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Committee on Political Affairs and Democracy

Addendum to the minutes of the meeting held in Paris, 8 March 2016¹

Open discussion on current issues

Exchange of views on *The state of democracy and the rule of law in Poland*

- Briefing note of the Ministry of Culture and National Heritage, Warsaw, submitted by Mr Włodzimierz Bernacki, Chairperson of the Polish delegation to the Assembly
- Intervention by Ms Joanna Banasiuk, Member of the Ordo Iuris Institute for Legal Culture
- Intervention by Ms Małgorzata Szuleka, Helsinki Foundation for Human Rights
- Intervention by Mr Jarosław Kurski, Deputy Editor in Chief of the newspaper Gazeta Wyborcza

¹ Document declassified by the Committee on 18 April 2016.

Briefing note of the Ministry of Culture and National Heritage, Warsaw, submitted by Mr Włodzimierz Bernacki, Chairperson of the Polish delegation to the Assembly

Public service media in Poland – causes and directions of changes

To a greater or lesser extent, public service media in the whole of Europe face problems related, on the one hand, to politicisation, and on the other hand - to commercialisation. In Poland, especially in the last 6 years, it has become a pathology. The authorities of the public service media have not taken any remedial actions. On the contrary, they have basically removed all creative artists and replaced them with officials. No media – especially public service media – can function properly in such a way.

Some European institutions, including the Council of Europe, accuse the current Government of the Republic of Poland of trying to make the public radio and television dependent on them. At the same time, they suggest that the existing public service media have not been under direct political control before. However, let us not forget that the National Broadcasting Council has been elected by the Sejm, Senate and President. This institution grants licences to broadcast television and radio signals and appoints supervisory boards of public television and radio companies. It is hard not to notice that persons nominated by politicians are elected by the parliamentary majority and take decisions on what the public service media should look like. It could be argued that the experts of the National Broadcasting Council are independent of the Government and apolitical. However, looking at the biographies of several members of the Council and authorities of the public service media is all it takes to challenge this opinion. Who were the members of the National Broadcasting Council in the past?

Marek Siwiec – member of the Polish United Workers Party until the party was dissolved, for many years a member of the Democratic Left Alliance. Robert Kwiatkowski – member of the Polish United Workers Party, organiser of Aleksander Kwaśniewski's presidential campaign. Danuta Waniek, Włodzimierz Czarzasty – prominent party activists, as well. Ryszard Miazek – United People's Party and then Polish Popular Party activist. Krzysztof Luft, Jan Dworak, Juliusz Braun – former members of the Freedom Union and the Civic Platform, the governing party of the last 8 years. Most of them not only decided on the shape of the public service media but also managed them personally.

Let us not forget that the public service media have always been subordinate to politicians. They, i.e. the President, the Sejm and the Senate, take every year a decision to approve or reject the report of the National Broadcasting Council. Rejecting the report means automatic dissolution of the Council. Therefore, who has been in charge of the public service media? Independent experts or active politicians? The new government has decided to change the existing state of affairs. According to the changes proposed in the so-called "Big Media Act", Telewizja Polska, Polskie Radio and Polska Agencja Prasowa will become media subordinate to the National Media Council. It will be an organisation very similar to UK's Ofcom and BBC Trust.

Instead of twenty supervisory boards of the existing companies, a single 5-people National Media Council will be appointed. It will be independent of the executive power, public administration and the National Broadcasting Council. The National Media Council, non-dismissible for a 6-year term, will appoint heads of the restructured media institutions. These head persons – according to the draft of the so-called "Big Media Act", which is currently being prepared – will be chosen in public competition from among persons with outstanding achievements in the field of media and culture and will have a guaranteed term, which will allow them to implement their proposed agenda.

