: <http://www.wirtualnemedial.pl/artykul/tomasz-lis-newsweek-i-gazeta-wyborcza-sa-chowane-na-stacjach-orlen-agora-z-rozwiazana-umowa-na-ekspozycje-tytulow#>

<sup>37</sup> Katka, K. (2017) "Lotos promuje prawicowe tytuły na swoich stacjach," [in:] [trojmiasto.wyborcza.pl](http://trojmiasto.wyborcza.pl), January 9. Available [online]: <http://trojmiasto.wyborcza.pl/trojmiasto/1,35612,21217979,lotos-promuje-prawicowe-tytuły-na-swoich-stacjach.html>

<sup>38</sup> "Mniej dziennikarzy i ograniczony dostęp do polityków. Sejm wprowadza ograniczenia dla mediów," (2016), [in:] *wiadomości.gazeta.pl*, December 15, Avail-

able [online]: <http://wiadomosci.gazeta.pl/wiadomosci/7,114883,21124006,mniej-dziennikarzy-i-ograniczony-dostep-do-politykow-sejm-wprowadza.html>

<sup>39</sup> "Rzecznik Praw Obywatelskich o zaproponowanych 14 grudnia zasadach dostępu dziennikarzy do informacji w Sejmie," (2016) [in:] [rpo.gov.pl](http://rpo.gov.pl), December 19. Available [online]: <https://www.rpo.gov.pl/pl/content/RPO-o-propozycjach-z-14-grudnia-o-dostepie-dziennikarzy-do-informacji-w-Sejmie>

<sup>40</sup> "Kolejne ograniczenia dla dziennikarzy w Sejmie. Byle dalej od Prawa i Sprawiedliwości," (2017), [in:] [polsatnews.pl](http://polsatnews.pl), December 8. Available [online]: <http://www.polsatnews.pl/wiadomosc/2017-12-08/kolejne-ograniczenia-dla-dziennikarzy-w-sejmie-byle-dalej-od-prawa-i-sprawiedliwosci/>

<sup>41</sup> Szutdrzyński, M. (2016) "O ograniczeniu dostępu dziennikarzy do Sejmu," [in:] *Rzeczpospolita*, December 15. Available [online]: <http://www.rp.pl/Komentarze/312159868-Michal-Szutdrzynski-o-ograniczeniu-dostepu-dziennikarzy-do-Sejmu.html>

to increase the share of Polish capital in the media industry (currently, a significant part of the market belongs to foreign owners).<sup>42</sup> However, it seems that the main goal is to weaken the independence of media.<sup>43</sup>

At the beginning of 2018, the media reported that these bills would not be processed in the parliament in the forthcoming future.<sup>44</sup> The decision to freeze these bills probably results from their incompatibility with international law (the new Act would constrain the free movement of capital – one of the fundamental EU rules). As such, the Polish government seems to be reluctant to open another field of conflict with the European Union and the United States. Nevertheless, as the journalist Agnieszka Kublik noted, the goal of the law, which may appear at any moment in parliament, may cause a so-called “freezing effect” in many editorial staffs due to the reluctance to provoke the ruling party with inconvenient material.<sup>45</sup>

## VIII THE DEATH CAMP LAW

A new law regarding death camps on Polish territory is yet another recent example limiting freedom of speech in Poland.

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<sup>42</sup> Dąbrowska, J. (2017) “Ustawa o dekoncentracji mediów – uzdrowienie rynku czy naruszenie interesów Polski?”, [in:] *wirtualnemedi.pl*, August 13. Available [online]: <http://www.wirtualnemedi.pl/arttykul/ustawa-o-dekoncentracji-mediow-uzdrowienie-rynku-czy-rzazace-naruszenie-interesow-polski>

<sup>43</sup> Wielowieyska, D. (2017) „Minister Sellin fałszywie opisuje rynek medialny w Polsce,” [in:] *wyborcza.pl*, August 29. Available [online]: <http://wyborcza.pl/7,75968,22293571,minister-sellin-falszywie-opisuje-rynek-medialny-w-polsce.html>

<sup>44</sup> “Dekoncentracji mediów nie będzie,” (2018) [in:] *Business Insider Polska*, January 15. Available [online]: <https://businessinsider.com.pl/media/dekoncentracja-mediow-w-polsce-zmian-nie-bedzie/8p96wmp>

<sup>45</sup> Kublik, A. (2017), “Jesień to pora repolonizacji, czyli PiS zabiera się za media prywatne. To będzie załatwione, choć będzie wielki opór,” [in:] *wyborcza.pl*, September 11. Available [online]: <http://wyborcza.pl/7,75968,22342547,jesien-to-pora-repolonizacji-czyli-pis-zabiera-sie-za-media.html>

Adopted by the Polish parliament in January 2018 and quickly signed by President Andrzej Duda, the amendment to the Act on the Institute of National Remembrance introduces criminal penalties for attributing Nazi crimes to the Polish nation or the Polish state “contrary to the facts”.<sup>46</sup>

