

DEPOLITICIZING **POLAND'S** MEDIA LANDSCAPE:

ASSESSING THE PROGRESS OF MEDIA REFORM IN 2024





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MEDIA FREEDOM RAPID RESPONSE



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INTRODUCTION

The Media Freedom Rapid Response (MFRR) conducted a mission to Poland on the 16th and 17th of September 2024 to explore the changes in the media environment since the elections of 2023.

In October 2023 the MFRR issued a pre-election report, [Media Freedom at a Crossroads](#), in which it identified the scope of major problems facing the media after eight years of government led by the Law and Justice Party (PiS).

These included

- The Public Service Media (PSM) had been fully converted into a propaganda arm of the then ruling PiS
- The private broadcasters were under intense pressure to ensure pliable media coverage
- The National Broadcasting Council, KRRiT, was pressuring private broadcasters by abusing its licensing powers and issuing arbitrary financial penalties
- Media pluralism was under threat as a result of both the political control over the public media and the effective nationalization of the largest regional media company, Polska Press by the state-controlled energy company, PKN Orlen S.A.¹
- Local media were in an exceptionally precarious financial situation facing legal threats and unfair competition from media financed by public authorities
- Financial obstacles for independent media were exacerbated by the politicised distribution of state advertising to award government supporters in the media and punish its critics
- The Polish media were subjected to some of the largest number of vexatious lawsuits, or SLAPPs, Strategic Lawsuits Against Public Participation, in the European Union

The MFRR concluded that Poland's media freedom was at a crossroads and that *"another four more years of the same policy would accelerate media capture and push Poland down the path to emulating the media environment in Hungary, Turkey or Russia."*

Since this report was issued, Poland conducted parliamentary elections that resulted in a change of government with the departing coalition, led by PiS, being replaced by the new government, led by the Civic Coalition.

One year later, the MFRR returned to assess how the media environment has developed since the change of government and to review the media reform plans for the public media specifically as well as its measures to bring legislation into line with new EU standards set out in the European Media Freedom Act (EMFA) and the Anti-Slapp Directive.

1. Polski Koncern Naftowy *Orlen* Spółka Akcyjna - Polish Oil Company

KEY FINDINGS

- The media freedom situation in Poland has improved substantially in the past year with significant improvements in the independence of public media, a drop in vexatious lawsuits, improved levels of media pluralism and an end to abuse of state funds to influence media. Plans for reform, if fully implemented, can help cement the progress and strengthen the safeguards that protect media freedom and editorial independence in future.
- While the public media has shed its role as a propaganda tool for PiS, it remains neither fully objective nor reliably depoliticised. The government has much to do to guarantee the future political and financial independence of public media without which it will continue to serve the interests of those in power.
- The pressure on private media has been largely lifted as the government no longer uses its financial powers or threats of regulatory interventions to pressure and influence media coverage.
- The broadcast regulator, KRRiT remains highly politicized, and its chair, the PiS-appointed Maciej Świrski, continues to abuse his powers to issue fines against media. Nevertheless, its powers have been blunted by the refusal of the courts to impose KRRiT's penalties. Fears of how KRRiT may yet abuse its powers of licensing remain.
- Meanwhile, in order to improve KRRiT's political independence and accountability, the government has issued proposals to reform both the appointment process for KRRiT members and the internal decision-making process.
- Media pluralism concerns, which were acute in 2023, have eased with the improved independence of the public broadcaster and PKN Orlen's decision to put Polska Press, and the press distribution company, RUCH S.A., up for sale.
- While local media continue to operate in a precarious state, the government has proposed to restrict local municipalities from running their own media. Such a move would help create a level playing field for local media and improve political independence.
- The distribution of state advertising, weaponized by previous governments to deny funds to critical media, are to be reformed to improve the fairness and transparency of the process.
- The threat from SLAPP cases has significantly diminished as the Ministry of Justice announced that it is closing all of the legal cases that had been taken out against private media in the name of the previous Minister of Justice. It is also advancing plans to transpose the EU's anti-SLAPP Directive and to decriminalize defamation.
- SLAPP cases initiated by state companies when PiS was in power, as well as SLAPPs at local level remain an ongoing problem.

GOVERNMENT REFORM PLANS

On June 24, the Ministry of Culture and National Heritage published a number of [reform proposals](#) which were opened to public consultation until [23 September](#).² It plans to publish a draft law before the end of 2024 and to complete the legislative process by July 2025. Most of these reforms are required to bring Polish legislation into line with the new European Media Freedom Act (EMFA).

The draft proposal combines reforms to guarantee the political and financial independence of public media, to ensure the political independence of the media regulator; to improve transparency of media ownership and conflicts of interest, to introduce a new mechanism for protecting media pluralism, and to end the abuse of state advertising.

