

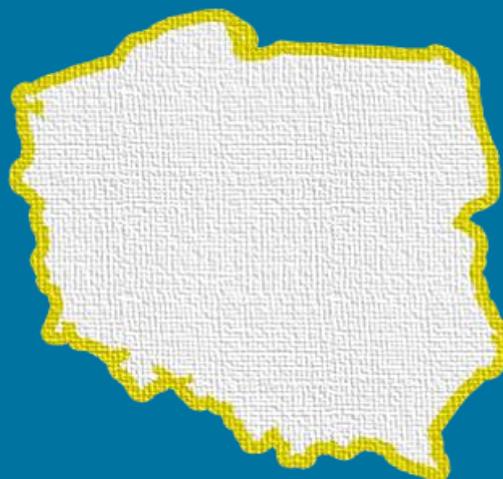


Democracy Declining: Erosion of Media Freedom in Poland

MEDIA FREEDOM RAPID RESPONSE (MFRR)
PRESS FREEDOM MISSION TO POLAND

(November-December 2020)

MISSION REPORT



#MediaFreedomRR





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This report has been prepared by the International Press Institute (IPI) with the support of:

- Article-19
- European Centre for Press and Media Freedom (ECPMF)
- European Federation of Journalists (EFJ)
- Free Press Unlimited (FPU)
- Osservatorio Balcani Caucaso Transeuropa (OBCT).



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Introduction

The conclusions outlined in this report reflect the findings of the recent joint press freedom mission to Poland carried out between November and December 2020 by the Media Freedom Rapid Response (MFRR). The mission was led by the International Press Institute (IPI) and joined by Article 19, the European Centre for Press and Media Freedom (ECPMF), the European Federation of Journalists (EFJ), Free Press Unlimited (FPU) and the Osservatorio Balcani e Caucaso Transeuropa (OBCT). The aim was to gather information about key developments for media freedom over the last year and better understand the key challenges facing journalists.

Due to the COVID-19 pandemic, the planned on-the-ground mission was switched to a virtual format through a series of online meetings over successive weeks. During the mission, the delegation met with a wide range of editors-in-chief and journalists from across the political spectrum, as well as academics, journalist associations, civil society organizations and the Polish Ombudsman. The delegation also held online meetings with representatives from the diplomatic missions of the United States of America and Germany in Warsaw, and Polish Member of European Parliament (MEP) and special rapporteur on media freedom Magdalena Adamowicz.

Repeated requests to meet with representatives of the governing Law and Justice (PiS) party via its spokesperson and different MPs went unanswered. Emails to 25 different PiS MEPs also did not receive a response. The Parliamentary Group for the Defense of Freedom of Speech and the members of the National Media Council also did not respond to repeated meeting requests. The mission's key findings are summarized below. Key themes are explored in more depth in the second section. A set of recommendations concludes the report.

Key Findings

- Media freedom in Poland now faces its greatest set of challenges since 2015. During the COVID-19 pandemic, the ruling Law and Justice (PiS) party continued to wage a multi-pronged attack on independent media in an effort to muzzle critical reporting and undermine watchdog journalism. On a national level, Poland's media landscape is still highly pluralistic and enjoys high levels of freedom of expression. However, five years of policies aimed at destabilising and weakening independent media has taken a debilitating toll on media freedom and pluralism.
- The centrepiece of PiS' plans for media reform have been efforts to "repolonise" and "deconcentrate" the media market. During the mission it was revealed for the first time that long-rumoured legislation had been prepared by the Ministry of Culture. This bill would impose limits on the level of capital invested in the domestic market by foreign media companies and limit the number of outlets that a single media group can own. Ostensibly aimed at creating greater pluralism, in reality these dual legal mechanisms are intended to concentrate more media under the control of the ruling party and its allies. If passed, both would pose a major threat to media freedom and come into direct conflict with EU law.
- However, faced with major political and diplomatic hurdles, so far this draft bill has yet to be introduced to parliament and PiS has instead been forced to search for alternative methods to achieve its aims. Initial efforts to copy the Hungarian system of having business and media allies step in and buy up independent titles have so far been unsuccessful. Instead, PiS has pioneered a form of media capture unique within the European Union: the nationalisation of private media companies via state-owned and controlled companies. This model achieved its first results in early December when a state energy firm headed by PiS appointees acquired control of Polska Press from German company Verlagsgruppe Passau, in a deal that hands PiS indirect control over 20 of Poland's 24 regional newspapers.
- The appointment of pro-government executives and journalists and a slow erosion of editorial independence is widely expected to follow, akin to the purge at the public broadcaster Telewizja Polska (TVP) in 2016. The sale represents a major setback for press freedom in Poland and potentially one of the biggest blows to independent journalism in the country in many years. By achieving this acquisition without legislative changes, the government engineered the long-

awaited takeover of a foreign-owned media company without provoking public diplomatic repercussions from other EU member states or the U.S or a head-on collision with the EU over the rule of law. The state energy giant PKN Orlen is now likely to remain the economic engine of PiS' media capture model.