Then, why was the earlier decision made to apply the provisions of the so-called "Small Media Act", which consisted in personnel changes in the management of TVP and PR? Because the television and radio management boards had started protesting before they heard any specific information on the prepared changes. It was impossible to work on improving the public service media, to conduct an audit, to find out about the actual financial condition of the media in such circumstances. At the same time, the public subscription fee collection method must be changed as soon as possible. Currently, no more than 8% of citizens pay their compulsory fees. Only financially strong media can be independent and carry out their mission. That is the most essential task for the new staff - the most essential in accordance with the guidelines of the European Broadcasting Union, after all.

In order to de-politicise the public service media, we want – apart from appointing the National Media Council, non-dismissible for 6 years, with respected figures coming from the field of media and culture – to introduce social programme councils, which will inspire the public mission action agenda. This is how civil society will be granted actual leverage to influence the agenda of the public service media.

As a result, according to the prepared Big Media Act, which will come into force not later than in the middle of the year, radio and television will be separated from the direct influence of the political world and be able to carry out the public mission; they will also be based on strong financial and organisational foundations.

Intervention by Ms Joanna Banasiuk, Member of the Ordo Iuris Institute for Legal Culture, Warsaw, Poland



ORDO IURIS

INSTYTUT NA RZECZ KULTURY PRAWNEJ

1. Interest of the written statement

Ordo Iuris Institute for Legal Culture (hereinafter: 'Ordo Iuris' or 'the Institute') hereby respectfully submits this statement and requests that the Committee considers its relevant arguments.

Ordo Iuris is an independent legal organization incorporated as a foundation in Poland. The Institute gathers academics and legal practitioners aiming at promotion of legal culture based on the respect for human dignity and rights. Ordo Iuris is one of organisations consulted by the Polish Government within the legislative process. Third party interventions by Ordo Iuris have been accepted by Polish and international courts and institutions, e.g. Polish Supreme Court, the European Committee of Social Rights and the European Court of Human Rights.

Due to high importance of human and citizens' rights at stake and invitation of Horst Schade to participate in the Committee on Political Affairs and Democracy, the Institute presents its position.

2. General remarks

Ordo Iuris would like to present the perspective of a non-governmental organization, which works with marginalized communities and people at risk of social exclusion, promoting the respect for Polish constitutional order and legal culture. In our activity we directly engage with at-risk individuals and address difficult family situations, often we act as advocates of freedom of speech and freedom of assembly. Institute Ordo Iuris appreciates a close contact with the average people – we remain largely dependent on voluntary donations from ca. 7000 people, and we correspond regularly with over 120.000 people. These close relations with ordinary people let us know and understand the daily concerns of the Polish people. We are aware that nearly 780.000 of families in 2015 were in an extremely difficult financial situation in which the income per capita did not exceed 185 euros per month, which for a long time produced mass emigration. Unfortunately, proposals calling for state support of families were ignored by previous governments more interested in neoliberal policies and macroeconomic indicators than in the daily challenges that people face, so flagrantly disregarding social rights. Over the last decade, which was extremely prosperous time for the banking sector in Poland, state has spent very little for social expenses. In fact, Poland is now the EU country spending the least in family programs. Family policy was treated as a costly burden for the budget, and not as an investment area of strategic importance. The result is a demographic collapse and one of the lowest levels of fertility in the world, which must soon lead to a social disaster.

3. Social rights

This situation has fortunately changed greatly since the last elections. The new government, restoring the hope of many low incomes and working people, is now implementing proposals from non-governmental organizations that had been ignored by a long time. Indeed, we can observe some people in large cities, who were in favour of the former status quo and now are expressing their displeasure during the demonstration. This confirms strong standing of democratic freedoms in Poland, as the demonstrations are by no means restricted, which was not the case during last decade. Moreover, proposals by civil society organizations to provide a child benefit for each second and subsequent child, regardless of income, as well as special benefits for every children in poor families, although small compared to other European countries, constitute an unprecedented qualitative change for the majority of people. The proposed amount of the benefit compensates for only a fraction of the cost of raising a child, but for most parents will provide unprecedented, substantial financial support, making great difference for the majority of the society.

