

**LIBERTIES**

**RULE OF LAW REPORT**

**2024**

**POLAND**

**#ROLREPORT2024**



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## **FOREWORD**

This country report is part of the Liberties Rule of Law Report 2024, which is the fifth annual report on the state of rule of law in the European Union (EU) published by the Civil Liberties Union for Europe (Liberties). Liberties is a non-governmental organisation (NGO) promoting the civil liberties of everyone in the EU, and it is built on a network of national civil liberties NGOs from across the EU. Currently, we have member organisations in Belgium, Bulgaria, the Czech Republic, Croatia, Estonia, France, Germany, Hungary, Ireland, Italy, Lithuania, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and Sweden, as well as a contributing partner organisation in Latvia.

Liberties, together with its members and partner organisations, carries out advocacy, campaigning and public education activities to explain what the rule of law is, what the EU and national governments are doing to protect or harm it, and gathers public support to press leaders at EU and national level to fully respect, promote and protect our basic rights and values.

The 2024 report was drafted by Liberties and its member and partner organizations, and it covers the situation during 2023. It is a ‘shadow report’ to the European Commission’s annual rule of law audit. As such, its purpose is to provide the European Commission with reliable information and analysis from the ground to feed its own rule of law reports, and to provide an independent analysis of the state of the rule of law in the EU in its own right.

Liberties’ report represents the most in-depth reporting exercise carried out to date by an NGO network to map developments in a wide range of areas connected to the rule of law in the EU. The 2024 report includes 19 country reports that follow a common structure, mirroring and expanding on the priority areas and indicators identified by the European Commission for its annual rule of law monitoring cycle. Thirty-seven member and partner organisations and one independent human rights expert contributed to the compilation of these country reports.

**[Download the full Liberties Rule of Law Report 2024 here](#)**

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# POLAND

## About the authors



The Helsinki Foundation for Human Rights (HFHR) is a non-governmental organisation established in 1989 and based in Warsaw, Poland. The HFHR is one of the largest and most experienced non-governmental organisations operating in the field of human rights in Eastern and Central Europe. Since 2007, the HFHR has had a consultative status with the United Nations Economic and Social Council (ECOSOC). The HFHR's objective is the protection and promotion of human rights.

## Key concerns

### *Justice System*

Regarding the justice system, the most important problem concerning the independence of the judiciary remains the functioning of the National Council of the Judiciary. Consequently, there is a growing number of judges who are potentially defectively nominated with its involvement, and their rulings will be open to challenge by the parties. Regarding the implementation of the European Commission's 2023 recommendations, progress was not satisfactory. The recommendation to separate the functions

of the Minister of Justice and the Prosecutor General has not been implemented. However, with the change of government in December 2023 there was a change of attitude and at the beginning of 2024 the current Minister of Justice presented the main ideas for the separation of functions.<sup>1</sup>

### *Media Environment and Media Freedom*

Regarding the media environment and media freedom, the previous parliamentary majority (in power until mid-December 2023) remained mostly reluctant to any demands for change to increase media freedom. The public media under its control often displayed a clear bias,

1 <https://www.pap.pl/aktualnosci/nastapi-rozdzielenie-funkcji-ministra-sprawiedliwosci-i-prokuratora-generalnego>

bordering on party propaganda. The National Broadcasting Council excessively prolonged procedures for renewing licences for media not favourable to the previous majority and imposed penalties on these media. Progress on the Commission’s recommendations was not satisfactory. The recommendation to ensure that fair, transparent and non-discriminatory procedures are adhered to for the granting of operating licences to media outlets has not been implemented. The independent governance and editorial independence of public service media has not been strengthened in any manner.

### **State of play** (versus 2023)

-  Justice system
- N/A** Anti-corruption framework
-  Media environment and freedom of expression and of information
- N/A** Checks and balances
- N/A** Enabling framework for civil society
- N/A** Systemic human rights issues

#### Legend

**Regression**    **No progress**    **Progress**



## **Justice system**

### **Key recommendations**

- *The new parliamentary majority should take urgent legislative action, in cooperation with a wide range of stakeholders (judges, prosecutors, lawyers, academia, NGOs etc.), to reform the National Council of the Judiciary in accordance with the case law of the European Court of Human Rights, the Court of Justice of the European Union and the Supreme Court.*
- *The legislator should more clearly separate the functions of the Minister of Justice and that of the Prosecutor General.*

## **Judicial independence**

### **Appointment and selection of judges, prosecutors and court presidents**

On 23 November 2023, the European Court of Human Rights (ECtHR) delivered a judgement in the *Wałęsa v. Poland* case (application

No. 50849/21), finding, among other things, a violation of Article 6 of the Convention. The Court found in particular, as it has done in previous cases, that the Chamber of Extraordinary Review and Public Affairs, which had examined the extraordinary appeal, was not an “independent and impartial tribunal established by

law.”<sup>2</sup> In this judgement, the Court applied the pilot judgement procedure.

Moreover, in 2023, the Court of Justice of the European Union (CJEU) issued two rulings on the status of the new Supreme Court chambers created in 2018.