Separately, the Ministry of Justice also plans to transpose the European Anti-SLAPP Directive and expand its reach to ensure that the provisions addressing SLAPP cases apply to domestic cases as well as cross border ones. It further promises to decriminalize defamation.

This report assesses the reform plans and the concerns and demands raised by the numerous stakeholders the mission met with. It concludes with a set of recommendations for government and media stakeholders.

PUBLIC SERVICE MEDIA

The struggle for power, reform and political independence

Media freedom was at the heart of the first political [crisis](#) to hit the new government within days of taking office as it immediately sought to wrestle control of public media away from the outgoing PiS-led coalition. These included Telewizja Polska S.A. (TVP), Polskie Radio S.A. and the Polish news agency, PAP.

One of the first acts of the new government was to change the leadership of the public media by adopting a parliamentary resolution on 19 December 2023, [declaring](#) the situation at public media as illegitimate and unconstitutional before calling on the state authorities to take immediate action to restore the constitutional order and the “independence, objectivity and pluralism” of public media.

The Minister of Culture and National Heritage, Bartłomiej Sienkiewicz, intervened by replacing the members of the supervisory boards and senior management of the TVP, Polskie Radio and PAP. In doing so, he by-passed the National Media Council (NMC) set up in 2016 by PiS to nominate senior public media management and supervisors.

The dismissals led to three weeks of protests led by PiS politicians and some TVP staff on the premises of TVP and a political standoff between the government and Poland’s President, Andrzej Duda, who tried to block the changes by rejecting the 2024 budget for the public media.

Without funding, the situation quickly became untenable and the Minister of Culture and National Heritage placed the public media into [liquidation](#), a legal status for entities without sufficient funds to operate, which enabled the ministry to continue to finance the public media directly until new reforms can be agreed.

2. The results of the public consultation were published on November 6.

<https://www.gov.pl/web/kultura/prezentujemy-raport-z-konsultacji-spoecznych-zalozen-do-ustawy-medialnej>

Ten months later the legal uncertainty persists with public media staff forced to work in a form of legal limbo without the security of guaranteed financing nor a management that has been appointed by a scrupulously independent and transparent process.

Meanwhile, problems and controversies grow:

- The audience figures for the 24 hour news channel, TVP Info, and the main evening news show of TVP '19:30', have collapsed. While figures fluctuate, '19:30' (formerly known as 'Wiadomości') may have lost up to [40%](#) and TVP Info, up to [73%](#) of their audiences. Most of the lost viewers will have moved to the private conservative broadcaster, TV Republika. Rebuilding that audience will be key to the future of the news in public media.
- While there is no evidence of direct government interference, concerns were expressed that the public media, including the flagship '19.30' news show, exhibited a pro-government [bias](#) that failed to provide a diversity of views and objective journalistic standards. According to [data](#) based on KRRiT monitoring, provided by KRRiT board member, professor Tadeusz Kowalski, less than 15% of TVP news coverage of political parties was given to opposition parties during the first quarter of 2024. Kowalski has since confirmed that the percentage remains under 15% for the third quarter further fuelling the concerns over bias.



Protests against government media reforms in front of the public broadcaster TVP Info in Warsaw, Poland on 27 December, 2023.
Credits: picture alliance / NurPhoto | Jaap Arriens

The lack of progress on reform has been a source of frustration and mounting criticism against the government for failing to swiftly enact strong guarantees of independence for the public media following the controversial tactics used to end PiS' political control. Decision-makers partly justify the slow pace of reforms by citing the need to wait until after the 2025 Presidential elections as any significant reforms presented before then are likely to be rejected by President Duda. Nevertheless, critics argue that given the extensive public debate about public media over the past eight years, the new government should have had concrete proposals ready on taking office.

Meanwhile, the Broadcasting Council, KRRiT, continues to act in the interests of PiS. KRRiT is currently made up of five members. Four, including the chair, Maciej Świrski, were appointed by the PiS-majority parliament

and President Duda, while the 5th, Professor Kowalski was nominated by the Senate where the then opposition parties held the majority. Świrski has used KRRiT unapologetically as a political tool since the change of government by blocking transfers of licence fee funds to the public media and by continuing to issue arbitrary fines against media. This includes a [550000 Zloty fine to TVN](#) (approx. 125 000 EUR) issued in March 2024 for broadcasting a controversial film on sexual abuse in the church. KRRiT also remains responsible for awarding broadcast licences, which may become a further test of its impartiality.³ The proposed reforms mean KRRiT can also look forward to regaining its powers to oversee public media and an extension of its oversight role into the broader news media market.

At the end of September, the Constitutional Commission of the Sejm (lower chamber of parliament) started a process that may see the removal of [Maciej Świrski](#) from the chairmanship of KRRiT. A parliamentary motion accused Świrski of blocking funds to the public media and hindering licensing procedures for private broadcasters. He has since [responded](#) and is expected to be called before the State Tribunal in the coming months.