- The bulk of PiS' attacks are reserved for a handful of large and influential liberal-leaning private media which remain openly critical of the ruling party and its policies. In the absence of "deconcentration" legislation, PiS is instead waging a coordinated and concerted campaign of administrative pressure against these outlets aimed at destabilising and undermining their businesses. Efforts to tighten the screws on independent media include antimonopoly investigations to block unfavoured mergers, licensing changes and the use of retroactive tax penalties and discretionary fines. Increasing government control over state regulatory bodies, advertising agencies and infrastructure such as printing presses and newsstands offer new avenues for multiplying this pressure. These measures mirror tactics used by the Orbán government in Hungary and are indicative of attempts at media capture.



Journalists in Poland work in a hyper-polarised society in which threats and insults linked to their profession have become increasingly normalised in recent years.

- State resources meanwhile continue to be weaponized to starve certain media of public advertising revenue. Since 2015, state institutions and state-owned and controlled companies stacked with PiS loyalists have ceased to subscribe to or place advertising in independent media, cutting off an important source of funding in a policy of economic strangulation. Though politicisation of state advertising is nothing new in Poland, it has reached new levels under PiS. This politically motivated manipulation of public money continued during the COVID-19 pandemic and is now leading to the artificial distortion of the media market in favour of pro-government publications.

- In an extension of this pressure campaign, legal harassment of independent media in Poland also reached unprecedented levels in 2020 as PiS officials and their allies continued efforts to bury critical outlets under an avalanche of costly and time-consuming court battles. Both publishers and publications have been targeted with vexatious civil defamation and libel cases. Questionable criminal investigations, though rarer, have also been brought disproportionately against watchdog media.
- Many lawsuits are initiated by government agencies, state bodies or PiS politicians themselves, and are aimed at draining newspapers' financial resources. The abusive nature of these cases means many can be classified as Strategic Lawsuits Against Public Participation (SLAPP), a form of legal harassment used to intimidate and silence public interest journalism. Editors and human rights organisations informed the mission that the number of these lawsuits has increased markedly under PiS. Crucially, the continued independence of Poland's lower courts has blunted the worst of these legal attacks. This underscores the clear connection between media freedom and judicial independence in Poland amid the EU's ongoing Article 7 procedure against Warsaw regarding pressure on courts and the rule of law.



This subtle but escalating assault on the freedom of the media is driven in part by PiS's populist ideology, which has instilled in its leaders the view that they alone represent the “will of the people” and wield a monopoly on truth.

- Journalists in Poland work in a hyper-polarised society in which threats and insults linked to their profession have become increasingly normalised in recent years. As media have become enmeshed in “culture wars”, social media vitriol has increasingly been targeted at journalists on both sides of the political spectrum. Many Polish editors interviewed by the mission said their reporters were routinely vilified, discredited and delegitimised in smears in pro-government media or by PiS officials. Tried-and-tested accusations include journalists being dismissed as “anti-Polish”, “political activists” or “foreign agents”.

- Gender-based insults against female journalists online and the publishing of unsubstantiated rumours and conspiracy theories about foreign publishers are also common. Pro-government mouthpieces and the public broadcaster TVP – which has effectively become a personal communication tool of the ruling party – are used to spread propaganda and at times relentlessly attack Law and Justice’s critics in the media, contributing to a worsening climate of hostility.
- In addition to vilification, journalists are also subject to discrimination when it comes to access to information. After taking power in 2015, PiS appointees were given leadership positions across state agencies. Public officials connected to the ruling party now routinely refuse communication or interviews with certain media. Reporters are often denied access to legally guaranteed and publicly held information without explanation. Critical reporting about officials or institutions is sometimes met with retaliation in the form of cancellation of accreditation or blocked entry to political events.
- To worsen matters further, journalists also faced an increased risk of violence in 2020. While physical attacks on journalists are rare in Poland, in October and November there was a clear increase in violence against journalists covering protests. Several were injured and some hospitalised after violence from both protesters and police officers. On some occasions, police hit or shot rubber bullets at journalists clearly identifiable by ‘PRESS’ insignia. Heavy-handed behaviour by law enforcement culminated in the high-profile arrest of a photojournalist in November.
- These developments reflect the continuation of PiS’ agenda, launched when it came to power in 2015, to fundamentally recalibrate and restructure the Polish media market in its favour. These reforms are justified as overhauling a system which PiS claims bears the antecedents of Communist rule that long excluded right-wing voices and viewpoints. Policies are therefore couched in the language of “rebalancing” the country’s media landscape in the name of greater pluralism. Behind this rhetoric, however, the true aim is to destabilise and weaken the influence of critical media while strengthening media aligned with its own nationalist agenda.
- This subtle but escalating assault on the freedom of the media is driven in part by PiS’s populist ideology, which has instilled in its leaders the view that they alone represent the “will of the people” and wield a monopoly on truth. Control of a legislative majority is wrongly taken as a carte-blanc