In the first of the judgements, delivered on 13 July 2023 (joined cases C-615/20 and C-671/20), the CJEU ruled on the removal of Judge Igor Tuleya from office and the lifting of his immunity by the Disciplinary Chamber of the Supreme Court in 2020.<sup>3</sup> The CJEU held that the decision was incompatible with EU law. According to the CJEU, the court (which included Judge Igor Tuleya, who posed the question) was entitled to ignore the ruling of a body whose independence is not guaranteed (i.e. the Disciplinary Chamber) and pose the question despite the suspension resolution, and the bodies responsible for the allocation of cases in the court should not apply the resolution of the Disciplinary Chamber. Another panel of the court (in which Judge Piotr Gąciarek sat) should not apply the resolution of the Chamber, i.e. not hear the case taken away from the suspended judge and assigned to another judge. It should be noted that the Disciplinary Chamber of the Supreme Court was abolished in July 2022 and its duties were taken over by the Professional Responsibility Chamber. The latter chamber continues to be staffed by judges appointed by the new National Council of the

Judiciary (NCJ), but does not constitute the entire staff.

On the other hand, in the second ruling, issued on 21 December 2023 (case No. C-718/21), the CJEU refused to hear preliminary questions from the Chamber of Extraordinary Review and Public Affairs.<sup>4</sup> In this case, the CJEU was responding to two questions from a panel composed exclusively of new judges, which was considering an appeal by a certain judge against a resolution of the NCJ, which had refused his request to continue to occupy the position of judge after he had reached the age for retirement, namely 65. The NCJ refused his request on the grounds that the judge had failed to meet the deadline for making such a declaration. The CJEU ruled that the questions did not come from a body with the status of an independent and impartial court previously established by law, as required by EU law, and consequently declared the questions inadmissible. The Court referred to a judgement of the ECtHR, which, in relation to two compositions of new judges, held that they did not constitute a court established by law and were not independent, as the appointment of their members was made in clear breach of the basic national provisions governing the procedure for the appointment of judges. The circumstances of the change in the composition of the NCJ in 2017 undermined its independence from the legislature and the executive, affecting its ability to propose independent and impartial candidates for judicial

2 [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-229366%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-229366%22]})

3 CJEU, Judgement of the Court (Grand Chamber) of 13 July 2023, joined cases C-615/20 and C-671/20.

4 CJEU, Judgement of the Court (Grand Chamber) of 21 December 2023, case No. C-718/21.

positions on the Supreme Court. Moreover, the judges in question were appointed by the President of the Republic of Poland on the basis of a resolution of the NCJ, the implementation of which was suspended by the Supreme Administrative Court at the time of their appointment pending an examination of the legality of that resolution, and the Supreme Administrative Court ultimately revoked the resolution.

On 20 December 2023, the Sejm of the Republic of Poland adopted a resolution addressing the situation of the NCJ.<sup>5</sup> It indicated that the Sejm's resolutions regarding the appointment of judicial members of the NCJ were taken in flagrant violation of the Polish Constitution, the Treaty on the European Union (TEU) and European Convention on Human Rights. According to the Sejm, this prevents the NCJ from fulfilling its constitutional functions, including the task of safeguarding the independence of courts and judges. Furthermore, the Sejm called on improperly appointed members of the NCJ to immediately cease their activities in the Council. At the same time, it declared, with a general approach, its intention to take action to restore compliance with constitutional standards promptly.

The Helsinki Foundation for Human Rights (HFHR) prepared a report analysing judicial appointments made with the involvement of the NCJ, whose members were irregularly/unlawfully appointed by the previous Sejm

(hereinafter: new NCJ).<sup>6</sup> The report reveals that between 2018 and August 2023, the President appointed 2,204 individuals to judicial positions based on the recommendations of the so-called new NCJ. This number does not include individuals appointed to trainee judge (asesor) positions.

Among the appointed judges are eighteen people who have been appointed by the new NCJ to the judiciary on as many as two occasions (the record holder received two consecutive appointments, to a district court and then to a court of appeal, with an interval of just over a dozen months). A comparison of the list of appointed individuals and the list of candidates endorsed by the NCJ revealed that 239 individuals appeared on both lists.

The majority of individuals appointed with the involvement of the new NCJ were appointed to district courts and regional courts (988 and 876 individuals, respectively). However, the highest percentage of appointments pertained to appellate courts (179 individuals) and the Supreme Court (56 individuals), constituting 39% and 42% of the composition of these courts, respectively.

HFHR also analysed the career paths of individuals appointed to judicial positions with the involvement of the new NCJ. The data collected indicate that 47% of those appointed previously held the position of judge, while 19% were trainee judges, and 34% came from other legal

5 <https://www.sejm.gov.pl/sejm10.nsf/komunikat.xsp?documentId=E2DE6E25A9B2F8EAC1258A8B006DDA45>

6 <https://hfhr.pl/publikacje/nowa-krs-krajobraz-po-reformie>

professions. In this last group, the most numerous appointees were court clerks (254 individuals), attorneys (159), assistant judges (111) and legal advisors (110).

At the same time, the HFHR analysed the ratio of judges appointed by the new NCJ to the total number of judges in several dozen courts. The analysis showed that this ratio ranged from 7% to even 63% in individual courts. HFHR identified courts and departments almost entirely composed of individuals appointed with the involvement of the new National Council of the Judiciary.

HFHR also examined whether individuals appointed to judicial positions as a result of the selection process had competitors. From the collected data, it appears that out of 1,782 analysed selection processes, there was only one candidate in 557 cases.

HFHR emphasizes that these data must be taken into account when designing solutions related to the status of individuals appointed with the involvement of the new National Council of the Judiciary.