The MFRR mission believes that while ending the PiS stranglehold over the public media was self-evidently necessary, the legal methods used to do so remain highly contested and the ultimate assessment of the government's actions can only be made once its reforms to guarantee the long-term independence and sustainability of public service media have been completed.

Financial independence

The public media is now funded through direct, ad hoc government subventions through the liquidation mechanism. For example on 27 September, the parliamentary finance committee approved the [reallocation](#) of 700 million Zloty to public media from the 2024 budget's reserves.

Funds that are gathered through the licence fee, meanwhile, were withheld by KRRiT which, in March, [asked the courts](#) to establish an account where the funds can be placed until the dispute over the legal basis of the public media is resolved. The standoff continued until 17 September when Świrski lifted the ban on payments in order to be able to support the public media coverage of the floods that had caused catastrophic damage in large parts of the country the week before.

The licence fee has become an increasingly modest share of the public media's overall budget as a result of declining payments by the public and a steadily growing contribution by the government. In 2023, funds allocated to public service media totaled [3.3 billion Zloty](#) (approx. 774 million euro) of which it received approximately 0.62 billion Zloty (approx. 144 million euro) through the licence fee.

The government proposes to end the licence fee altogether and to replace it with direct state funding that is 'at least' 0.09% of the annual GDP (approximately 3.5 billion Zloty for 2024). The government says that this will also enable public media to reduce commercial advertising.

Critics argue that financing would still be vulnerable to a change in political mood or power and that the budget can be quickly altered by a parliamentary vote.

Meanwhile the state of liquidation restricts management's ability to plan long term and has increased precarity for employees unable to secure [stable contracts](#).

Stakeholders and media experts have proposed other alternatives to the licence fee such as placing an additional levy on audiovisual goods or a simple audiovisual tax on all citizens.

3. In June KRRiT issued a terrestrial broadcast licence to the conservative Republika TV which has been [challenged](#) on the grounds of having breached impartiality and equal treatment.

The licence fee has traditionally been the favoured funding model for public service media providing stable income free of political interference. However, more and more countries have been moving away from it as public appetite for paying the licence wanes. The MFRR mission believes the proposed model has the advantage of tying the budget to the country's economic performance offering stability and predictability and, most importantly, ensuring it is not subject to annual or arbitrary negotiations with the government.

Political independence

The government proposes to dissolve the National Media Council (NMC) formally responsible for appointments to supervisory boards of the public media. The NMC was established by the PiS government in 2016, in order to by-pass the National Broadcasting Council (KRRiT) and to be able to appoint government allies to the public media. The NMC operates on a six-year term basis, with the current members last nominated in 2022 and their mandates expiring in 2028.

In 2016, the NMC was ruled [partly unconstitutional](#) by the constitutional court, as its creation had limited the authority of KRRiT, an institution whose regulatory role is enshrined in the Polish constitution.

The terms of the NMC and KRRiT can be shortened if the parliament rejects their annual reports and the President approves the decision. In July the Sejm rejected KRRiT's report but President Duda withheld his approval and the KRRiT board remained in place.

If closed, the powers of the NMC to appoint supervisory board members will revert back to KRRiT.

The government then proposes to reform KRRiT by

- Expanding the number of board members from five to nine. Four members will be nominated by the lower house, (Sejm), two by the Senate, and three by the President.
- Restricting each board member to one, six-year mandate
- Staggering the appointments so that every two years one third of the members are replaced.

To improve the independence of the public media management and board members the government proposes the following:

- Introduction of a two-stage competition for appointments to the boards of public media with the final selection being made by KRRiT.
- Candidates for programme councils will be nominated by non-governmental organizations and public media employees.
- Ensuring candidates are selected on the basis of the necessary skills and competences to exercise the functions and to make public the justification for those finally selected.

Maciej Wróbel, chair of the parliamentary sub-committee on public media, gave further [context](#) to the plans saying that the interview for the President of TVP would be broadcast live, that no board member could come from politics and that they will be composed of media professionals, with knowledge about broadcasting.

While not part of the formal government proposals, the mission was told of further plans to reform KRRiT's internal procedures to make it more transparent and accountable. The current KRRiT leadership has been criticized for focusing too much power into the hands of the chair who investigates complaints of breaches

of broadcast regulation, rules on them and issues penalties without consulting or getting approval from the board. Changes would require such decisions to be taken by a two thirds majority of board members in line with the procedure for approving licences.

The MFRR mission welcomes the proposals while noting that returning the powers of public media oversight to KRRiT will make guaranteeing KRRiT's political independence all the more urgent. There is some doubt whether expanding the number of KRRiT members alone can achieve this. While the change will not, in itself, stop political appointments to KRRiT, it should improve the plurality of political views represented and, together with the other reforms, help reduce the likelihood of one political force securing a majority position.