to undermine democratic norms and solidify its control over all areas of governance. This is said to be exacerbated by the fortress mentality of PiS leaders, who see critical journalism and investigative reporting as “oppositional”, rather than part of a democratic system’s necessary checks and balances.

- Five years of these continued policies mean Poland is now taking worrying steps down the path established by Hungary, whose government has in the last decade created and then exported a system of media capture unprecedented in the European Union. In a calculated cherry-picking exercise, PiS has selected parts of its model that are effective and found workarounds for those that do not fit the Polish system. As in Hungary, these policies have so far been scattered enough to avoid further battles with Brussels over the rule of law. New forms of pressure on independent media are slowly increasing. The effect, as one interviewee noted, is that “free journalism is slowly dying in Poland.”
- Nonetheless, significant opportunities for defending and strengthening media freedom in Poland remain. Private media in Poland are stronger and more well-established than their Hungarian counterparts. Government-friendly oligarchs used by FIDESZ to capture independent titles do not exist to the same extent in Poland. Potential conflicts over repolonisation and EU law look doomed to fail for PiS. Despite controversial judicial reforms, the rule of law in Poland has so far proven resilient for upholding journalists’ rights. Media freedom stands at an important junction. It is essential now to ensure PiS does not drive the country further down the path forged by Hungary.

Mission Report - Key Issues

I. ‘Repolonisation’: Acquisition of Private and Foreign-Owned Media

Efforts to “repolonise” the country’s foreign-owned press have [long](#) been the centrepiece of plans for media reform within PiS’ coalition government with the Agreement (Porozumienie) and Solidary Poland (Solidarna Polska). Politicians in the PiS-led ruling camp and their [allies](#) have [often accused](#) foreign-owned publications of editorial bias and propagated conspiracy theories about their malign interference in Polish democracy. This simmering debate [returned](#) to political discourse in 2020, rekindling concerns PiS was planning to place stricter rules on ownership as a way to force out foreign companies. The long-debated “repolonisation” law would [limit](#) foreign-owned companies to a stake of between 15% and 30% in domestic media. Foreign investment in print media is not currently restricted. Foreign companies are estimated to be invested in 40% of the country’s publications and own about 75% of distributed circulation. Such controls would largely affect Swiss-German Ringier Axel Springer Polska, which publishes Fakt, Newsweek and ONET.pl, as well as TVN24, owned by U.S media company Discovery. A supplementary bill on “deconcentration” would limit the number of outlets that a single media group can own, effectively breaking up larger groups such as Agora. In their place, PKN Orlen and PiS business allies would likely be used to step in and fill the hole left by foreign investors, muzzling critical publications and cementing further control over Polish media.

Since 2015, rumours have swirled that legislation had been drawn up. However, many interviewees told the mission that diplomatic [pressure](#) from the U.S ambassador to Poland, paired with wariness over the inevitable fight with Brussels about the legislation’s adherence to EU law, had forced PiS to shelve the plans and look for other options. Other interlocutors suggested a series of electoral victories for PiS has lessened the need for drastic measures. This appeared to change in the second half of 2020 when incumbent and PiS ally Andrzej Duda won the presidential election by an extremely narrow margin of 51-49%. Shocked by the closeness of the result, PiS has since moved to shore up its electoral support in preparation for future ballots by strengthening right-wing opinions in the media.

In the absence of legislation, the government has changed its tactics. In late 2020 it began using its leverage over companies owned by the State Treasury to step in and purchase media infrastructure and media businesses. This process began in November when the government-controlled state oil giant PKN Orlen [completed the purchase](#) of a 65% stake in newsstand operator

Ruch, which owns a network of 1,300 newspaper kiosks. During the mission, several interviewees expressed concern that the purchase would offer PiS significant influence over the infrastructure that distributes print media and allow it to raise prices or harass critical titles. Many raised fears Ruch-owned kiosks across the country would limit the display of newspapers and magazines critical of the government, leading to a drop in sales. Similar issues were [documented](#) when Orlen purchased a network of petrol stations in 2015. Numerous interviewees described the leadership of the petrochemicals firm as beholden to the ruling party. The State owns a decisive share in Orlen. Its CEO Daniel Obajtek and many other top figures were appointed directly by the Ministry of State Assets, which is headed by deputy prime minister and deep Kaczyński loyalist, Jacek Sasin. Later in November, [reports](#) emerged that representatives of PKN Orlen had also met with several influential media titles and publishers to make enquiries about selling their stakes. Among those approached was the [most popular TV station in Poland](#), TVN24. These advances were so far unsuccessful. One interviewee described Orlen as acting as the “deep pockets” of PiS in this new form of media capture.