### ***Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors***

In June 2023, the District Court for Warszawa-Śródmieście ordered the reinstatement of Judge

Marzanna Piekarska-Drażek.<sup>7</sup> At the end of 2022, Judge Piekarska-Drażek, along with two other judges, was transferred to another department by the president of the Appellate Court in Warsaw. The District Court concluded that the actual reason for her transfer was the application of judgements of the ECtHR and the CJEU, as well as questioning the status of individuals appointed to judicial office with the involvement of the new National Council of the Judiciary. The court also held that the transfer of Judge Piekarska-Drażek had been illegal because it did not take into account the length of her service in the position and her specialization. Similar judgements were issued in the cases of Judge Waldemar Żurek and Judge Paweł Juszczyzyn, who were also transferred by the presidents of their courts.

On 1 September 2023, all three judges returned to work in the criminal department. In contrast, in July 2023, Judge Rafał Jerka was transferred from the labour and social security department to the family department by the president of the Regional Court in Olsztyn, Michał Lasota.<sup>8</sup> According to media coverage, he was probably transferred in order to create a vacant position that could be filled with the wife of a district court president, who is also a member of the National Council of the Judiciary. Judge Jerka has filed a complaint with the European Court of Human Rights, alleging that he was transferred unlawfully.<sup>9</sup>

7 <https://oko.press/wielki-sukces-sedzi-piekarskiej-drazek-sad-nakazal-schabowi-cofnac-jej-karne-przeniesienie>

8 <https://oko.press/czlowiek-ziobry-przymusowo-przeniosl-sedziego>

9 <https://www.rp.pl/sady-i-trybunaly/art39243761-sedzia-rafal-jerka-z-olsztyna-skarzy-polske-do-strasburga>

Minister of Justice Zbigniew Ziobro removed the Deputy Prosecutor of the District Prosecutor's Office for Poznań-Stare Miasto, stating that she did not exercise appropriate substantive supervision over the work of subordinate prosecutors and did not verify their legal qualifications.<sup>10</sup> This decision was related to the conviction of two individuals found guilty of a homophobic-motivated robbery. The ruling of the criminal court in this case faced public criticism from the Ministry of Justice, which described it, among other things, as a 'judicial crime'.

### **Promotion of judges and prosecutors**

In December 2023, the Court Watch Polska Foundation published a report emphasizing the need for a change in the system of appointing judges in Poland and advocated for a greater emphasis on the substantive preparation of judges for their roles.<sup>11</sup>

### **Allocation of cases in courts**

The new Minister of Justice, Adam Bodnar, submitted for public consultations a draft ministerial regulation amending the regulation on the functioning of common courts. The proposed changes indicate that requests for the disqualification of a judge based on the manner of their appointment will not be considered by judges appointed in the same manner. This

solution will prevent judges appointed by the so-called new National Council of the Judiciary from participating in the consideration of requests related to this circumstance.

In June 2023, the Supreme Administrative Court (file No. III OSK 4359/21) dismissed the previous Minister of Justice's cassation appeal against a judgement obliging him to provide the ePaństwo Foundation with copies of reports from the drawings of lots for the composition of the jury using the random case allocation system (*System Losowego Przydziału Spraw*). HFHR requested the disclosure of information including, at minimum, the name and surname of the randomly selected judge, the court and department where they serve, the case file number, and the date of the drawing. In April 2021, the Supreme Administrative Court ordered the disclosure of the system's algorithm.<sup>12</sup> The Ministry of Justice published the algorithm. However, based only on the algorithm it is impossible to assess if the entire system functions properly and is not subject to modification by external factors (e.g. political).

However, with regard to the source code for the random case selection system, which we wrote about last year, the case (II SAB/Wa 660/23) has not started before the Regional Administrative Court in Warsaw. The complainant, Sieć Obywatelska Watchdog Polska,

10 <https://tvn24.pl/polska/sprawa-skazanej-24-letniej-mariki-zbigniew-ziobro-zdecydowalem-o-odwolaniu-zastepcy-szefa-poznanskiej-prokuratury-rejonowej-7275993>

11 <https://amicus.courtwatch.pl/files/2023/12/Mapa-drogowa-reformy-konkursow-na-stanowiska-sedziowskie.pdf>

12 Poland, [Judgement of the Supreme Administrative Court of 19 April 2021](#), case No. III OSK 836/21.

has requested the new Minister of Justice to publish the source code.<sup>13</sup>

As mentioned in the 2023 submission, in May 2022, the Supreme Administrative Court ruled<sup>14</sup> that the source code of the Random Case Allocation System or RCAS (*System Losowego Przydziału Spraw*) constitutes public information and, therefore, should be disclosed by the Minister of Justice. RCAS is a network application based on a number generator used to designate members of adjudicating benches in common courts (in criminal and civil cases). It was introduced in 2017 to eliminate the possibility that a particular judge be allocated to a case arbitrarily. It was also supposed to guarantee an equal distribution of workload among judges. NGO<sup>15</sup> and Supreme Audit Chamber<sup>16</sup> reports cite numerous irregularities in RCAS functioning (e.g. lack of transparency, risk of manipulation, and unequal workload distribution). The judgement stemmed from actions taken by the Citizens Network Watchdog Poland (*Sieć Obywatelska Watchdog Polska*). In 2017, the network successfully petitioned the Ministry of Justice via a public information request for the source code's disclosure. The NGO complained about the Ministry of

Justice's failure to act before the Provincial Administrative Court in Warsaw. However, the court agreed with the Minister's position (stating that the code is information of a technical character and, as such, does not fall under the scope of the FOI act) and dismissed the motion.<sup>17</sup> HFHR appealed against this judgement to the Supreme Administrative Court.

