

How ruling party has been subordinating the media and controlling the way Poles are informed

Independent media are a guarantee of the freedom of speech and is one of the fundamental civic freedoms guaranteed by the Polish Constitution. After 2015, the media's independence has been significantly restricted, but there are still independent TV and radio broadcasters, internet news portals and printed press.

- **The first step in taking over control of the media was the amendment of the Media Act, which allowed PiS to fully subordinate public TV and radio.**
- **PiS wants to take over private media as well. Although so far, to no avail.**
- **Orlen, a state-owned company, has succeeded in purchasing regional newspapers and internet news portals from the Polska Press publishing house. Soon after the purchase, the senior roles in the publishing house were filled with people from media outlets which support PiS.**
- **PiS has an impact on the financial situation of media outlets. Those which are favourable to the ruling party earn millions of zlotys every year through adverts from state-owned companies, whilst media outlets not favourable towards the ruling party lose income from adverts.**
- **Freedom of speech is restricted by limiting access to information. Ministries do not answer journalists' questions, prominent PiS politicians give interviews only to favourable outlets and if a scandal is exposed, lawyers working for politicians use SLAPP (intimidation lawsuits), they harass journalists with lawsuits to deter them from investigating.**
- **Public media and financially supported pro-government private outlets publish what is convenient and politically beneficial for the ruling party. They discredit opposition politicians and promote PiS, and can thus influence voters' moods and, potentially, election results.**

Subordination of public media

One of the first things that PiS did after winning the election was to subordinate the public media. The elections took place on 25 October 2015, and by the end of the year the Sejm had already adopted a resolution which made it possible to end the terms of office of senior

management in public media as of the following month. They would be replaced by people selected by the ruling party. Consequently, it took a short time for them to take over public TV and radio. This was but the beginning of the process of taking control of public media and attempting to subordinate private media.

The “Media Act” and “Small Media Act” are both common names for the amendment to the Act on the National Broadcasting Council, adopted on 30 December 2015. Its consequences were twofold.

First, terms of office of people in management and supervisory positions in TVP and Polish Radio were terminated. Jacek Kurski became the new CEO of TVP and Barbara Stanisławczyk of Polish Radio. Both are close to the ruling party. Jacek Kurski was a PiS and later Solidarna Polska politician and Barbara Stanisławczyk is a journalist famous for her right-wing leanings.

Secondly, the Act changed the rules of filling the posts of CEO and directors of TVP and Polish Radio. Up until then, the National Broadcasting Council had organised recruitment processes to fill the posts, but they are now appointed directly by the Minister of the Treasury. As a result, the National Broadcasting Council was deprived of its very important role as the guardian of freedom of speech and the right to information. The role is safeguarded by the Constitution, so an act of law cannot restrict its functions. The selection of heads of public media by a politician from the ruling party and not an independent National Broadcasting Council means that public media are no longer independent. Whilst under the Media Act, the Minister of the Treasury was tasked with selection only until “a new body of national media” was created, in reality every public media management board was newly appointed during this transitional period.

The amendment to the act also led to the establishment of a new body. On 22 June 2016, the Council of National Media was formed, mostly appointed by PiS (three members were selected by the PiS-led Sejm, and two by the President from among candidates nominated by the biggest opposition parties, i.e. Civic Platform and the Left). The Council of National Media appoints and recalls CEOs, and management and supervisory boards of public media and the Polish Press Agency. In December 2016, the Constitutional Court (still presided over by Andrzej Rzepliński, so before it was taken over the ruling party) stated that stripping the National Broadcasting Council of its tasks and transferring them to the Council of National Media was unconstitutional. Despite this, the Council of National Media continues to fill senior positions in public media.

Although some members of the Council of National Media were selected by the opposition, the majority were selected by the ruling coalition. The Act on the Council of National Media stipulates that it is independent and its members cannot be recalled before the end of their terms, but its actual functioning is determined by the decisions of its members. Three people selected to the Council by the Sejm majority (Krzysztof Czabański, Elżbieta Kruk,

Joanna Lichočka) are former or active PiS politicians, whose careers depend on the head of the party.