4. Guarantees for human rights in other areas

Guarantees for human rights were also strengthened in other areas. One of particular interest to the Institute is the problem of taking children from parents in vulnerable families (single mothers, low economic status of the family, poor housing conditions and social exclusion). From the very beginning Ordo Iuris has been receiving numerous requests for legal assistance in cases where social workers abused their dominant position and has been arbitrarily taken children from parents without a court order. In this context we appreciate very much recent statutory amendments protecting vulnerable but functional families from arbitrariness of state officers.

5. Constitutional tribunal

We are deeply concerned with the constitutional crisis that emerged from the decisions of the previous parliamentary majority, enabling Parliament to elect five judges with infringement of the Constitution and constitutional custom of legislative silence (cadences of all the 5 judges were opened after the elections). We share the opinion expressed in the process by Helsinki Foundation in the opinion of 9th June 2015 that the provisions of the Constitutional Tribunal act from 25 June 2015, was unconstitutional.

In this situation it was absolutely understandable that the President of the Republic of Poland refrained from taking oaths from the judges elected in so controversial way. According to the provisions of the Constitution, President is a guardian of constitutional order and appointment of judges is one of his independent powers. It is to be stressed, that similar situation took place in the break of the year 2006/2007, where the Constitutional Tribunal itself asked President of the Republic of Poland to not to accept oath from a person who was elected by the Parliament but was considered to be not eligible for being constitutional judge. The person was sworn only after assuring, she will resign from the judicial post just after the oath will be taken. Although she was a sworn judge for 6 days, she was not granted with the status of a former judge.

We are also deeply concerned with the procedural practice which had been taking place in the tribunal, and which allows to postpone considering important cases for ordinary people because the Tribunal was much more interested in deciding on political cases than those relating to the situation of average people and families. Institute Ordo Iuris prepared in 2014 a complaint to the Constitutional Court, which dealt with the unjustified taking of children from their parents. Up to this day the complaint has not been examined. We are, however, hopeful that the changes introduced in the Constitutional Tribunal Act on the order in which cases should be examined, will put an end to the arbitrary way the President of Constitutional Tribunal has been deciding which cases to take up. We have also raised this issue in a statement addressed to the Venice Commission.

Controversial constitutional issues of nationalisation of pension funds (K 1/14), scope of judicial immunity of judges deciding retroactively under the martial law in 1981 (K 10/08) or conscientious objection (K 12/14), all were decided with simple majority and the Tribunal's decisions were broadly commented as politically motivated. In this perspective adjudicating by a 2/3 majority by a body of at least 13 judges seems as a reasonable tool for limiting judicial activism of the Tribunal and affirming the primary legislative power of the parliament.

6. Prosecution

All the time during the communist rule in Poland, Prosecution was separated from the Ministry of Justice. By no means was it providing more transparent or independent crime prosecution. Together with the constitutional and political transformation from the communist totalitarian state to democratic one, Prosecution was submitted under the direct control of the Ministry of Justice. Introduced by Civil Platform, former ruling party, separation of the office of the Minister of Justice and Attorney General referred to the Russian and communist solutions. In practice the separation of these offices was ineffective and the Prosecution was highly dysfunctional. Particularly a leak of acts in one of the most serious cases in Poland, the so-called tape scandal has occurred. We observed an incompetence of the prosecution's actions, protraction of proceedings and violations of human rights – the prosecutor's office for more than 3 years was not able to complete the investigation which related to a man who was under a provisional detention for 3 years. Moreover, political indifference of prosecutor's office was a fiction – despite the declared a political indifference the prosecutor, who planned to enter a plea to the former Minister of Justice, was dismissed. It is necessary to underline that one of the largest problem with prosecutor office in Poland, was lack of legal measures possessed by the Attorney General to improve proceedings. We also observed an abuse of an ad hoc procedure provided for hooligans and treating this mode as harassment; using this procedure people protesting in a peaceful manner against failure counting votes after elections 2014, including journalists, well-

known director and a candidate in the last election for the office of President of Poland were detained and judged; all these people were acquitted after a long trial.