In the judgement of May 2022, the Supreme Administrative Court ruled the RCAS was not merely ancillary to the functioning of courts (as is the case of e.g. office programs).<sup>18</sup> In the court's opinion, RCAS in practice replaces people in the task of allocating judges to cases, the outcome of which is an irreversible decision – therefore, RCAS performs public functions and the information about its source code should be disclosed.

In its decision in August 2022, the Minister of Justice refused to publish the source code of the RCAS.<sup>19</sup>

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13 <https://siecobywatelska.pl/wp-content/uploads/2024/01/Ministerstwo-Sprawiedliwosci-algorytm-losowania-sedziow-pismo-zalacznik.pdf>

14 Poland, Judgement of the Supreme Administrative Court of 26 May 2022, case No. III OSK 1189/21.

15 Fundacja Moje Państwo, [Algorytm Losowego Systemu Przydziału Spraw](#).

16 Supreme Audit Chamber, [Post-Inspection No. P/19/038](#), 23 February 2019.

17 Poland, Judgement of the Provincial Administrative Court in Warsaw of 11 December 2018, case No. II SAB/Wa 502/18.

18 D. Gajos-Kaniewska, [NSA: kod źródłowy sądolotka jest informacją publiczną](#), Rp.pl, 29 May 2022.

19 Minister of Justice, Decision No. BK-IV.082.270.2022, 4 August 2022.

**Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)**

The National Council of Judiciary continues being responsible for the appointment and promotion of judges, while maintaining a critical stance towards the rulings of the European Court of Human Rights and the Court of Justice of the European Union (i.e. declaring that it will not adhere to these judgements). Shortly after the recent ECtHR judgement in the case of *Wałęsa v. Poland* (see above), the NCJ stated that “the judgement has no binding force in the national legal order”.<sup>20</sup>

Furthermore, the NCJ has negatively responded to the Sejm’s call to cease its activity. In the resolution of 20 December 2023, the NCJ’s presidium identified the call as an attack on the independence of the NCJ.

Moreover, while describing the activities of the NCJ, one cannot ignore its presence on X (formerly Twitter).<sup>21</sup> The social media account, described as ‘NCJ’, regularly attacks independent judicial associations, politicians from parties other than the Law and Justice (*Prawo i Sprawiedliwość*), as well as individual judges. Some of these attacks may be perceived as a threat to the independence of the judiciary.

Similar conclusions might also be drawn in connection with specific actions taken by the NCJ. On 14 March 2023, the chairperson of the NCJ made a sarcastic remark requesting the President of the Regional Court in Poznań to consider the possibility of sending a specific judge for training in constitutional law, particularly focusing on the protection of religious cults. The appeal was made in connection with the judgement issued by this specific judge that sparked public discussion.

In another case related to a robbery motivated by homophobia, the National Council of the Judiciary supported critical assessments of the judgement presented by the Minister of Justice Zbigniew Ziobro, and ordered a review of similar cases issued by the same court.

On 28 August 2023, during the extraordinary hearing of the NCJ ordered upon the request of the Minister of Justice, the head of the NCJ made a presentation criticizing specific judgements and accusing judges of politicizing their offices.

**Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges**

On 7 July 2023, the European Court of Human Rights issued a judgement in the case *Tuleya v. Poland* (applications Nos. 21181/19

<sup>20</sup> <https://www.gazetaprawna.pl/wiadomosci/kraj/artykuly/9361238,krs-zajela-stanowisko-wobec-orzeczenia-ws-skargi-l-walesy.html>

<sup>21</sup> [https://twitter.com/KRS\\_RP](https://twitter.com/KRS_RP)

and 51751/20), in which it found that the Disciplinary Chamber of the Supreme Court, which ruled on the lifting of the immunity of Judge Igor Tuleya, was not an independent and impartial court established in accordance with the law.<sup>22</sup> As a result, it found a violation of Article 6 of the Convention in relation to Judge Igor Tuleya.

The system of disciplinary responsibility for judges has not yet been adjusted to meet the requirements indicated in the case law of the Court of Justice of the European Union.<sup>23</sup> In 2023, judges faced repression through disciplinary proceedings multiple times. These cases involved, among other things, public statements in defence of the rule of law (e.g. Judge M. Piekarska-Drażek), decisions made by judges during proceedings (e.g. Judge T. Jaskłowski), decisions related to the management of the Supreme Court (Judge M. Gersdorf), the application of European law by assessing the independence and impartiality of judges appointed by the so-called new National Council of the Judiciary (Judges S. Bagiński, D. Tyrała, W. Maczuga), and the assessment of unlawful suspension of a judge (Judge K. Krygielski).

### **Remuneration/bonuses for judges and prosecutors**

While analysing the situation regarding the salaries of judges and prosecutors in 2023, it is

essential to point out concerns about the level of their indexation.

According to the Law on the Structure of Common Courts and the Law on the Public Prosecutor's Office, salaries of judges and prosecutors should be dependent on the average earnings in the national economy in the second quarter of the previous year. Nevertheless, in the years 2021-2023, the Sejm adopted solutions that differently identified the base for calculating the remuneration of judges and prosecutors.

As a result, the indexation of judicial and prosecutorial salaries was disproportionately small, which negatively impacted the financial situation of judges and prosecutors, especially given the high inflation rate in Poland. This led judges and prosecutors to file lawsuits against the State Treasury.