The view of media stakeholders

The mission met with numerous media stakeholders planning to respond to the public consultation. A common theme was that the reforms, while welcome, are not sufficient to ensure the future of the public service media. Some were demanding a complete rethink of the public media mission and structure to make it fit for providing public service information in the digital world of non-linear broadcasting and content streaming.

The group of experts under the umbrella civil society organization, **Batory Foundation**, has made extensive [recommendations](#) for restructuring the public media to improve its governance, and mission. Proposals included establishing a new Public Media Council to safeguard independence and select directors of public TV, Radio and PAP, and an independent 'Institute of Public Media' to monitor the extent to which the public media fulfils its public service mandate. The experts also supported creating a Public Mission Fund that all media could apply for journalism grants.

An independent media institute to monitor public media values would meet Art 5 .4 of the EMFA, which requires EU Member States to designate an independent body to monitor the application of political and financial independence.

Professor Kowalski, member of KRRiT, recommends establishing a board of trustees to oversee appointments of directors and implement the Employee Code of Ethics. He further supported financing public media with a universal audiovisual contribution paid by each citizen as a fee 'to access audiovisual creation.'



Robert Kwiatkowski, member of the NMC and former chair of the TVP management board (1998 - 2004) accused the government of doing the bare minimum required under EMFA and suggested that it was not committed to genuine reform. He also criticised the failure of the plans to address the digital challenges faced by public media. Finally, he called for large cuts to the budget after a huge expansion under PiS, so it could refocus on its mission.

Grzegorz Sajór, Director of the TVP's Television Information Agency (TAI), told the mission that he is dedicated to building a transparent, impartial and honest channel. "Quiet, normal TV without the hate, the propaganda and the conflict".

Sajór rejected the suggestion of political bias and insisted that TVP always invites voices and experts from all political groups including conservative voices. He also believes that opposition politicians are returning to public television programmes after the initial boycott. He says TVP can be closer to the audience than any other broadcaster, particularly with its sixteen regional offices spread across the country. He noted that during the weekend of the floods in southern Poland, audience figures more than doubled as the public sought out reliable information during the emergency.

Krzysztof Bobiński, of the Polish Journalists Society (Towarzystwo Dziennikarskie), noted that without a full picture of all the personnel and programming changes in public media it is very hard to judge the situation and the allegations of bias. He called for an independent research institute to monitor and report on all media developments. He also questioned the commitment of the current government to rebuilding public media, noting that they have other priorities and are happy with the status quo.

Jan Pawlicki, a former head of TVP first channel (TVP1) (2016) and a conservative journalist critical of the former PiS government, warned that it was impossible to depoliticise public media and that all public media carry a certain bias in favour of the government. "The public media's public mission is inarguably political, this is just how it is. We should end this hypocrisy of 'let's depoliticize the media', instead politicians should bear the responsibility for the media." He added, "the DNA of the public media is kind of to adapt yourself to whatever government is around and we need to change this DNA".

Kamila Ceran, editor in chief of Radio TOK FM, warned that the public media was tempting away quality journalists and presenters with the offer of high salaries against which the private sector struggles to compete.

The MFRR supports the concerns expressed by the many stakeholders, in particular that media such as RADIO TOK FM played a crucial role in protecting uncompromising journalism over the last decade, and that the continued health of the independent private sector is essential for providing balance and holding the government to account. The MFRR underlines the risk that, regardless of how successful the current reforms become, a new government could swiftly reverse all the changes. For that reason the private sector must continue to flourish.

Public service media reform recommendations

Article 5 of the European Media Freedom Act (EMFA) requires that governments guarantee the independent functioning of public media, including ensuring their editorial and functional independence, that procedures for appointing the management guarantee the independence of public media, that those appointed are done so on the basis of transparent, open, effective and non-discriminatory procedures and criteria, that funding is transparent, adequate, sustainable and predictable and can guarantee the editorial independence of the public media, and that an independent body is designated to monitor the application of these principles.

The MFRR supports the direction of the government proposals while also calling for more ambition.

The MFRR strongly encourages the government to engage in comprehensive and regular consultation with media stakeholders and experts to ensure meaningful dialogue and collaboration. Together they must develop a model of public media that both embraces the principles of independent functioning of public media outlined in EMFA, and ensures the public media will be fit for future challenges.

Financial Independence

The government and stakeholders should continue to explore all options and to pursue the financial model that is best placed to guarantee that public media's long term financing is free of political interference and is sufficient to fulfil its public service mandate.