Therefore, the reform of the Prosecution was highly necessary. It needs to be stressed that finally the departments dedicated to fight with the internal and international organized crimes and corruption will be created. It is estimated that so far the state budget recorded a loss of 50 billion zlotys per year because of this crimes.

7. Police and special services

Changes in the Police and Special Services Act were introduced because of the judgement of constitutional court. Therefore the legal provisions are fully in line with the judgement. In this context it is highly important to underline that under the former provisions the police abused its power invigilating citizens – particularly in 2014 there were 2 million requests for access to data on citizens; it was a growing tendency. Moreover, there was no supervision of these activities. On average of 28 per 1,000 citizens were invigilating, which is the highest rate in the European Union, at least 48 journalists and their families were tapped, the court could indefinitely prolong the wiretaps, so we faced a serious violations of the right to privacy.

The enacted changes in the Police and Special Services Act introduced the mechanism of control by independent courts wise of invigilation by police and special services, strengthened protection the interests of citizens and at the same time gave the police in the proportional measures to fight crime effectively.

8. Media law

The Act of 30 December 2015 amending the Broadcasting Act of 1992 is of very limited scope. The reform was necessary due to the progressive decreasing of standards of public media and poor financial condition. According to Main Board of Polish Journalists' Association, in recent years, public media have reached a state of pathology which is characterised, among other things, by political partisanship and lack of pluralism. In turn, this has led to manipulation and presenting a distorted picture of Poland. Public media were not fulfilling their mission or duties, which the Polish Journalists' Association has pointed out during its Extraordinary Assembly, calling upon radical change in this respect. We could speak on the phenomenon of the unequal distribution of airtime between the various election committees during the last election campaign – till 16 October 2015 Committees PiS and PO had respectively 16 and 15 hours, when committees KORWIN and Together were given only by 19 minutes and 8 seconds respectively.

It needs to be underlined, that Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 Audiovisual Media Services Directive, does not cover the issues concerning the organization of public media. Member States still retain the competences in regulating these matters. It has to be stressed that provisions of the 1992 Broadcasting Act ensuring the transposition of the 2010/13/EU directive will remain intact. Therefore the Act of 30 December 2015 amending the Broadcasting Act of 1992 is not contrary to the directive.

Intervention by Ms Małgorzata Szuleka, Helsinki Foundation for Human Rights



The Helsinki Foundation for Human Rights (HFHR) is one of the oldest non-governmental organisations in Poland dealing with the protection of human rights and fundamental freedoms. As part of its activity, HFHR monitors the implementation of human rights. This analysis of the on-going constitutional crisis in Poland presents the HFHR's key concerns and was prepared by in house experts.

The crisis surrounding the Constitutional Tribunal

Currently, Poland is witnessing a crisis concerning the functioning of the Constitutional Tribunal. The crisis has two aspects – the first one is related to the process of appointing new judges of the Constitutional Tribunal while the second one refers to the recently adopted legislative changes.

Process of appointing new judges

In June 2015, the former Parliament adopted the Act that enabled the Sejm (one of the two chambers of the Parliament) to appoint 5 judges of the Constitutional Tribunal, replacing the judges whose tenures expired in November and December 2015. In October 2015, the former Parliament appointed 5 judges. However, the President of the Republic of Poland did not swear those 5 judges into office.

After the parliamentary elections, the new governing majority adopted a set of resolutions on the basis of which it designated 5 judges to the Constitutional Tribunal. After it, on 2 December 2015 the governing majority appointed five new judges. On the same day (to be precise – at night, without any media presence), the President of Poland took the oath from the newly elected judges.