On 8 November 2023, the Constitutional Tribunal declared the discussed provisions of the law on special solutions serving the implementation of the budget act for the year 2023 to be unconstitutional (case No. K 1/23). The ruling was issued without the participation of judges appointed to positions that were already occupied (i.e. without procedural defects).

<sup>22</sup> [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-225672%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-225672%22]})

<sup>23</sup> See in particular [Judgement of the Court \(Grand Chamber\) of 15 July 2021](#), case No. C-791/19.

### ***Independence/autonomy of the prosecution service***

On 27 December 2023, the Council of Ministers accepted the proposal of the Minister of Justice and Prosecutor General Adam Bodnar for Poland to join the European Public Prosecutor's Office (EPPO).

In December 2023, the Minister of Justice Adam Bodnar appointed 5 prosecutors associated with the Lex Super Omnia association to the National Council of Prosecutors. This association brings together prosecutors who, during the tenure of the previous Minister of Justice, were the most vocal critics of the changes he introduced and were, as a result, subject to disciplinary action or transfer to distant prosecution offices.

On the other hand, in July 2023, the previous Sejm (in view of a possible change of government after the general election of October 2023) adopted an amendment to the Law on Prosecution introducing changes to the prosecution service. According to these changes, the National Prosecutor (*Prokurator Krajowy*), as well as other Prosecutor General's deputies, might be dismissed from their functions only upon the written consent of the President of Poland.

Simultaneously, the aforementioned changes delegated the competence to appoint and dismiss regional, district, and local prosecutors from the Prosecutor General (*Prokurator Generalny* – superior of all prosecutors in Poland) to the National Prosecutor (*Prokurator Krajowy* – first deputy Prosecutor General).

Furthermore, the National Prosecutor gained the authority to perform tasks and exercise rights provided for in the Police Act and other laws regulating the work of secret services. As a result, the National Prosecutor is now competent to initiate surveillance.

Finally, the powers of the Prosecutor General to issue orders to subordinate prosecutors were significantly weakened. According to the new wording of Article 7 of the Law on the Public Prosecutor's Office, the Prosecutor General issues orders through the National Prosecutor's Office.

In HFHR's opinion, the adoption of the changes was not aimed at improving the work of the public prosecution service, as declared by the drafters, but at strengthening the political influence over the prosecution and making it more dependent on political changes. The discussed changes were not in any way linked to a change in the method of selecting the National Prosecutor, including ensuring the participation of the prosecutor's self-government and entities independent of political influences in this regard. At the same time, they strongly hinder the current parliamentary majority from making changes that would more extensively ensure the independence of individual prosecutors in the performance of their functions.

### ***Independence of the Bar (chamber/association of lawyers) and of lawyers***

The Constitutional Court dismissed, due to formal reasons, a case initiated by a group of Law and Justice party members aiming to declare certain provisions of the Law on the

Bar unconstitutional (case reference K 6/22; see the HFHR's input to the 2023 Rule of Law Report).<sup>24</sup> This case was critically assessed by representatives of the legal profession, who considered it a threat to the independence of professional self-government. The motion was considered an attempt from the governing majority to limit the independence of advocates and legal advisers, who often are at odds with the government when defending the rule of law in Poland, and to reshape the existing structure of the Bar in future.<sup>25</sup> In reaction to the MPs' motion, national bar associations of advocates<sup>26</sup> and legal advisers<sup>27</sup> adopted resolutions emphasizing that the Bar's autonomy and independence serve the right to defence and the right to a fair trial.

***Significant developments capable of affecting the perception that the general public has of the independence of the judiciary***

On 13 December 2023, the Supreme Court, composed of seven judges of the Supreme Court (case reference I KZP 5/23), refused to adopt a resolution regarding the costs of unpaid legal aid. In the reasoning of its decision, the court referred to the legal situation of the Constitutional Court. It pointed out that decisions issued by the Constitutional Court

with the participation of individuals appointed to previously occupied positions do not have the effects envisaged in the Constitution (i.e. they are not binding). Therefore, they do not have a universally binding and final character.

## ***Quality of justice***

### ***Accessibility of courts (e.g. court fees, legal aid, language)***

In 2023, the Parliament adopted changes in the Act on Courts' Costs in Civil Cases. The new regulation lowered the fees for delivering a reasoned court decision. Previously, the fees for delivering reasoned court decisions were the same for judgements as well as other categories of court decisions. Currently, the fee for delivering judgement with justification is PLN 100 (approx. €2), whereas in cases of other decisions PLN 30 (approx. €7).

### ***Resource of the judiciary (human/financial/material)***

In 2023, the employees of court and prosecution services organised a protest against low wages. According to the media reports, in 2023 among over 8,000 employees of prosecution service almost 1,300 employees received minimal

24 <https://trybunal.gov.pl/postepowanie-i-orzeczenia/postanowienia/art/12570-przynaloznosc-do-izby-adwokackiej-lub-izby-radcow-prawnych-na-podstawie-kryterium-miejsca-polozenia-siedziby-zawodowej-lub-miejsca-zamieszkania>

25 P. Rojek-Socha, A. Partyk, [Wyrok TK w sprawie samorządów może uderzyć w prawnicze dyscyplinarki](#), Prawo.pl, 16 May 2022.

26 National Bar Association, [Resolution No. 63/2022](#), 4 July 2022.

27 National Chamber of Legal Advisers, [Statement](#), 4 July 2022.

wage (PLN 3,490 with tax / €775). The proposal of the state budget for 2024 envisages a 20% wage increase for employees of courts and prosecutors.