“They can interfere in the programming of public media outlets because they have the discretion to influence the composition of the management and supervisory boards of TVP, Polish Radio and the Polish Press Agency. The Council’s internal procedures and practice are untransparent and not fixed, which makes it easier to manually control and completely marginalise those members who were selected by the opposition. In short: The Council of National Media is the ruling party’s tool to control TVP and Polish Radio”, writes Szymon Ananicz, an expert on international matters from Forum Idei (part of the Batory Foundation) in his report “Upolitycznienie Krajowej Rady Radiofonii i Telewizji: nowy front w konflikcie Polski z Unią Europejską o praworządność? [Politicising the National Broadcasting Council: is this the new front of Poland’s rule of law battle with the European Union?]”.

Ramifications of politicising media outlets

The consequences of politicisation of public media outlets and their governing bodies - intended to guard their independence - reverberates throughout the whole system. Under Jacek Kurski, state TV produces programmes which present a polarised version of events that makes PiS look likeable and competent and the opposition dislikeable. News broadcasts are not just biased, but distort reality and fake it; there are also smear campaigns against the opposition and the ruling party is glorified. To all intents and purposes, this is state “propaganda”. Consequently, TVP news broadcasts can have an impact on election results.

Before the parliamentary elections in 2019, OSCE observers monitored the messaging of public media. In their report they wrote that “[the elections] were prepared well, but media bias and intolerant rhetoric in the campaign were of significant concern. While all candidates were able to campaign freely, senior state officials used publicly funded events for campaign messaging. The dominance of the ruling party in public media further amplified its advantage [...] The public broadcasters should ensure that all parties are presented in an impartial and objective manner. Favourable treatment of a political party by public media should be treated as an illegal use of public funds. [...] The distinct editorial bias of the media, especially the public broadcaster, and the absence of active oversight adversely impacted the opportunity of voters to make an informed choice.”

This position was later quoted by the Ombudsperson Adam Bodnar in a letter to TVP CEO, Jacek Kurski. The Ombudsperson questioned the way TVP had reported on the presidential election campaign in Poland and its failure to guarantee equal coverage of the candidates. During the presidential election campaign in 2020, TVP’s news broadcaster “Wiadomości” featured Andrzej Duda most frequently and for the longest periods.], whilst Duda’s main

opponent, Rafał Trzaskowski, if mentioned at all, was presented highly negatively, and often inaccurately. By contrast, whilst “Fakty”, broadcast by TVN, a private media outlet, often presented the incumbent president in a negative light, they also criticised Trzaskowski [The report of Towarzystwo Dziennikarskie (Journalists’ Association) which monitored election campaign coverage news broadcasts.

According to OSCE, in the second round of presidential elections, the “hostility and bias of the public media had a negative impact on the image of professionally conducted elections.” During the press conference which summed up the organisation’s observations on the way candidates and the campaign were presented in public media, it was underlined that “the public broadcaster was biased which means that TVP did not fulfil the duty of providing impartial information about the campaign.”

At the request of Wirtualnemedia.pl, Press-Service Monitoring Mediów, a media monitoring company, conducted an analysis of Donald Dusk’s presence in the media from July 2021, when he returned to Polish politics and became the leader of the biggest opposition party, Civic Platform. Based on that research, Wirtualne Media claims that up until today on TVP’s “Wiadomości”, there have been 78 news items about Tusk, out of which only three were neutral and zero were positive. [...] In the period between 3 July and 3 August, “Wiadomości” mentioned him almost every day, with the exception of two days (28 July and 1 August)”. There were altogether 78 news items about him out of which 35 lasted at least 30 seconds, 23 - 15-30 sec.) and 20 were shorter than 15 sec. 75 were negative (over 96%), three - neutral (less than 4%) and zero - positive.”

“Other public news broadcasts such as “Panorama” and “Teleexpress” likewise presented Tusk negatively: on “Panorama” on TVP2, he was covered in 37 items, 35 of which were negative, whilst 20 were longer than 30 sec., 4 took 15-30sec. and 13 were shorter than 15 sec. 35 were negative (almost 95%), two - neutral (almost 5,5%) and, again, zero were positive. “Teleexpress” broadcast 10 items about Tusk, all of which were negative.”

Tusk might become a politician strong enough to mobilise voters to vote against PiS, he might also be the most serious opponent to PiS’s leader Jarosław Kaczyński, which is why his return made the ruling party politicians worry about their polling. At the same time, he has many opponents, so smear campaigns can bring results.

There are tangible, recordable effects when it comes to the way politics is presented in public media, especially TVP, but there are also emotional effects, which cannot be expressed in numbers. For example, news bars that people make fun of. They summarise the main message and distort the reality to such an extent that they have become a media phenomenon.

