2023 Rule of Law Report – targeted stakeholder consultation

REPORT PRESENTS THE KEY DEVELOPMENTS IN THE AREA OF JUSTICE SYSTEM, ANTI-CORRUPTION FRAMEWORK, MEDIA FREEDOM AND CIVIL SOCIETY SPACE IN POLAND IN 2022



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Report presents the key developments in the area of justice system, anti-corruption framework, media freedom and civil society space in Poland in 2022

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I. Justice System

Please provide information on measures taken to follow-up on the recommendations received in the 2022. Report regarding the justice system (if applicable) (3000 words)

A. Independence

Appointment and selection of judges, prosecutors and court presidents (incl. judicial review) (The reference to 'judges' concerns judges at all level and types of courts as well as judges at constitutional courts)

Appointment of judges

On 12 May 2022, the Sejm elected 15 judicial members of the National Council of Judiciary. Since May 2023, the new National Council of Judiciary has appointed 175 judicial assessors and recommended the appointment of 274 judges. Overall, the National Council of Judiciary, the composition of which was constituted mostly by Parliament, appointed about 2500 judges.

Appointment of court presidents

In 2022, the Constitutional Tribunal issued a judgement concerning the constitutionality of art. 6 of the European Convention of Human Rights. The case was initiated directly after the ECtHR ruling in the cases Broda and Bojara v. Poland.

The CT found the provision of ECHR in violation of the Polish Constitution. The Tribunal recognized the articles as unconstitutional to the extent the ECtHR judgement recognizes the concept of "civil rights and obligations" to include the subjective right of a judge to occupy an administrative function in the structure of the common judiciary in the Polish legal system. In other words, the judgement has been used to assess the constitutionality of ECtHR judgement in the cases Broda and Bojara v. Poland.

In 2022, public authorities indicated that no specific general measure is needed to implement Broda and Bojara judgements, as the competence of the Minister of Justice to dismiss presidents of courts was temporary.

Appointment of prosecutors

There are different prosecutorial appointment procedures for first-time appointments and promotions. In the former situation, the Prosecutor General may decide that a candidate will be selected through a competitive process. However, in particularly justified cases, the Prosecutor General may waive this requirement and simply appoint a candidate named at the request of the National Prosecutor. According to an HFHR report "The state of accusation. Functioning of the prosecution service in years 2016-2022", since 2016, the Prosecutor General has provided notice of a vacancy on more than 650 occasions. The review of the notices shows that such competitions have not been organised at certain units of the prosecution service for the last six years. For

example, in two prosecutorial offices in central districts of Warsaw the vacancies have been filled at least several times in the last six years without any competitive process.

The non-compulsory competitive procedure notably applies only to first-time appointments for prosecutorial posts in district prosecutor's offices. Appointments to higher-level prosecutorial positions are wholly discretionary and guided by no criteria whatsoever. The appropriate professional experience of a candidate is generally a sufficient eligibility criterion. However, the law allows for waiving even this requirement "in particularly justified cases". This means that the appointment of prosecutors to higher-level units can only take place through a discretionary procedure and involves only the Prosecutor General and his senior deputy.

Irremovability of judges, including transfers, (incl. as part of judicial map reform), dismissal and retirement, regime of judges, court presidents and prosecutors (incl. judicial review)

Since 2021, suspension or transfer of judges to other court departments continues to be one of the forms of repression levied against Polish judges.

A judge's suspension may be ordered by the disciplinary court as a part of disciplinary proceedings. Additionally, the Minister of Justice or the president of the court may suspend a judge for one month in the event a judge has committed a crime.

Until mid-2022, the former Disciplinary Chamber ordered judicial suspensions. Some of these decisions were made in highly politicised procedures (e.g. the case of Judge Paweł Juszczyszyn or Judge Igor Tuleya). Furthermore, since 2021 the Minister of Justice and some presidents of the courts have cited contents of judicial decisions as reasons for possible suspensions of judges. The judicial decisions constituting grounds for suspension involved the status of judges appointed by the National Council of Judiciary in its current composition (e.g. the cases of judges Piotr Gąciarek, Maciej Ferek, Maciej Rutkiewicz, Adam Synakiewicz, Joanna Hetnarowicz-Sikora, Agnieszka Niklas-Bibik and Marzanna Piekarska-Drążek).