### **Training of justice professionals (including judges, prosecutors, lawyers, court staff)**

In November 2023, the previous Minister of Justice, Zbigniew Ziobro appointed Kamil Zaradkiewicz for a five-year term as the director of the National School of Judges and Prosecutors, responsible for the continuous education of judges and prosecutors, as well as trainees in the judiciary and prosecution.

Kamil Zaradkiewicz is a close associate of Minister of Justice Zbigniew Ziobro and a former director of the administrative department of the Ministry of Justice. He was appointed to the Supreme Court by the so-called new National Council of the Judiciary. Furthermore, his appointment occurred upon the personal recommendation of Minister of Justice Zbigniew Ziobro.

The decision of the Minister of Justice to appoint him as the director of the school raises doubts regarding compliance with the provisions of the law on the Supreme Court. The law prohibits judges from holding any official position or full-time employment other than as a scientific or teaching staff member in a higher education institution (whereas the National School is not one). Furthermore, according to the law, a judge of the Supreme Court appointed to serve

in state authorities must immediately resign from the judge's office, while retaining the right to return to the position held before the appointment.

What is more, during this period Judge Robert Pelewicz was appointed as the Deputy Director of the National School. In 2023, *Gazeta Wyborcza* published an article accusing him of attempting to influence the outcome of the judicial application exam by inciting the examiner to complete the test instead of the examined candidate (privately, the daughter of the then Law and Justice Senator, and currently the judge of the Constitutional Court, Stanisław Piotrowicz).<sup>28</sup>

## **Fairness and efficiency of the justice system**

### **Length of proceedings**

The issue of prolonged judicial proceedings remains a systemic problem of the Polish justice system. The ongoing changes in the judiciary since 2015 have led to a significant increase in the average duration of proceedings. While in 2015 court proceedings before district courts took 3.9 months on average, by 2022 their duration had extended to 5.7 months. During this period, an increase in the duration of proceedings is observed in every category of cases, except for criminal cases heard by regional courts, where there was a decrease from 10.3 to 8.6 months.

28 <https://wyborcza.pl/7,75398,29479150,kamea-czarny-dlugopis-i-egzamin-corki-piotrowicza.html>

However, in comparison to 2021, there is a noticeable statistical acceleration in the pace of adjudicating cases in some categories before the common courts (*sądy powszechne* – district, regional and appellate courts that deal with criminal and civil cases; outside their structures, there are specialized courts – administrative and military ones). This is particularly true for civil cases heard by regional courts (decrease from 8.9 to 8 months) and civil cases heard by district courts (decrease from 7.6 months to 6.1 months). Significant decreases compared to 2021 were also observed in the statistics related to family cases (from 5.3 to 4.9 months) and

business cases (from 8.6 to 7.3 months) heard by district courts.

On the other hand, in comparison to 2021, the duration of proceedings before regional courts in the field of social insurance and labour law increased (from 12.6 to 13.3 months), as well as in business cases (from 11.1 to 11.7 months). An important increase should be noted for regional courts in cases related to social insurance and labour law (from 11.5 to 12.2 months).

The duration of criminal proceedings, both before regional and district courts, remains nearly unchanged compared to 2021.

## Media environment and media freedom -

### Media and telecommunications authorities and bodies

#### **Independence, enforcement powers and adequacy of resources of media and telecommunication authorities and bodies**

In 2023, there were no significant changes concerning the independence of the National Broadcasting Council (*Krajowa Rada Radiofonii i Telewizji*, NBC). As in previous years and also in 2023, NBC's actions showed political bias towards certain media outlets. For example, in August 2023, NBC issued a decision imposing a fine on Radio ZET. Radio Zet published

content informing about the American service's lack of confidence in the Polish service during an organisation of the transport of the Ukrainian President in Poland. According to NBC, this material was contradictory to the Polish *raison d'état*.

In August 2023, NBC issued a decision prolonging the concession for Radio TOK FM. The private station (part of the Agora media corporation) awaited the decision for over 9 months. After issuing the decision, NBC Chairman Maciej Świrski said that the positive decision was issued "to show there is freedom of speech".<sup>29</sup> At the same time, NBC issued

29 <https://www.tokfm.pl/Tokfm/7,103085,29942061,zeby-pokazac-ze-jest-wolnosc-slowa-maciej-swirski-o-przedluzeniu.html>

a decision imposing fines on the radio for the critical comments made by one of its journalists concerning the new school handbook 'History and the Present' ("*Historia i Teraźniejszość*"). The handbook ordered by the Ministry of National Education was strongly criticized for its conservative and discriminatory approach.

Furthermore, in February 2022, the Supreme Administrative Court ruled that NBC "grossly violated the law" by delaying issuing the decision on prolonging the concession of one of the private TV stations. TVN 7 applied for the renewal of the concession a year earlier, whereas the final decision was issued only 6 days before the former decision expired. The protracted proceedings were of interest to the Ombudsman, among others, who suspected the existence of non-legal factors influencing the non-renewal of the concession.<sup>30</sup>

### **Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media and telecommunication authorities and bodies**

In 2023, the Ombudsman appealed to the Speaker of the Sejm, Elżbieta Witek, to start the process of implementing the Constitutional Court judgement of 2016 concerning the competences of the National Media Council and the National Broadcasting Council.