PKN Orlen, a major Polish oil refiner and petrol retailer company. Poznan, Poland, May 8, 2018. Shutterstock

As the MFRR mission was concluding, the government achieved a major victory in its effort to “repolonise” the media. On December 7, PKN Orlen [announced](#) it would purchase 100% of the shares of Polska Press from German company Verlagsgruppe Passau for a reported PLN 120 million (€27 million). The deal hands the state-controlled firm ownership over more than 20 regional dailies, 120 weekly magazines and 500 online portals across the country and access to a [reported](#) 17.4 million readers. Such an acquisition of a media company by a state energy firm is

unprecedented within the EU. One interlocutor described this form of nationalisation as “repolonisation via the back door”. A second likened the oil company’s investment in the press market to Gazprom Media in Russia. Another said the sale was not motivated by business and instead described it as deeply political and aimed at cementing greater control over independent regional titles ahead of the 2023 local elections. However, interviewees from right-wing media told the mission such a move would help break up the dominance of foreign publishers. Orlen has denied the deal is politically motivated and [insists](#) there will be no interference in newsrooms.



Polska Press Group publishes 20 regional dailies in 15 regions of Poland (Source: polskapress.pl)

However a purge of critical voices like that undertaken at the public broadcaster TVP in 2016 is expected to follow. Witold Głowacki, editor and columnist at Polska Times, one of those media acquired by Orlen, told the mission he feared his and other titles were likely to come under pressure to tow the party line. Głowacki predicted that after a “quiet period”, largescale executive changes at Polska Press’ 15 regional sub-companies would then be followed by pressure on editors on local titles ramping up ahead of 2023 local elections. Unlike TVP, no media law exists which could limit the scale or severity of editorial changes at privately-owned Polska Press. Throughout December [reports](#) suggested the company was again considering the acquisition of Gremi Media, which includes titles including two of the most respected dailies in Poland, Rzeczpospolita and Parkiet. Interviewees said other approaches may also have included Bauer

Media Group, regarding the RMF FM radio station, and Infor Biznes, owner of daily newspaper Dziennik Gazeta Prawna. Further acquisitions are dependent on the readiness of these media companies to sell. The hostile atmosphere towards foreign investors combined with the economic impact of the COVID-19 pandemic has likely increased the opportunity for further acquisitions. These tactics bare similarities to the [strategy](#) used by the FIDESZ in Hungary to push out foreign, primarily German and Swiss, owners and then replace them with government-friendly oligarchs. In Poland, however, the country's distinctive transition after the fall of Communism resulted in less cronyism and oligarchical control over key industries. With few billionaire business tycoons to rely upon, PiS has instead opted to use state-owned and controlled companies as the economic engines of its media capture model.

To the shock of many observers, in early January 2021 it was then revealed that the long-rumoured draft legislation had been prepared by the Ministry of Culture to “repolonise” and “deconcentrate” the country's media market. In a [written parliamentary response](#), Culture Minister Piotr Gliński officially disclosed for the first time that a draft bill had been prepared, adding it was “currently impossible to give a specific date [when] the draft will appear in the Sejm”. One interlocutor suggested PiS was now waiting for the opportune political moment. Questions remain over whether these laws would have a retroactive effect on previous acquisitions or only affect future sales. Gliński has [stressed](#) the bill would be modelled on French or German laws. However, during the mission interviewees noted that these laws only limit foreign ownership from outside the EU. Lukasz Lipinski, deputy-editor-in-Chief at Polytika, said any legislation outlawing ownership of EU-based companies would be incompatible with EU law establishing the internal market, setting up a potential legal battle at the Court of Justice of the European Union. Non-retroactivity would not allow PiS's desired changes in ownership structure of TVN, ONET or Fakt. Others pointed out that Poland already has anti-trust regulations which limit companies from holding a dominant market share. The majority of interviewees had previously maintained it was too politically and diplomatically challenging for PiS to introduce such legislation. Others noted an attack on foreign investment would risk damaging Poland's investment climate. However, recent developments suggest a bill is more likely than previously thought, rekindling concerns over the future of foreign media ownership.