Although the politicisation of TVP might be the most conspicuous example, a similar process is occurring in all public media outlets. Everywhere, newsrooms are now staffed with people pushing the propaganda of the ruling party, organising smear campaigns against the

opposition and attempting to whip up strong emotions.

The ramifications of politicising the National Broadcasting Council

The National Broadcasting Council did not fulfil its task of monitoring media during electoral campaigns to the European Parliament and the national Parliament in 2019, and the presidential campaign in 2020, and thus could not report on media outlets' activities during these periods. "Complaints about public TV bias were lodged to the National Broadcasting Council, among others by the Ombudsperson. It took a long time for them to be dealt with, and some of them still remained unanswered" [Szymon Ananicz, Forum Idei, the Batory Foundation, "Upolitycznienie Krajowej Rady Radiofonii i Telewizji: nowy front w konflikcie Polski z Unią Europejską o praworządność?" (Politicising the National Broadcasting Council: is this the new front of the Poland's rule of law battle with the European Union?)].

"The Council is very lenient towards TVP's propaganda and much more decisive towards broadcasters who are less favourable to the ruling party. For example, in 2017, the Council imposed a fine of almost 1.5m PLN on TVN for reporting how the opposition took over the plenary room of the Sejm and how the session was moved to the Column Hall, where the budget was voted through illegally (the Council later revoked the fine). In October 2020, the Council asked TVN to stop using the term "the Constitutional Court of Julia Przyłębska" claiming that this was "an untrue description, which might meet the premise of harassment, deterrence and even hate speech". By contrast, the Council reacted with restraint to the complaints about public media bias, including in cases referring to news bars (Wiadomości, TVP Info). For example, in the case of a complaint from Agnieszka Pomaska from Civic Platform about the news bars on TVP Info during protests against the ruling of the Constitutional Court on abortion (the bars read, for example, "the opposition wants to paralyse the state", "the opposition wants anarchy during an epidemic", "leftist fascism destroys Poland", etc.). The Council responded that the "slight exaggeration" of the bars might have resulted from the dramatic nature of the events and that they "are always somewhat emotional". The Council is not interested in the huge disproportion in broadcasting time nor in the different nature in which politicians from the opposition are portrayed in comparison to the ruling party. Despite complaints, the intensity of the propaganda in public media has not been reduced."

Licence for TVN24 and Lex TVN

The most evident failure of the National Broadcasting Council has been the attempt to delay the decision to prolong the broadcasting licence for TVN24. Whilst the licence expired in

September 2021, the owners asked for an extension 18 months in advance, in February 2020, yet the Council did not make any decision.

The Council is legally obliged to prolong the licence. It can refuse it in two cases only: if a court bans the broadcaster over economic activity that the licence covers and if the broadcaster breaches the conditions specified either in the Act or the licence. Neither of these were relevant to case of TVN24. In the Sejm, a battle took place to make it impossible for TVN24 to broadcast in Poland, because of its American owner.

This has become known as “Lex TVN”. The Act stipulates that companies from outside of the European Economic Area cannot broadcast in Poland. The Sejm adopted the law in August 2021 in turbulent circumstances. However, the Senate rejected the Act, meaning that the Sejm would have to vote it through again. However, after conflicts within the governing coalition, the parliamentary club of the United Right no longer has an absolute majority that would make it possible to vote through any act. Instead, the ruling party now has to look for MPs from other parliamentary groups to join them in voting. PiS could thus lose the second vote and even if they won, there would be a risk that the President would not sign it. As of writing, the vote has still not taken place and on 22 September 2021, the National Broadcasting Council granted a licence for TVN24 for 10 years.

If the Act had been voted through and signed, and if the American owner had then decided to give up and put TVN for up sale, a state-owned company would probably have bought it, such as Orlen, which has already purchased the Polska Press publishing house.

“This is what still makes us different from Hungary, where all media outlets were bought by oligarchs, either tied to or loyal to Victor Orbán. We do not have such wealthy oligarchs in Poland, but we do have wealthy state-owned companies, with unlimited cash. This is why such transactions are possible. These companies can become bidders and follow the current political agenda of the government” [Adam Bodnar, former Ombudsperson, in an interview with Gazeta Wyborcza, 10 July 2021].

Orlen purchases local newspapers

On 1 March 2021, the state-owned company Orlen purchased the above mentioned Polska Press publishing house from Verlagsgruppe Passau. Orlen now owns 20 out of 24 regional newspapers in Poland, over 100 local weeklies, and over 500 internet portals.