In 2016, the Parliament adopted the Act on the National Media Council that transferred

some of the competencies of the National Broadcasting Council in respect of appointing the management of the public media to the newly created National Media Council (*Rada Mediów Narodowych*). In its judgement, the Constitutional Court ruled that bypassing the NBC in the process of appointing the management of the public media is unconstitutional. Regardless of the decision, for almost seven years the Parliament did not implement the judgement.

In December 2023, after the forming of the new government, the Minister of State Assets undertook steps to change the management of the public media. Relying on the provisions of the Commercial Companies Code (*Kodeks spółek handlowych*), the Minister dismissed the public media supervisory boards and the media chiefs. This process was heavily contested from the perspective of its legality. According to the opinion of the HFHR, such actions "raised serious legal concerns".<sup>31</sup> In its statement, the HFHR pointed out that the model of appointing the management of the public media by a member of the government violated the Council of Europe standards.

Responding to these actions, President of the Republic of Poland, Andrzej Duda, decided to veto the legislation increasing the budget of the national media. In reaction to this, the Minister of State Assets decided to start the process of liquidation of the companies: Public TV, Public Radio and the Polish Press Agency. According

30 <https://bip.brpo.gov.pl/pl/content/rpo-krrit-koncesja-tvn7>

31 <https://hfhr.pl/aktualnosci/stanowisko-hfpc-ws-zmian-w-mediach-publicznych>

to the Ministry, this process would secure the functioning of the media and undertake the needed reorganisation without the necessity of collective dismissal of employees.

## **Transparency of media ownership**

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### **Rules governing transparency of media ownership and public availability of media ownership information, and their application**

No legislative changes as regards transparency of media ownership and public availability of media ownership information took place.

At the same time, research for the local press in this area has been done. According to research carried out by the Media Forum Foundation, a significant proportion of readers make very little distinction between private local media and local government-owned media. Whereas as many as 45% of respondents stated that they had a positive view of media published by the local government (whose right to report on its activities is not questioned), only 23% said that the local government media is a propaganda tube, i.e. that local government media are a propaganda mouthpiece of the local government.<sup>32</sup>

In 2023, HFHR published a report ‘From the regional press to Orlen Press’. It is the first study analysing the journalistic freedom and freedom of speech in regional media after acquisition of

Polska Press by state-owned company Orlen in March 2021. The report, based on interviews with journalists who work or worked in Polska Press, shows several key trends that pose a threat to journalists’ freedom that occurred after the acquisition. Firstly, the study revealed practices of favouring the former ruling party (Law and Justice) and its politicians in editorial coverage. Furthermore, the interviewed journalists indicated the practice of marginalizing the political opposition in the media coverage and limiting the choice of topics that were considered sensitive from the perspective of the former ruling majority. Finally, the study also revealed examples of substantial interference with the texts prepared by the journalists and the familiarity of editorial management with politicians associated with the former ruling majority.<sup>33</sup>

In 2023, the Supreme Audit Chamber (Najwyższa Izba Kontroli - SAC) published a report from an audit of the Public TV finances. The Chamber’s report indicated numerous violations of the legality and scrutiny in managing the public funds by the public TV. According to the Chamber, “the scale of the irregularities, their financial dimension, as well as their nature, which indicates that such actions may be repeated, does not allow the SAC to give the state station a positive assessment in the scope covered by the audit”.<sup>34</sup>

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32 <https://www.press.pl/tresc/79474,lokalne-media-niezalezne-slabo-odrozniane-od-mediow-samorzadowych>

33 <https://hfhr.pl/en/news/from-the-regional-press-to-ornen-press>

34 <https://www.nik.gov.pl/aktualnosci/funkcjonowanie-i-finanse-tvp.html>

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## **Public service media**

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### **Independence of public service media from governmental interference**

No legislative changes that increase the independence of the media from political influence took place. However, elections and the change in the public media (namely, the change of management boards of public companies Polish Television and Polish Radio), which have been criticized as legally questionable, have triggered an acceleration in civic work around public media reform. All drafts stress the independence of these media from politicians.

A topical issue is press publishing by local governments. In 2023, this topic was repeatedly discussed in the community of independent local media publishers. Towards the end of the year, publishers of local media began to call for a ban on press publication by local authorities. The ban would be included in local government laws at all levels and would apply to the press as defined in the Press Law.<sup>35</sup>

In addition, in June 2023 the editor-in-chief of one of the leading news portals, *Wirtualna Polska*, published a column informing about alleged efforts to influence the outlet's editorial independence by state actors.<sup>36</sup> According to the article, after *Wirtualna Polska* began publishing investigative reports, a state-owned company made an offer to acquire the portal. As the

offer was rejected, another offer was allegedly made, that of business cooperation – which was also rejected. Afterwards, a head of a state institution allegedly made a suggestion to a member of the board of the portal's publisher, specifying which named journalists should be fired and hired. According to the column, once all such offers were refused, a state regulator issued seven requests relating to various business activities of the portal's publisher in a single week, a few days only after the head of the state agency expressed dissatisfaction with *Wirtualna Polska's* editorial line.

Also in June 2023, an editor-in-chief of another news portal, *Onet*, published an article describing similar behaviour. According to the article, a person close to the government had suggested in a conversation with the editor-in-chief that *Onet* hire a new deputy editor-in-chief to represent the government's viewpoint, who would directly report to the portal's management board rather than the editor-in-chief.