Political Independence

The government must

- Insulate the independence of the public media from political interference, now and for future governments.
- Create a robust culture of political independence and journalistic standards that ensure it provides the public with high value information that is not available elsewhere.
- Update the public media's mission, structure and governance to be able to effectively compete and serve the public in a non-linear digital market.
- Establish an independent institute for monitoring the public media's fulfilment of its public service mandate.

Moreover, we warn that

- Time is of the essence. Public media need an urgent plan to ensure its relevance and to fulfil its public mission.
- The reforms must not come at the expense of compromising the sustainability of private news media on whom the Polish public have depended to maintain a pluralistic range of news and information sources when public media was under government control.

GUARANTEEING PLURALISM AND EDITORIAL FREEDOMS THROUGHOUT THE MEDIA

Media pluralism, media ownership and the role of KRRiT

The Media Pluralism Monitor report ([MPM](#)) for 2024 scores Poland's media plurality as high risk at 68%, down from 71% in 2023, though lower than Hungary (83%) Czech Republic (77%), Romania (84%) and Bulgaria (73%). However, the risk scores around the plurality of media providers and plurality in digital markets are 88% and 86 % respectively. One of the distinguishing characteristics of the Polish market is a much more significant presence of foreign investors than elsewhere, including the Swiss German Ringier / Axel Springer, the German Bauer, and the US Discovery ownership of TVN.

The 2023 MFRR mission had been particularly concerned by how the state controlled energy company, PKN Orlen, was used to take over the regional press giant, Polska Press in December 2020, as a means to extend government control beyond the public media. An appeal by the then Human Rights Ombudsman, Adam Bodnar, (and today Minister of Justice) to challenge the take-over on media pluralism grounds was eventually thrown out by the courts, partly on the grounds that there was no established methodology for measuring media pluralism.

During 2024, following a change of leadership at PKN Orlen, Polska Press was put up for sale, thereby ad-

addressing the immediate challenge to media pluralism. Nevertheless, the risks to media plurality in Poland remains high and stronger rules for protecting it are clearly needed.

The EMFA introduces limited Europe-wide safeguards to protect media pluralism by requiring national authorities to monitor media ownership, conflicts of interest and revenue from state advertising, essential for any reliable assessment of media pluralism. Furthermore, it requires that in any change of ownership, the competition regulator must ask a designated authority for an assessment of the take-over on media pluralism and editorial independence grounds in addition to competition grounds.

KRRiT, the designated regulator for media transparency and media pluralism

The government proposes to designate KRRiT as the body responsible for these two new roles with the following tasks;

- introduce greater transparency in the media ownership structure by developing a national media ownership database,
- coordinate measures concerning non-EU media services, which can be an important element in the fight against disinformation and propaganda (including from Russian media),
- conduct periodic monitoring of the state of media pluralism in Poland.

The proposal also states that the KRRiT will not become the regulator of the press market.

The expansion of regulatory oversight from broadcasting into traditional print and online media was one of the more contentious elements of EMFA with publishers particularly concerned about the dangers of giving national regulators powers, albeit limited, over what was traditionally a regulation-free space. The Polish Chamber of Publishers expressed particular concern about the risk of regulatory overreach providing a back-door to restricting media freedoms.

EMFA only requires very limited powers for the oversight of ownership, necessary to have any meaningful assessment of the state of media pluralism. The Ministry of Culture and National Heritage assured the mission that KRRiT's new powers will be limited to ensuring all news media provide the information required for the ownership database.

Recommendation: The reforms required by EMFA on media ownership and media pluralism should be fully implemented. They are essential to provide an effective mechanism in monitoring who exercises control over the media and protecting a plurality of voices and sources of information. This is further needed to expose conflicts of interest and minimise risks of misuse of media to pursue political or business interests.

To deliver on this role, KRRiT must be fully independent of political influence and equipped with the necessary resources and expertise. This will be aided by developing a robust methodology to protect the process from impartiality or political manipulation.

State advertising

The misuse of state advertising to fund pro-government media and starve independent media of vital income is a well-documented problem across many central and eastern European countries and was directly addressed in EMFA.

Under previous governments, state advertising was systematically used to award government allies in the media and punish its critics. Last year's MFRR report explored how state advertising funds were redirected away from

independent media towards public media and PiS supporting outlets. Gazeta Wyborcza was particularly hit with less than 1% of its advertising income from [state companies in 2020](#), as well as being completely excluded from the public health advertising campaign under Covid-19. [Figures](#) from the National Audit Office revealed that TVN, which had enjoyed a 10% share of state advertising in 2017, received no more state advertising after 2019.

In its reform proposal, the government includes addressing the abuse of state advertising, but provides no further detail.

EMFA requires governments to ensure all state advertising is distributed in a *transparent, objective, proportionate and non-discriminatory* manner. Governments must also designate a body to monitor the distribution of state advertising and to issue public annual reports. The rule applies to all forms of state funded advertising through public authorities and state-owned companies.