II. Death by a Thousand Cuts: Weakening and Destabilising Independent Media

In addition to its “repolonisation” efforts, Law and Justice has waged a coordinated campaign of administrative harassment aimed at destabilising and undermining the businesses of critical media. This involves the use of antimonopoly investigations, licensing and regulatory changes and retroactive tax penalties. Some interlocutors described this array of attacks as “death by a thousand cuts”. Others characterized it as a policy of “scattered deconcentration” used in the absence of formal legislation. An important factor in this campaign has been Law and Justice’s Hungary-style instrumentalisation of state bodies and agencies. Since 2015 many of these institutions have had their independence slowly eroded after PiS politicians or its affiliates were placed in leadership positions, transforming them into instruments of the government’s agenda.

One of these bodies is the Office of Competition and Consumer Protection (UOKiK). Under PiS control, the body is currently pursuing an unprecedented number of antitrust investigations in the media market, interviewees said. These investigations are ostensibly about ensuring pluralism by blocking ownership concentration. However, the weight of evidence gathered during the mission suggests the body 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. In a stark example, in early January 2021 UOKiK [blocked](#) Agora from purchasing rival radio broadcaster Eurozet, ruling the proposed merger could create a “harmful duopoly” in the Polish radio market with the current market leader RMF. Agora bought a minority 40% stake in Eurozet in 2019 for an initial price of 131 million zlotys, with the remaining 60% acquired by the Czech SFS Ventures fund, which is linked to liberal billionaire George Soros. UOKiK’s decision followed strong [opposition](#) by PiS officials and demands to block the merger by the government. A PiS ally and rival of Agora, the conservative media group Fratria, had also previously failed in an attempt to purchase Eurozet with a loan from state-owned bank Pekao due to a lack of resources. Agora denounced the decision as “arbitrary and selective” which “protects Agora’s competitors, not competition”.

In addition to using media regulators to stymie the businesses of “adversarial” media, PiS also appears to be adding new tools for administrative harassment to its arsenal. During the mission concerns were raised over pending amendments to the Electronic Communications Law which would permit the President of the Office of Electronic Communications to withdraw frequency reservations of radio and television broadcasters. If passed, amendments would also enable the



The leader of the Poland's ruling party, Law and Justice (PiS) Jarosław Kaczyński, who has long been in favour of "repolonising" the country's foreign-owned media. 26 October 2020. EPA-EFE/Radek Pietruszka

National Broadcasting Council, another body stacked with PiS appointees, to determine the period for which licenses are issued. These amendments are currently passing through parliament. Interviewees raised issues over a lack of legal safeguards and warned these new powers could be misused to further stymie the growth of certain media companies and keep their publishers off kilter. Increasing government control over infrastructure such as printing presses, newsstands and distribution companies also offers new avenues for strengthening pressure. In February 2021, Prime Minister Morawiecki's government unveiled a new draft bill that would impose an advertisement revenue tax on media outlets, raising [concerns](#) it would be yet another new tool for exerting financial pressure on independent media.

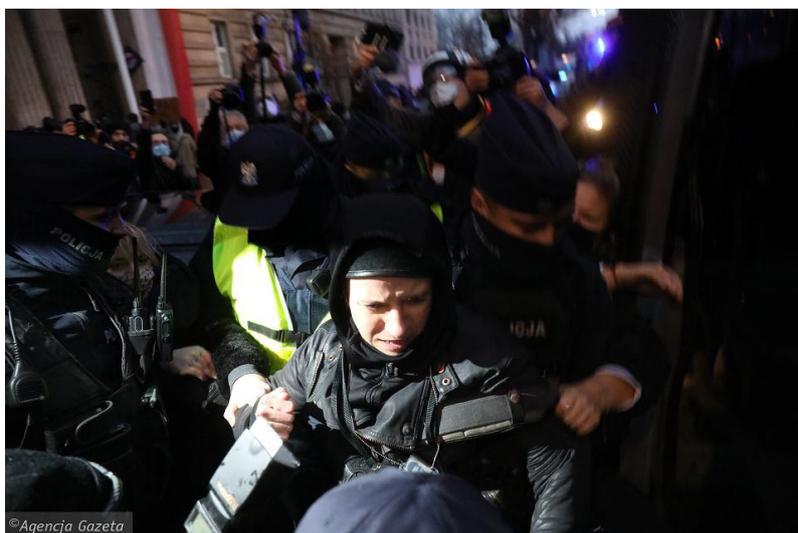
The viability of independent media outlets is further threatened by the Polish government's continued utilization of state resources to starve certain media of public advertising revenue. Since 2015, numerous state institutions and state-owned and state-controlled companies have ceased to subscribe to or place advertising in critical media, cutting off an important source of funding. Professor Stanisław Jędrzejewski, a media expert and former member of the National Broadcasting Council, told the mission that billions of zloty allocated by state-owned companies in the last four years had been disproportionately redirected away from critical media. Politicisation of state advertising is nothing new in Poland. However, under PiS it has reached new levels. Liberal titles like Polityka and Newsweek Polska have been boycotted altogether and seen revenue from state advertising drop by 98-100% since 2015. This policy of economic strangulation continued in 2020. Recently, liberal daily Gazeta Wyborcza was the only major media outlet in Poland to be excluded entirely from a government sponsored public awareness campaign about COVID-19, denying hundreds of thousands of readers important health information.