In December 2015, the Constitutional Tribunal ruled on the amendment of the Act adopted in June 2015. The Tribunal stated that the appointment of 2 of the 5 judges appointed by the previous Parliament violated the Constitution. Furthermore, the Tribunal ruled that the Sejm had a right to appoint 3 judges in October 2015. Tribunal referred to the President's obligation to swear the judges into office. The Tribunal emphasised that it was the President's obligation to receive the oaths from the judges immediately. It should be also noted that the Tribunal's judgments are final and are published in the Official Journal of Laws that is administrated by the Chancellery of the Prime Minister. However, the chief of the Chancellery put the publication on hold, quoting defects in the proceedings before the Tribunal as justification, and requested that the President of the Constitutional Tribunal submit relevant clarifications. The judgment was eventually published after three weeks.

In the light of this judgement, on 12 January 2016, the President of the Constitutional Tribunal announced that the two judges appointed in December 2015 by the new governing majority were assigned to the cases. The rest three candidates appointed by Sejm and sworn into office by the President have the statuses of the Constitutional Tribunal's employees. Right now the Constitutional Tribunal is composed of 12 acting judges.

Legislative changes

After the parliamentary elections in October 2015, at an accelerated pace and without any consultation with civil society, in November and December 2015 the new governing party adopted two amendments to the Act on the Constitutional Tribunal. Both of those amendments *de facto* aim at paralysing the work of the Constitutional Tribunal.

The amendment adopted in December 2015 states, among others things, that when the Constitutional Tribunal is deciding on cases concerning the compatibility of an Act with the Constitution it must sit in its plenary formation of at least 13 judges (the Constitutional Tribunal is composed of 15 judges) and all rulings should be passed by a 2/3 majority. This slows down the speed at which the Tribunal is able to clear its case-load. The amendment also requires hearings to be organised no earlier than 3 months after the notification of the parties. In cases requiring the Tribunal to sit in plenary formation, the hearing can be held no earlier than six months after notification of the parties. This rule has the effect of unnecessarily delaying the hearing of cases of constitutional importance by the court, again slowing the ability of the Tribunal to

deliver justice within a reasonable time. The amendment also introduced a regulation which states that cases should be examined in order of their submission. Such a regulation has not been adopted in any of the constitutional courts in the world.

This could neutralise the Tribunal as a check on the executive and legislature by preventing it from prioritising the hearing of cases of greater constitutional importance. Apart from verifying whether acts violate the Constitution or not, the Tribunal also examines complaints brought by citizens alleging violations of their rights and freedoms, including rights granted to them by EU law. Because these reforms effectively paralyse the Tribunal, it will no longer be in a position to deliver an effective remedy for individuals seeking protection of their rights.

The Commissioner for Human Rights, the first President of the Supreme Court, the Prosecutor General and two groups of MPs submitted complaints to the Constitutional Tribunal concerning this amendment. The Constitutional Tribunal will hear this case on a session scheduled for 8 and 9 March 2016.

Public discussion

The public discussions and statements from politicians on the Constitutional Tribunal are also disturbing. For example, the representatives of the governing party expressed their opinions stating that the Tribunal is “over-politicised”. Worse still, threats have even been addressed towards the current judges. For example, one of the politicians from the ruling party stated that the President of the Constitutional Tribunal should be escorted from the Tribunal handcuffed.

Public media

At the end of 2015, the Parliament adopted the amendment to the Act on the public media. Similarly to the amendments to the Act on the Constitutional Tribunal, this legislation also came into force immediately after it was signed by the President, rather than after the usual period required by law of 14 days.

The amended Act on the public media is problematic for two reasons. First, it abolishes the open and transparent recruitment process for management positions in the public broadcaster and instead gives the government total discretion over the appointment of new public media chiefs. Second, the minister responsible for the State Treasury has the power to appoint and dismiss members of public media organisations’ management and supervisory boards. Further serious reforms can be expected. The government has described these changes as a “preliminary Act on the public media”. Representatives of the governing party have also stated that public media will be transformed into ‘national’ media.