The preliminary contract was signed in December 2020 and in March, Orlen started taking over shares in the publishing house.

The new owner immediately changed the management of the publishing house. Marcin Dec, close to Orlen for a long time, and CEO of the media agency used by Orlen and PZU (publicly traded insurance company), became CEO. Dorota Kania, a prominent right-wing journalist from the PiS supporting Gazeta Polska, also joined the management board. Kania

became editor-in-chief of the publishing house and she subsequently replaced editors-in-chiefs of local dailies with those from newspapers or portals supportive of the ruling party.

Repolonisation of media

The purchase of Polska Press by Orlen feeds into the idea promoted by the governing party ever since they came to power of the “repolonisation of the media” - an to stop journalists from working for the interests of foreign capital or foreign political forces. Such statements were supposed to undermine the credibility of independent media unfavourable to the ruling party and owned by foreign publishing houses. Through this strategy of repolonisation, the ruling party wants to control disobedient media outlets.

The ruling party spread the claim that German media outlets serve German interests, because the biggest newspapers and portals critical of the ruling party are owned by German publishing houses. For example, Ringier Axel-Springer, owner of the Onet news site and Newsweek weekly, is a Swiss-German-American company.

Funding the chosen ones

Another way to impact independent media outlets is by worsening their financial situation. Since they taking power, PiS have been consistent in trying to financially weaken independent media outlets and fund those favourable to them.

One of the first things done after 2015 was withdrawing adverts by state-owned companies from Gazeta Wyborcza, Newsweek and Polityka - all of which are critical of PiS. Adverts from state-owned companies are often a substantial source of income for media outlets. In total, in 2015-2020, state-owned companies spent 5.4bn PLN on adverts. This money went mainly to the media outlets which supported the politics of the ruling party. Those which are favourable to the ruling party can now count on adverts from state-owned companies and in 2020 many earned several million zlotys. Professor Tadeusz Kowalski from the Department of Journalism, Information and Bibliology at the University of Warsaw analysed data from Kantar Media. He estimated that in 2020, the Sieci weekly earned 20m PLN from adverts from state-owned companies, accounting for 31% of its ad revenue. Similarly, the Do Rzeczy weekly earned 13.7m PLN (25% of its ad revenue), Gazeta Polska - 12.8m PLN (43%) and Gazeta Polska Codziennie 8m PLN (29%). All these outlets have a pro-PiS leaning. In comparison, Gazeta Wyborcza which is critical of PiS and publishes scandals concerning PiS politicians earned 74.000 PLN, less than 1% of its ad revenues, and critical weeklies, such as Newsweek and Polityka earned nothing on adverts from state-owned companies. State subsidies are another source of funding for public media outlets. In 2020, an election year, when it was especially crucial to present PiS favourably and the opposition critically,

the Sejm gave 2bn PLN in subsidies to public media outlets. A further 2bn PLN was also earmarked for them in the Budgetary Act for 2021.

Limiting access to information

Limiting access to information is a soft way to restrict freedom of speech. The most prominent state politicians only talk to those media outlets which are favourable to the ruling party and refuse to talk with critical outlets. Additionally, journalists from pro-PiS outlets do not ask uncomfortable questions of the PM, president or Jarosław Kaczyński and they rarely ask follow-up questions. Controlling access to information also takes place at lower levels of government and Ministers often do not reply to journalists' questions on controversial matters, despite a legal obligation to do so.

Are media in Poland free?

Since 2002, the Reporters Without Borders organisation has been publishing the Press Freedom Index. In 2021, Poland was ranked 64 out of 180 countries, which is the worst result ever. In the best year, 2015, it was ranked 18 globally. Since then, it has been going downhill and Poland now has one of the worst rankings among European countries. Authors of the index took into account factors such as public media support for Andrzej Duda during his presidential campaign and discrediting of his opponent, the "repolonisation" of private media outlets, claiming that the objective of the policy is to influence the publishing policy of the newly-acquired titles. A process that amounts to censorship.

Reporters Without Borders also took into account limiting the right to information during street protests in Poland, when journalists were treated violently, and arbitrarily arrested. However, the index was published before the Sejm introduced a state of emergency in provinces on the border with Belarus due to the migration crisis. As a result of this move, journalists cannot report on the situation on the border, and are not allowed to be in the area at all. As a result, citizens have limited access to information about what the Border Force is doing with refugees who arrive from Belarus.