At the same time, public advertising has been used to reward and fund media towing the party line. Studies show that spending in conservative outlets like Gazeta Polska, Wsiec, Radio Maryja and Nasz Dziennik – often owned by PiS allies – has increased significantly during the same period. Recent advertising expenditure [analyses](#) carried out by Prof. Tadeusz Kowalski of Warsaw University and market research firm Kantar Media confirm this trend. This carrot-and-stick approach, observers say, has resulted in private media outlets such as TV station Polsat gradually softening its editorial approach towards the government on its flagship news shows in return for more favourable advertisement placement. High levels of cross-industry ownership in Poland mean media owners with investments in industries dependent on state subsidies are particularly susceptible to these pressures.

Over consecutive years, this instrumentalisation of public advertising has distorted market dynamics in favour of outlets which align with the government's views and values. As a result, a substantial amount of pro-PiS portals and websites have been set up in the last few years to reap the financial rewards. This "indirect sponsorship" has led to the creation of a pro-government media bubble, many of whose outlets amplify nationalist rhetoric but display little adherence to journalistic standards. ONET.pl editor-in-chief Bartosz Węglarczyk described this situation as reaching such unprecedented levels that there are now many media in Poland that "would not exist in a free market economy". Increasing PiS leverage over state-owned companies and the [control](#) of PKN Orlen over an influential new major house, Sigma Bis, is likely to solidify PiS control over the advertising market further in the coming years. Inversely, Jacek Karnowski, editor-in-chief of Sieci, said additional public advertising for pro-government media was necessary as the private sector in Poland was "afraid" of advertising with the pro-PiS titles. Though PiS MPs have in the past encouraged private companies to withdraw advertisements from certain media, interviewees agreed that the private sector in Poland had not been cowed into halting advertising, as has occurred in Hungary under the FIDESZ government. At the individual level these smaller and scattered forms of pressure appear not to pose a major threat. When taken together, they reveal a multipronged campaign of harassment aimed at stymieing the businesses of private media and creating a hostile climate for publishers. This is resulting in a less appealing investment climate for foreign-owned media companies, in turn helping create the market conditions necessary for PiS's model of media capture.

III. Defamation and SLAPPs: Legal Harassment of Media

In an extension of this pressure campaign, legal harassment of independent media in Poland continued in 2020 as PiS officials and their allies continued to harrÿ critical outlets with expensive and time-consuming court battles. By far the most targeted publication was the liberal daily *Gazeta Wyborcza*, a strong critic of Law and Justice. At the time of the mission, the newspaper was [fighting](#) more than 50 different lawsuits. Its publisher, Agora, told the mission many of these were part of a coordinated campaign by PiS and its allies to pressure the outlet. While most of these vexatious lawsuits are eventually thrown out, GW journalist Bartosz Wieliński said these legal battles were a burden on resources and had a “chilling effect” on critical reporting. The newspaper also faces a significant number of pre-litigation requests – many drafted by specialized law firms – involving cease-and-desist letters, apology requests or extortionate demands for financial compensation. During the COVID-19 pandemic the newspaper’s journalists and photojournalists also faced dubious criminal charges for allegedly breaching lockdown rules, including reporter [Angelika Pitoń](#) and photojournalists [Pawel Rutkiewicz](#) and [Wojciech Jakub Atys](#). Agora representatives said they believe these charges were politically motivated.



*Polish photojournalist Agata Grzybowska is arrested in Warsaw, Poland, 23/11/2020
Photo: Maciek Jaźwiecki,
Agencja Gazeta*

Investigative news outlet ONET is also facing at least eight different vexatious lawsuits over its reporting, with significant effects on its staff. Editor-in-chief Bartosz Węglarczyk told the mission either he or his deputy were in court at least three times a week. The outlet has now been forced to hire private lawyers to fight all the lawsuits, many of which are also brought by state entities,

often supported by government lawyers. “These lawsuits are about dragging media companies and journalists through the courts, which in Poland can take many years”, he said. While his outlet could shoulder its legal defence costs, Węglarczyk said smaller news companies and freelancers were now self-censoring to “avoid getting sued”. Lukasz Lipinski, deputy-editor-in-Chief of Poland’s biggest weekly, Polityka, told the mission his outlet was also facing consistent legal pressure, including a [recent lawsuit](#) by the former head of the Military Counterintelligence Service. OKO.press is currently facing nine different lawsuits, Right-wing media in Poland are also targeted by defamation lawsuits. However these are rarely initiated by government entities or officials.