Changes to the Act on Police

In January, the Sejm adopted the amendment to the Act on the Police and several other acts concerning the functioning of secret services. The purpose of this amendment is to implement the Constitutional Tribunal’s judgement of 2014. In this judgement, the Tribunal noted that Polish law does not foresee any independent supervision of access to telecommunication data (e.g. phone billings, location data). The Tribunal argued that this gap should be regulated.

The amendment poses a serious threat to human rights protection, including the right to privacy. First of all, the amendment fails to create a system of independent control over the actions of law enforcement services. In the light of this amendment, every six months the Police and secret services are obliged to send to the court a summary of obtained data. In such a case, the court’s control over this data is *post factum* and it might not be comprehensive enough. The court is entitled (but not obliged) to verify the operational material gathered by the security services. The court can inform the services about the results of the control, but is not entitled to order any steps, e.g. to delete the data. Furthermore, the services’ powers to obtain data have been extended to “online data”, which will be accessible through ITC networks without the obligation to submit a relevant application before each instance of data collection. The draft includes a regulation in light of which the Police or secret services will have a possibility to sign agreements with telecommunication operators. On the basis of such agreements, the Police and secret services will have permanent access to “online data”/internet data in real-time.

Last but not least, the draft also fails to guarantee protection of information covered by professional confidentiality obligations, such as attorney-client privilege or reporter’s privilege. Pursuant to the draft law, such information shall be disclosed to the prosecutor, who – however – has no power to have it destroyed, and later to the court. The law came into force on 7 February 2016.

Changes in the justice system – reunification of the Offices of the Minister of Justice and Prosecutor General

In December 2015, the Parliament started the works on the amendments to the Act on Prosecution. The main change postulated by this draft is the reunification of the Offices of the Minister of Justice and Prosecutor General.

Until 2010, the Minister of Justice acted also as the Prosecutor General. Such a convergence of roles posed a potential (or sometimes real) danger of subjecting the prosecutors' work to political influences. In 2010, the reform of the prosecution was introduced. In the light of this reform, these two offices were separated and the Prosecutor General's office became independent, although Prosecutor General had an obligation to present annual summaries of its work before the Parliament.

In December 2015 a group of MPs submitted a draft of new Law on the Prosecutor Office. The draft aimed at reversing the reform of the Prosecution. In the light of the new draft, the prosecution will be entirely supervised by the Ministry of Justice. Furthermore, the draft widens the competences of the Prosecutor General. For example, the Prosecutor General will be able to appoint or dismiss a head of the prosecution unit on the basis of a discretionary decision without the necessity of carrying out a transparent and open recruitment process. Furthermore, the Prosecutor General will be able to issue decisions regarding specific investigations. The Prosecutor General will also have the power to release to the media the information from any investigation. The law came into force on 4 March 2016.

Reactions to the adopted changes

Numerous different bodies have protested against the recently adopted changes. As it was mentioned above, the Commissioner for Human Rights, the first President of the Supreme Court, the Prosecutor General and two groups of MPs submitted complaints to the Constitutional Tribunal concerning the amendment to the Act on the Constitutional Tribunal adopted in December 2015.

The law faculties of Poland's largest universities have universally protested against these changes. Legal academics appear unified in condemning the changes as a violation of the principle of the separation of powers that is unacceptable in a democratic state. Numerous non-governmental organisations have also protested against the reforms. Notably, in December 2015 thousands of people came out on the streets of Warsaw and other cities, in protest against the changes to the Constitutional Tribunal. Similar protests and assemblies were organised in January and February 2016.

International organisations have also expressed their concerns regarding the changes to the Constitutional Tribunal. The Venice Commission expressed its concerns regarding the changes adopted in the Act on the Constitutional Tribunal. This opinion seems to be shared by the Secretary General of the Council of Europe, Council of Europe Human Rights Commissioner and Regional Bureau of the United Nations. The European Broadcasting Union, European Journalist Federation, Reporters Without Borders and the European Association of Journalists have also expressed their deepest concerns over the amended Act on public media.