On 28 June 2023, the editors-in-chief of 67 media outlets in Poland issued a joint declaration denouncing the pressure reported by *Wirtualna Polska* and *Onet* as latest efforts to restrict the independence of Polish media.

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35 <https://www.press.pl/tresc/79474,lokalne-media-niezalezne-slabo-odrozniane-od-mediow-samorzadowych>

36 <https://www.wirtualnemedial.pl/arttykul/wirtualna-polska-redaktor-naczelnny-pawel-kapusta-naciski-wladza-pis-mateusz-morawiecki-jaroslaw-kaczynski>

## **Safety and protection of journalists and other media actors**

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### **Rules and practices guaranteeing journalists' independence and safety**

In 2023, the Parliament adopted the Law on the State Commission for Investigating Russian Influences on the Internal Security of the Republic of Poland between 2007-2022 (Law on the State Commission).<sup>37</sup> Although the law was commonly referred to as 'Lex Tusk' as it was mainly targeting the leader of the then opposition (now Prime Minister), Donald Tusk, nonetheless media and civil society expressed concerns that this legislation would also influence media freedom. According to the law, the commission was granted competences to hear journalists, compel them to reveal their sources and submit motions to launch criminal proceedings against journalists. According to the former deputy Minister of Defence, "Many journalists who operate under Russian influence should be summoned by the commission."

After the general election in October 2023, the new Parliament dismissed the members of the commission. The representatives of the new governing majority announced that the Parliament would appoint new members and introduce a new scope of the commission's work.

On 8 May 2023, the European Commission informed it was launching infringement proceedings against Poland with regard to the adoption of the (Law on the State Commission).<sup>38</sup> In the Commission's view, the adopted law violates the principle of democracy (Articles 2 and 10 of the TEU), the principles of legality and non-retroactivity of sanctions (Article 49 of the EU Charter of Fundamental Rights - Charter) and the general principles of legal certainty and *res judicata*, as well as the right to effective judicial protection (Article 47 of the Charter), *ne bis in idem*, the protection of professional secrecy (Article 7 of the Charter) and the requirements of EU law relating to data protection (General Data Protection Regulation and Article 8 of the Charter). As of the date of drafting this report, the proceedings are pending.<sup>39</sup>

### **Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists and media activists**

In March 2023, the European Court of Human Rights communicated to the Polish government the case of two journalists, Maciej Moskwa and Maciej Nabrdalik.<sup>40</sup> While covering the humanitarian crisis on the Polish-Belarusian border, the journalists were harassed by soldiers (aggressively stopped, handcuffed and searched). The investigation into this case was never opened. In their application to the ECtHR, the journalists raised the violations

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37 <https://www.gov.pl/web/premier/komisja-ds-badania-wplywow-rosyjskich>

38 [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_3134](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3134)

39 EC, [Information about Commission decisions on infringements](#) (accessed: 15.02.2024).

40 *Maciej Nabrdalik v. Poland*, Application No. 30614/22; *Maciej Moskwa v. Poland*, Application No. 30848/22.

of, among others, Article 5 (right to liberty and security), Article 10 (freedom of speech) and Article 13 (right to an effective remedy) of the European Convention on Human Rights.

### **Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse**

In 2023, the District Court in Hajnówka sentenced a journalist who commented on the works of the Border Guard in the context of the humanitarian crisis on the Polish-Belarusian border. According to the journalist, the Border Guard officers “who forbid the delivery of water and doctors’ visits to migrants can attach SS patches to themselves”.<sup>41</sup>

Another example of a SLAPP lawsuit relates to an article published in the environmental magazine *Zielone Wiadomości* on 18 August 2023 by Nawojka Ciborska, a member of the collective of environmental activists ‘Bombelki’. The article reported on a protest by ‘Bombelki’ against plans by Gaz System S.A., the state-owned company operating Poland’s gas network, to build a terminal for natural gas delivered by sea. The article criticised the Gaz-System’s plans to build an LNG terminal in Gdansk, indicating that gas has a significant impact on global warming and for this reason, fossil gas should not act as a transition fuel towards decarbonization. The article also quoted an unnamed activists saying that “gas is a dangerous fossil fuel that we need to move away from, not invest in [...]”

Gaz-System are a bunch of criminals who are pushing us straight to disaster for their profits”. In response to the article, on 28 October 2023, Gaz System filed a defamation lawsuit against both the author of the article and the publisher of the magazine. The plaintiff demanded an apology and PLN 20,000 compensation (c.a. €4,500). The case is currently pending before the District Court in Warsaw.

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41 [https://www.press.pl/tresc/75931,piotr-maslak-skazany-w-niejawnym-procesie\\_-dziennikarz-tok-fm-rzeko-mo-mial-znieslawic-funkcjonariuszy-strazy-granicznej](https://www.press.pl/tresc/75931,piotr-maslak-skazany-w-niejawnym-procesie_-dziennikarz-tok-fm-rzeko-mo-mial-znieslawic-funkcjonariuszy-strazy-granicznej)

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## Contacts

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The Helsinki Foundation for Human Rights in Poland, based in Warsaw, was founded in 1989. Currently, the Helsinki Foundation for Human Rights is one of the most experienced and professionally active non-governmental organizations engaged in the field of human rights in Europe.

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### ***The Civil Liberties Union for Europe***

The Civil Liberties Union for Europe (Liberties) is a non-governmental organisation promoting the civil liberties of everyone in the European Union. We are headquartered in Berlin and have a presence in Brussels. Liberties is built on a network of 19 national civil liberties NGOs from across the EU.

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