One weakness in EMFA is that local governments whose populations are under 100.000 are exempted from the transparency obligations. However, the Ministry of Culture and National Heritage assured the mission that they intended to waive this exemption and apply the transparency rules across all local governments regardless of size of population.

Recommendation: The reforms to guarantee the fair, objective and transparent distribution of state advertising must be fully implemented and should be applied to all state and government bodies regardless of size. Such a measure is essential for ensuring a level economic playing field for independent media and improving their financial viability.

The government can go one step further and include in the monitoring reports details of contracts with the state won through public tenders by companies that belong to the same corporate groups as the media.

Local media

Much of the local media are either directly owned, or closely controlled, by local governments through government funds. Media that are outside this funding are able to operate free of political influence but without the resources to flourish in a highly competitive market.

In 2023 Andrzej Andrysiak, head of the Association of Local Newspapers, spoke about the precarious situation facing independent local media who are squeezed on the one side by the well financed Polska Press and on the other by local government newspapers offered for free.

The government plans include measures to address this problem by imposing [restrictions](#) to the activities of local government in the media market. No further detail has been published, but it has sparked strong [opposition](#) from the 'Union of Polish Cities', a network of local city administrations, who claim any ban on their ownership of local media is a restriction of their freedom to inform the public and calls for a full review before any reforms are implemented.

While not formally included in the official proposals, government figures and media stakeholders have also expressed support for a new public fund for local media. **Maciej Wróbel** argued that such a fund could help increase media viability and independence from local governments.

Recommendation: Local media must be enabled to flourish independent of government control whether through direct ownership, grants or the abuse of state advertising. We support measures to address the problem and guarantee the financial and editorial independence of all media from the government. The provision of public funds for local media, equipped with arm's length decision making processes that ensure that funds

are distributed on objective criteria free of political interference can be an important part of the solution.

Publishers, platforms and copyright

The mission met with the President of the Chamber of Press Publishers, Marek Frąckowiak, to discuss their responses to the government reform plans and the prospects for negotiations with the Very Large Online Platforms (VLOPs) following the transposition of the Digital Single Market Directive into Polish legislation in September. The Chamber includes both print and digital media publishers of all sizes and regions.

Frąckowiak supported many of the proposed reforms to end the influence of governments on local media and to strengthen regulations around state advertising.

Frąckowiak also provided some insight into the hard fought negotiations around the implementation of the Digital Single Market Directive into Poland's Copyright legislation during 2024. 350 publishers [protested](#) against the first draft passed by the Sejm in June for failing to provide adequate rules to ensure journalists and publishers receive copyright payments from the platforms for the use of their work. The Senate finally [met](#) some of the publishers' demands, including establishing a negotiation procedure between publishers and platforms to set copyright remuneration and enabling the regulator to set the terms should negotiations fail.

Nevertheless, publishers still believe the final text is too weak and warned of years of future court cases.

Negotiations with the platforms had yet to begin, but there is already concern that some of the larger publishers would rather negotiate separately and secure better deals at the expense of smaller publishers. The final outcome of the negotiations will be crucial for determining the long term economic health of the publishing sector.

Recommendation: the government must support negotiations and help ensure that the press publishers and journalists, in line with [Digital Services Market Directive](#) Article 15, are able to secure adequate compensation for their work used by the platforms.

Editorial independence and professional standards

The MFRR mission was also informed of challenges facing journalists in the newsroom including a lack of respect for professional standards, poor working conditions and the lack of a strong trade union to protect journalists' rights. There are reports of widespread [sexual harassment](#) and a newsroom culture in which quality, independent journalism is suffocated by a climate of fear and precarity. Several severe examples are described in Paulina Januszewska's recent book, "Gównodziennikarstwo" (Shitjournalism) which portrays a media full of mistreated, humiliated and mentally exhausted journalists surrounded by scandals.

The MFRR mission believes that if publishers are to defend media freedom they must also protect the freedom of journalists and workplace safety. This starts by ensuring a newsroom culture that respects the professional and working rights of staff, is committed to journalistic ethics, guarantees editorial independence and the right to freely organize, and be represented by, a journalists' union.

Recommendation: the publishers should engage with all media stakeholders to guarantee journalistic and editorial standards by implementing the [recommendations](#) on internal safeguards for editorial independence and ownership transparency that accompanied the publication of EMFA.

Journalists should organise into a national journalists' union to represent their interests and protect their working conditions and professional rights. There must be zero tolerance for sexual harassment in any workplace.

STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION (SLAPPS)

SLAPPs, including criminal defamation lawsuits against journalists, have been a problem in Poland for many years, targeting both nationwide and local media. Under PiS rule, abusive lawsuits and pre-trial legal actions targeting critical journalists and media outlets had sharply increased, as we highlighted in our report from the 2023 MFRR [mission](#). These legal actions, often initiated by politicians tied to the ruling alliance, state-owned companies, and even the public broadcaster, became a tactic to weaken independent media. *Gazeta Wyborcza*, one of Poland's largest dailies, faced over 100 lawsuits launched during the eight-year period of the PiS rule.

A striking example of abuse is the legal action initiated by former Minister of Justice Zbigniew Ziobro, who filed multiple lawsuits over the same article in various capacities. This example reflected a broader use of SLAPPs by the former government as a tool to drain resources from media outlets. [Criminal defamation](#) provisions have also been increasingly used against journalists and media outlets who face up to two years in prison for their reporting. It is difficult to assess the total number of SLAPPs against Polish media, as the problem has also been significant against local media in the regions, where it is harder to monitor cases.



The MFRR mission meets with Minister of Justice Adam Bodnar.
Credits: MFRR

The delegation met with Minister of Justice Adam Bodnar, and ministerial experts on European affairs, civil law, and criminal law. According to Minister Bodnar, the cabinet identified 37 SLAPP cases initiated by their predecessors. The cases on behalf of state institutions and PiS-affiliated politicians were handled by two external law firms, one of which still resists transferring all the necessary documentation to the Ministry of Justice. The contracts with these firms were swiftly terminated and the new cabinet has started the process of terminating most of these cases. All of the lawsuits lodged against *Gazeta Wyborcza* have already been withdrawn. The actions aimed at terminating the proceedings include: publishing apologies (see the case with [Wyborcza](#)), withdrawing lawsuits entirely, and refraining from filing appeals or cassations. However, according to Minister Bodnar, several proceedings initiated by affiliated institutions remain. The government has not been able to withdraw these cases yet, due to the lack of direct authority over these entities and ongoing audits and changes in the oversight boards of some state-owned companies.

Minister Bodnar confirmed that two codification commissions – one for civil law led by Dr. Hab. Marek Safjan and one for criminal law led by Dr. Hab. Włodzimierz Wróbel – have been requested to review the domestic framework and develop a comprehensive anti-SLAPP legislation. The Ministry informed the delegation that it plans to present its draft anti-SLAPP legislation by the end of the year. It additionally plans to use it to inform discussions around the EU wide transposition when Poland assumes the EU Presidency in January 2025.

Our interlocutors emphasized that the goal is to draft standalone anti-SLAPP legislation that goes beyond the minimum scope set by the Directive and draws from the Council of Europe Recommendation to ensure its effectiveness in the Polish context, where the majority of SLAPP cases have been domestic and initiated by state institutions.

The government outlined the following elements for the anti-SLAPP legislation:

- Developing straightforward, clear legislation with minimal ambiguities, making it easy for judges to reference and implement in their decisions.
- Ensuring the new legislation is applicable to domestic cases, which form the overwhelming majority of all SLAPP cases in Poland.
- Creating a detailed set of new terminology to clearly define a SLAPP and the public interest, in line with the terminology from Poland’s Code of Civil Procedure to ensure the bill is properly anchored in Polish jurisprudence.
- Decriminalizing defamation (repealing Article 212 of the penal code), is set to be accompanied by a framework of safeguards in the civil code to ensure robust protection of personal rights.
- Repealing Article 216 of the penal code that criminalizes insult.
- As a rule of thumb, the claimant should generally bear the cost of the proceedings.
- Introducing an early dismissal mechanism at the initial stages of any case.
- Introducing the possibility of imposing a fine on the plaintiff when a lawsuit is deemed abusive or unfounded.
- Strengthening the role of civil society groups in the proceedings as support bodies for the targeted individuals.

The MFRR delegation welcomes the Ministry’s readiness to adopt comprehensive, standalone anti-SLAPP legislation that is set to include key recommendations outlined by international and local civil society groups. In particular, we appreciate the commitment to decriminalize defamation, which civil society groups on the ground have been advocating for for over 20 years, and which every political party, while in opposition, has promised to abolish.

Recommendations: We further recommend the following

- The Ministry should also consider the removal of more specific insult-related provisions in the criminal code including Article 196 (Insult of religious feelings) or Article 226 (Insult of officials and the state).
- The Ministry should base the SLAPP-related terminology on the Council of Europe Recommendation CM/Rec(2024)2 on countering the use of strategic lawsuits against public participation (SLAPPs).
- The Ministry should put a definitive end to all abusive proceedings launched under the PiS government and refrain from initiating potential SLAPPs against media critical of the current government.

MISSION RECOMMENDATIONS

Public service media reform

Article 5 of the European Media Freedom Act (EMFA) requires that governments guarantee the independent functioning of public media, including ensuring their editorial and functional independence, that procedures for appointing the management guarantee the independence of public media, that those appointed are done so on the basis of transparent, open, effective and non-discriminatory procedures and criteria, that funding is transparent, adequate, sustainable and predictable and can guarantee the editorial independence of the public media, and that an independent body is designated to monitor the application of these principles.