The Act excludes academics and artists from criminal liability, but the wording of the law is imprecise. The boundary between academic and journalistic activity is quite fluid, just like the phrase “contrary to the facts” – as historical research develops, facts are liable to change. In addition, the concept of the “Polish nation” also remains unclear. As conservative journalist Witold Jurasz notes, in practice, the law opens the way for censorship. Jurasz also refers to the statements of some PiS politicians who openly admitted that the new law is aimed to restrict the freedom of expression of specific popular writers (eg. Jan Tomasz Gross) whose vision of Polish history is different from what is popularized by the current Polish government.<sup>47</sup>

In an analysis for the portal *Oko.press*, legal expert Patrycja Grzebyk points to numerous incompatibilities of the Act with both the Polish Constitution and international law, including basic rights such as the freedom of speech and the freedom of scientific research.<sup>48</sup>

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<sup>46</sup> “Ustawa z dnia 26 stycznia 2018 r. o zmianie ustawy o Instytucie Pamięci Narodowej – Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu, ustawy o grobach i cmentarzach wojennych, ustawy o muzeach oraz ustawy o odpowiedzialności podmiotów zbiorowych za czyny zabronione pod groźbą kary” (2018) Available [online]: [http://orka.sejm.gov.pl/opinie8.nsf/nazwa/771\\_u/\\$file/771\\_u.pdf](http://orka.sejm.gov.pl/opinie8.nsf/nazwa/771_u/$file/771_u.pdf)

<sup>47</sup> Jurasz, W. (2018) “Polska mogła uniknąć skandalu. Niestety znów okazało się, że nie mamy dyplomacji,” [in:] *Wiadomości Onet*, January 28. Available [online]: <https://wiadomosci.onet.pl/tylko-w-onecie/witold-jurasz-polska-mogla-uniknac-skandalu-niestety-znow-okazalo-sie-ze-nie-mamy-komentarz/ry9cbw8>

<sup>48</sup> Grzebyk, P. (2018) “Prezydent podpisał ustawę o IPN.

Although the ability to enforce the new law is questionable (due also to its vague wording), the general atmosphere of the intimidation of journalists and academics remains a serious problem.

## CONCLUSIONS

Despite the fact that in the 2015 campaign PiS presented itself as a moderate party promising better state management and improving social issues, the party carried out a ruthless attack on the rule of law and the separation of powers in Poland immediately after assuming office. Violations to the Polish Constitution, limits to the public's right to assembly, and restrictions on the independence of the judiciary took place gradually (often described as "salami tactics" or "the boiling frog story"<sup>49</sup>). The upswing of an economic cycle, generous social transfers ("Program Rodzina 500+"<sup>50</sup>) and portentous nationalistic rhetoric combined with weak opposition, significantly reduced social resistance to these changes.

Similar tactics may be applied to the media. The gradual introduction of legal changes, the use of large SOEs to influence the market, and the general atmosphere of

uncertainty and intimidation are meant to remodel the conditions in which the media operate in Poland.

Nevertheless, the return to official censorship, as was apparent during the communist era, seems unlikely. The ruling party tends to dominate the media market in Poland with their supporters and marginalizes the critical press, so that the power of their influence does not have a major impact on the election result.

Experience shows that the ruling party withdraws from certain political initiatives only when faced with strong and loud resistance (e.g. the attempt to tighten the anti-abortion law in 2016<sup>51</sup>). To keep the free and pluralistic media in Poland alive and well, it is vitally necessary to arouse the public interest and civic consciousness on these issues. This refers to both domestic and international public opinion, including the EU institutions. The public has a moral imperative to maintain a critical eye on the activities of the ruling party, and to warn against continuing threats to freedom of speech. ●

<sup>51</sup> See: Cocotas, A. (2017) "How Poland's far-right government is pushing abortion underground," [in:] *The Guardian*, November 30. Available [online]: <https://www.theguardian.com/news/2017/nov/30/how-polands-far-right-government-is-pushing-abortion-underground>

Oto 8 punktów, w których jest niezgodna z prawem międzynarodowym," [in:] OKO.press, February 8. Available [online]: <https://oko.press/prezydent-podpisal-ustawe-o-ipn-oto-8-punktow-ktorych-niezgodna-prawem-miedzynarodowym/>

<sup>49</sup> As George Pettit explains this metaphor (used in one of his songs): "The analogy is that if you take a frog and put it in boiling water, it will jump right out immediately, but if you put it in cold water and then you slowly turn the heat up, they'll just eventually fall asleep and die." [in:] *Urban dictionary*, Available [online]: <https://www.urbandictionary.com/define.php?term=boiled%20frogs>

<sup>50</sup> "Program Rodzina 500+" is a family income-supporting benefit according to which PLN 500 monthly (app. EUR 125) is granted for every second child under 18, and for the first child if the family income is below PLN 800 monthly (app. EUR 200). The law was adopted in February 2016 and payment of benefits began in April 2016.



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