In mid-January 2016 the European Commission announced that it started the rule of law framework concerning the situation in Poland. Right now, the procedure is in its initial stage.

The Minister of Foreign Affairs asked the Venice Commission for the opinion on the Act amending the Act on the Constitutional Tribunal. The Venice Commission's delegation visited Poland in February 2016. The final version of the Commission's opinion will be adopted at the meeting scheduled for 11 and 12 March 2016.

Conclusions

HFHR is concerned that the key pillars of the democratic State under the rule of law are in danger of being dismantled in Poland. The governing party is attempting to change the entire political system using lower ranking laws such as acts and resolutions without, however, changing the Constitution (since it does not have the required majority to change the Constitution). Reforms have been pushed through at an accelerated pace, without consultation with civil society and in disregard for experts' opinions. The discussion that accompanies these changes is deeply polarising Polish society.

Intervention by Mr Jarosław Kurski, deputy editor-in-chief of the daily newspaper Gazeta Wyborcza, before the Committee on Political Affairs and Democracy,

Mr President, Ladies and Gentlemen,

I would like to start by thanking you for your invitation.

Allow me to say a few introductory words: I am deputy to Adam Michnik, editor-in-chief of the daily newspaper Gazeta Wyborcza, which was founded after the fall of the communist regime and the peaceful revolution of the Round Table Talks in 1989. Since then, our newspaper has become a symbol for rediscovered freedom of expression in Poland.

I do not represent any political party. The reason why I accepted your kind invitation is that I am concerned, as a citizen, about the future of the media and democracy in Poland.

My words here can be considered as an act of treason; because every critical opinion of the governing PiS party (Law and Justice) expressed abroad is perceived as an indictment against Poland. According to Jarosław Kaczyński, the leader of the PiS, those who do this, and I quote: “carry a gene for national treason and are the worst sort of Poles”.

What has actually happened to the media in Poland in the first 100 days of the new government?

Here are the facts:

- On 30 December last year, the PiS proceeded to dismiss former journalists and senior managers from public media outlets. The first part of the new law relating to the public media, called “the Small Media Act”, was adopted in two and a half days. All of the opposition's proposals were rejected.
- Within a short space of time, all members of the management and supervisory boards of the public television and radio companies were replaced.
- The treasury minister has now been made responsible for the indefinite appointment and removal from office of the heads of the public service media, appointments which are made without holding open competitions or consulting the National Broadcasting Council (KRRiT), which, under the Constitution, remains the media market regulator.
- Shortly thereafter, the treasury minister appointed the new president of public television, a government member and PiS spin doctor who has played a significant role in numerous electoral campaigns for the party.
- This is the most significant public media takeover by the government in 26 years of Polish democracy.
- But the PiS has never hidden its true intentions. The party's spokesperson, Ms Beata Mazurek has openly stated – and I quote – “we hope that finally the media narrative which we don't agree with ends”.
- So far, more than 80 journalists have been dismissed or forced to leave public media outlets. And it is not over yet. There have not been this many dismissals since 1989. Journalists with lengthy careers within the public service media have lost their jobs. The deputy minister for culture, Krzysztof Czabański, himself named a number of those to be dismissed.
- Journalists employed on the main news programmes were immediately replaced by others coming from the Catholic and nationalist television channel TV Trwam, directed by Father Rydzyk, as well as from the right-wing television channel TV Republika. Before the two elections in 2015, these two channels were considered by the Media Research Laboratory at the University of Warsaw to be the most biased and loyal towards the PiS².