Though exact data is unavailable, OKO.press editor-in-chief Piotr Pacewicz, ONET.pl editor-in-chief Bartosz Węglarczyk and representatives from TVN24 and Gazeta Wyborcza all told the mission the use of lawsuits to harass critical media had increased markedly under PiS. Konrad Siemaszko, of the Helsinki Foundation for Human Rights, said the organisation had also observed a “clear increase” since 2015. Krzysztof Bobinski, of the Polish Society of Journalists, estimated that only around one in ten of these defamation cases was successful, indicating that lawsuits were being used more as a tool to harass government critics than achieve justice. Interviewees on both sides of the political spectrum said Poland’s lower courts were still independent and ruled in favour of upholding journalists’ rights.

However, several editors and journalists said press freedom had ultimately suffered as a result of the weakening of the rule of law in Poland following the government’s judicial reforms in 2016. Concerns were also raised about the increase in the use of injunctions by the government to halt the publication of stories involving high-profile corruption scandals, and the length of time that civil cases took to move through courts, which interviewees said encouraged the use of SLAPPs. These claims were rejected by Krzysztof Skowroński, president of the pro-government Association of Polish Journalists (SDP), who said its Press Freedom Monitoring Center had observed “no special change” or increase in defamation cases against the media.

IV. Journalists Under Pressure: Smears, Physical Attacks and Obstruction

Journalists in Poland are routinely subject to discrimination when it comes to access to information. Interviewees including Katarzyna Buszkowska, deputy editor-in-chief of the Press.pl magazine, told the mission public officials connected to the ruling party often refuse communication or interviews to critical media. Reporters are regularly denied access to legally guaranteed and publicly held information without explanation. Interlocutors described this as an attempt to starve “opposition” media of vital information, undermining their ability to access public information and keep the public informed. Challenging reporting about top officials or institutions is also met with retaliation, such as the [cancellation of accreditation](#) or blocked entry to certain events. This multi-levelled obstruction is having damaging repercussions for investigative journalism in particular. Representatives from investigative news platforms said these issues had worsened further during the COVID-19 pandemic, during which official requests for public health information routinely went unanswered, in violation of the Polish Freedom of Information Act. Communication with the Ministry of Health during the pandemic was also extremely challenging for journalists on both sides of the political spectrum.



*Tomasz Gutry, 74, worked as a photojournalist for Tygodnik Solidarność for more than 30 years. He required surgery to remove the rubber bullet from his cheek.
Photo: Jędrzej Nowicki, Agencja Gazeta*

Over the last five years, Poland’s public broadcasters have been deformed into state media. News coverage on national TV and radio is deeply biased and opposition politicians and viewpoints are either absent or marginalised. Coverage of candidates during the 2020 presidential election was particularly partisan, creating an uneven playing field during elections. This hollowing out of centrist reporting is contributing to the formation of a dual information system in Poland, in which

left- and right-wing news consumers have little exposure to contrasting reporting or opinions. As a result, watchdog journalism revealing wrongdoing can be either ignored or whitewashed by pro-government media, limiting its potential impact. This intense polarisation has divided Poland's journalistic community into opposing camps, reducing the space for cooperation on pushing back against issues which effect the entire profession.

“ **To worsen matters further, journalists in Poland also faced increased risk of physical violence in 2020. Journalists reporting from the front lines of protests sometimes became the target of attacks themselves.**

This deepening polarisation in Polish society between the government's supporters and opponents is also resulting in escalating online harassment against journalists. All those interviewed during the mission said the daily work of journalists had become more challenging due to an increase in threats, smears and gender-based insults online. Often this vitriol comes from members of the public in opposing ideological camps. However, journalists working for independent media are also publicly vilified and delegitimised in far-right and pro-government media. Common accusations include journalists critical of the government being [dismissed](#) as “anti-Polish”, or “foreign agents”. The public broadcaster TVP is increasingly being used as a tool of the ruling party to use against its critics in certain media. It has broadcasted targeted smears against journalists and media houses. This pervasive anti-media rhetoric delegitimizes journalists and is contributing to a climate of hostility against the press.

To worsen matters further, journalists in Poland also faced increased risk of physical [violence](#) in 2020. Journalists reporting from the front lines of protests sometimes became the [target of attacks](#) themselves. In October, Gazeta Wyborcza journalists Magda Kozioł and Joanna Urbańska-Jaworska were [assaulted](#) and injured by a group of black-clad football hooligans while documenting a Women's March protest in Warsaw. During the same protests, regional crews of TVP also faced threats and [damage to property](#) from protesters angry at its coverage. TVP media workers have been attacked while performing professional duties on other [occasions](#). [Attacks on property](#) or company vehicles have also been reported.