The MFRR supports the direction of the government proposals while also calling for more ambition.

The MFRR strongly encourages the government to engage in comprehensive and regular consultation with media stakeholders and experts to ensure meaningful dialogue and collaboration. Together they must develop a model of public media that both embraces the principles of independent functioning of public media outlined in EMFA, and ensures the public media will be fit for future challenges.

Financial independence

- The government and stakeholders should continue to explore all options and to pursue the financial model that is best placed to guarantee that public media's long term financing is free of political interference and is sufficient to fulfil its public service mandate.

Political independence

The government must

- Insulate the independence of the public media from political interference, now and for future governments.
- Create a robust culture of political independence and journalistic standards that ensure it provides the public with high value information that is not available elsewhere.
- Update the public media's mission, structure and governance to be able to effectively compete and serve the public in a non-linear digital market.
- Establish an independent institute for monitoring the public media's fulfilment of its public service mandate.

Moreover, we warn that

- Time is of the essence. Public media need an urgent plan to ensure its relevance and to fulfil its public mission.
- The reforms must not come at the expense of compromising the sustainability of private news media on whom the Polish public have depended to maintain a pluralistic range of news and information sources when public media was under government control.

Guaranteeing pluralism and editorial freedoms throughout the media

Media pluralism and media ownership

The reforms required by EMFA on media ownership and media pluralism should be fully implemented. They are essential to provide an effective mechanism in monitoring who exercises control over the media and pro-

protecting a plurality of voices and sources of information. This is further needed to expose conflicts of interest and minimise risks of misuse of media to pursue political or business interests.

To deliver on this role, KRRiT must be fully independent of political influence and equipped with the necessary resources and expertise. This will be aided by developing a robust methodology to protect the process from impartiality or political manipulation.

State advertising

The reforms to guarantee the fair, objective and transparent distribution of state advertising must be fully implemented and should be applied to all state and government bodies regardless of size. Such a measure is essential for ensuring a level economic playing field for independent media and improving their financial viability.

The government can go one step further and include in the monitoring reports details of contracts with the state won through public tenders by companies that belong to the same corporate groups as the media.

Local media

Local media must be enabled to flourish independent of government control whether through direct ownership, grants or the abuse of state advertising. We support measures to address the problem and guarantee the financial and editorial independence of all media from the government. The provision of public funds for local media, equipped with arm's length decision making processes that ensure that funds are distributed on objective criteria free of political interference can be an important part of the solution.

Publishers, platforms and copyright

The government must support negotiations and help ensure that the press publishers and journalists, in line with [Digital Services Market Directive](#) Article 15, are able to secure adequate compensation for their work used by the platforms.

Editorial independence and professional standards

The publishers should engage with all media stakeholders to guarantee journalistic and editorial standards by implementing the [recommendations](#) on internal safeguards for editorial independence and ownership transparency that accompanied the publication of EMFA.

Journalists should organise into a national journalists' union to represent their interests and protect their working conditions and professional rights. There must be zero tolerance for sexual harassment in any workplace.

Strategic lawsuits against public participation

The MFRR delegation welcomes the Ministry's readiness to adopt comprehensive, standalone anti-SLAPP legislation that is set to include key recommendations outlined by international and local civil society groups. In particular, we appreciate the commitment to finally decriminalize defamation, which civil society groups on the ground have been advocating for over 20 years, and which every political force, while in opposition, has promised to abolish.

We further recommend the following

- The Ministry should also consider the removal of more specific insult-related provisions in the criminal code including Article 196 (Insult of religious feelings) or Article 226 (Insult of officials and the state).
- The Ministry should base the SLAPP-related terminology on the Council of Europe Recommendation CM/Rec(2024)2 on countering the use of strategic lawsuits against public participation (SLAPPs).
- The Ministry should put a definitive end to all abusive proceedings launched under the PiS government and to refrain from initiating potential SLAPPs against media critical of the current government.

ACKNOWLEDGEMENTS

The mission was organised by the Media Freedom Rapid Response (MFRR) and the delegation comprised of representatives of ARTICLE 19 Europe, the European Centre for Press and Media Freedom (ECPMF), the European Federation of Journalists (EFJ), Free Press Unlimited (FPU), and International Press Institute (IPI).

The mission took place in Warsaw between 16 - 17 September, 2024, and met with the Minister of Justice, Adam Bodnar, the Ministry of Culture and National Heritage, representatives of KRRiT as well as a wide range of editors, journalists and civil society groups.

We would like to thank all those who took their time to meet with us and share their experience without which this report would not have been possible.