² These are the conclusions of a report prepared for the National Audiovisual Council (KRRiT) by the Research Laboratory Media of the University of Warsaw. The Trwam TV and TV Republika seem to be media which are missing objectivity, criticising the PO (Civic Platform, the former ruling party, democrat, liberal, pro-European) and praising the PiS. According to the report in question, it is the Trwam TV which is the most biased. It is noteworthy that 98.8% of guests in this channel were representatives of one election committee - that of PiS. The airtime allocated to political parties was in total: 16h 15 min. and 52 sec. Representatives of PiS had to themselves 16h!

- The director of the first public radio station, Kamil Dąbrowa, was dismissed for disciplinary reasons: his only offence was to have played the national and European anthems as a sign of protest against the new government's dominance over the media.

- For your information, the list of dismissed journalists, prepared by a group of independent journalists (Towarzystwo Dziennikarskie), is in enclosure no 2.

- In addition the PiS has announced its intention to hold a rapid vote on the new law on national media, which should permanently change the public media system. National media outlets will henceforth be an institution run by the ministry for culture, similar to theatres or museums, a tool for government propaganda.

This means the dismissal of all current staff and the employment of people known to be loyal towards the PiS.

A word about private media outlets

- The PiS has announced the "repolanisation" of foreign-owned media. We still do not know how they wish to do this.

- Gazeta Wyborcza, the largest daily broadsheet in Poland, is under immense pressure. Nearly every day we receive anonymous threats, including death threats. We lodge complaints with the courts. (enclosure no 3)

- On 13 December last year, a demonstration referred to as the "Rosary Crusade for the Motherland" was held in front of our newspaper's headquarters. A priest, accompanied by persons close to the governing party, came to "exorcise" our newspaper. And this is no joke! (see photos in enclosure no 7).

- On the same day, PiS sympathisers came to denounce – and I quote – "the anti-Polish lies of the Gazeta Wyborcza, to protest against the newspaper's propagation of gender and multicultural ideologies, as well as against inviting Muslim terrorists to come to Poland". We responded with a counter-demonstration to defend freedom of expression.

- The ministry of justice has cancelled all the subscriptions held by courts and court administrations to Gazeta Wyborcza and to the weekly newspapers Polityka and Newsweek-Polska.

- We have noted a decline in government advertising and the first cases of withdrawals of notices of calls for tenders and announcements by state-owned companies in which the key positions have been taken over by PiS sympathisers.

- The PiS has announced the creation of a Polish Media House which would be responsible for centralising all the resources making up state-owned companies' advertising budgets and then distributing them to media outlets who are in favour of and loyal to the government in power.

- Lastly, for the first time in Gazeta Wyborcza's history, the governing party has lodged a complaint before the civil court against Gazeta for having published a critical remark about the PiS. (enclosure no 4)

- The PiS believes and asserts that "the good of the nation is above the law".

This sums up the substance of the upheavals in Poland's political system. The democratic institutions which seek to uphold the separation of powers and to defend the Constitution are now paralysed. (See the text by Ewa Siedlecka, enclosure no 5).

Independent and free media are the last remaining guarantor and protector of liberal democracy! This is why we aim to defend their cause. For Poland and for Europe!

Enclosures (available from the Secretariat on request):

- 1) Letter of 3 March 2016 of Seweryn Blumsztajn, president of the Journalists Association, addressed to all members of the Parliamentary Assembly of the Council of Europe relating to the changes in public media outlets and
- (2) List of dismissed journalists or those who have left public media
- 3) Example of the threats sent to Gazeta Wyborcza and an example of a complaint lodged is (in Polish only)
- 4) First pages of the complaint lodged by the PiS against Gazeta Wyborcza (in Polish only)
- 5) Text by Ewa Siedlecka, in which she analyses how the PiS, over just 100 days in government, has violated the democratic order in Poland
- 6) Letter of 7 March 2016 of the Committee for the defence of democracy (KOD) addressed to the Chairperson and Members of the Committee on Political Affairs and Democracy of the Parliamentary Assembly of the Council of Europe
- 7) Photos