Other attacks on journalists during the recent protests came from the police. This violence led to numerous injuries and the hospitalization of a 74-year-old photographer, Tomasz Gutry, who was [shot in the face](#) with a rubber bullet by police from 10 metres away. Other [video footage](#) shows police using truncheons to hit photojournalists who had become pinned against a flight of stairs. Among those beaten was [Renata Kim](#), a journalist from Newsweek Polska, who was hit with a police baton even though she was wearing a bright PRESS vest. Other photographers were [pepper sprayed](#). Allegations of intimidation of the media peaked when on November 23, police arrested award-winning photojournalist [Agata Grzybowska](#) as she documented a protest in Warsaw. She was [detained](#) for three hours for “violating the physical integrity” of a police officer before being released without charge. This arrest capped a worrying escalation in the tactics used by police during their crackdown on the demonstrations.

Some interviewees described the incidents as isolated instances of accidental violence unavoidable at a large-scale protest. Jacek Karnowski, editor-in-chief of the right-wing Sieci magazine, believed too many journalists in Poland blurred the line between “observation” of demonstrations and “participation”. Others including Polish Ombudsman Adam Bodnar firmly rejected the argument that attacks were accidental, pointing to the fact that almost all journalists injured were wearing ‘PRESS’ insignia or clearly identifiable as members of the media at the time. All participants agreed that the level of violence against the media in late 2020 had been the most severe in many years.

Urgent Recommendations

To the U.S Government, EU Member States and Relevant EU Institutions:

- Recognise the subtle but clear escalation of the Polish government's assault on media freedom and understand the model now being used to nationalise foreign-owned titles and concentrate media under the influence of the ruling party.
- Ensure that the system for media capture pioneered and exported by Hungary is not implemented in Poland and react strongly to halt further dismantling of media independence.
- Condemn all physical attacks and arrests of journalists in Poland and react to future policies aimed at weakening independent, critical media in Poland through all available diplomatic and political channels.
- Push back strongly and immediately against any attempt to introduce legislation regarding "repolonisation" or "deconcentration". Adherence to EU internal market law must be robustly defended.
- Ensure the current absence of a U.S. ambassador due to the U.S. presidential transition is not used as an opportune moment for PiS to push forward with this legislation without diplomatic pressure. In this event, the chargé d'affaires should take up the role in publicly defending media pluralism and media freedom. The subversion of democracy in Poland should be discussed at the upcoming Global Democracy Summit planned by the incoming Biden presidency.
- The EU must create a united front on strengthening democracy and confronting illiberal democracies wherever they emerge.

To the Law and Justice Party and the Government of Poland:

- Recognise the central importance of media freedom, pluralism and independence to sustaining democracy in Poland and shed the mentality that independent, critical media is a form of political opposition rather than a necessary and important element of a functioning democratic system.
- Withdraw plans to introduce any bill on “repolonisation” or “deconcentration” that is designed to weaken independent media and provide cover for their take over by PiS supporters.
- Stop utilising state-owned and state-controlled companies to buy out independent media outlets to bring them under PiS control.
- Guarantee fair competition in media markets and stop weaponizing public advertising to punish critical media outlets and reward alignment with PiS’s views and values.
- Depoliticise state entities and ensure independence is restored at regulatory institutions such as UOKiK in order to ensure fair and transparent market competition.
- Halt all efforts to discredit, delegitimise and vilify journalists and stop engaging in conspiracy theories about foreign-owned media in Polish politics.
- Restore editorial independence at the public broadcaster TVP and encourage higher standards of journalistic ethics in its reporting on politics and opposition through the depoliticisation of the National Media Council.
- Redesign the government’s system for communication with media at press conferences and allow all journalists to ask questions without discrimination on the basis of their reporting. Stop the cancellation of accreditation in retaliation for critical coverage.
- During the COVID-19 pandemic, where reliable and accurate information is more essential than ever before, state bodies and government agencies must ensure journalists’ rights to access information. The Polish Freedom of Information Act must be upheld.

MEDIA FREEDOM RAPID RESPONSE



The Media Freedom Rapid Response (MFRR) tracks, monitors and responds to violations of press and media freedom in EU Member States and Candidate Countries. This project provides legal and practical support, public advocacy and information to protect journalists and media workers. The MFRR is organised by a consortium led by the European Centre for Press and Media Freedom (ECPMF) with ARTICLE 19, the European Federation of Journalists (EFJ), Free Press Unlimited (FPU), the Institute for Applied Informatics at the University of Leipzig (InfAI), International Press Institute (IPI) and CCI/Osservatorio Balcani e Caucaso Transeuropa (OBCT). The project is co-funded by the European Commission.