The former Disciplinary Chamber was dissolved in 2022 with its jurisdiction being transferred to the new Professional Accountability Chamber of the Supreme Court (PAC). According to the PAC president, cases involving judicial suspensions received priority in PAC proceedings. For instance, the Chamber lifted the suspension of Judge Igor Tuleya, Judge Maciej Dutkiewicz and Judge Krzysztof Chmielewski. In December 2022, the Voivod Administrative Court in Gdańsk ruled in the case concerning the suspension of Judge Agnieszka Niklas-Bibik, finding her suspension in violation of the law.

Other forms of repression concerning judges still persisted in 2022. These included transfer of judges to other court departments.

For example, in 2022 the Disciplinary Chamber lifted the suspension of Judge Paweł Juszczyszyn. Judge Juszczyszyn returned to work, however the president of the court ordered his transfer to another court department. In 2022, Piotr Schab, president of the Appellate Court in Warsaw, decided to transfer three judges (Ewa Gregajtys, Ewa Leszczyńska-Furtak and Marzanna Piekarska-Drążek) to other court departments. The judges have adjudicated for many years in the criminal department and upon the

decision of the court's president were transferred to the department of labour law and social security. The European Court of Human Rights issued a decision on interim measures suspending the transfer in all three cases. Furthermore, in December 2022, Judge Dorota Lutostańska of the Regional Court in Olsztyn was transferred from the criminal department of the second instance to the criminal department of the first instance.

None of the above-mentioned transfers involved consent of the relevant judges.

Promotion of judges and prosecutors (incl. judicial review)

The promotion of judges

On 21 December 2022, the President of Poland promoted 11 judges to higher judicial positions. This included the promotion from the Kraków Regional Court to the Supreme Court of the Head of the National School of Judiciary and Prosecutorial Service (a former Director in the Ministry of Justice and partner of the judge who heads the National Council of Judiciary). Moreover, the President decided to promote two members of the National Council of Judiciary. Both of them have been appointed as new judges of appellate courts, despite the fact that their experience concerned only adjudicating cases in district courts.

According to the 2022 HFHR report "The costs of the reform. Functioning of the judiciary system in years 2015-2022", members of the National Council of Judiciary have relatively often sought promotion to a higher court. In the course of the previous term of office, the National Council of the Judiciary recommended seven of its 15 judicial members for higher judicial positions. Secondly, persons closely linked to NCJ members – spouses, partners and siblings – also sought the Council's recommendation. According to media coverage, in 2018-2022 the NCJ appointed more family members or other associates of its judicial members to judgeships than it had during the past 27 years of the Council's functioning.

Judicial review of NCJ decisions

Applicants taking part in the competition for the judicial posts before the NCJ have the right to challenge the legality of the NCJ's decision in the Supreme Court. However, such does not apply to candidates seeking a judicial position in the Supreme Court.

However, it is the Chamber of Public Affairs and Extraordinary Appeal that reviews appeals from NCJ decisions. In 2021, in the case Dolińska-Ficek and Ozimek v. Poland (application no. 39650/18), the European Court of Human Rights once again indicated that said Chamber does not meet the criteria of an independent and impartial court.

This judgement has not been implemented neither in a general nor individual way. In 2022, the Ministry of Foreign Affairs refused to pay compensation to both applicants in that case. In the reasoning for its decision the MFA cited the Constitutional Tribunal judgement of 10 March 2022 (case no. K 7/21) which found art. 6 of ECHR to be in partial violation of the Constitution of Poland.

Allocation of cases in courts

In May 2022, the Supreme Administrative Court ruled 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 and Supreme Audit Chamber 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 MoJ'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 an information of a technical character and, as such, does not fall under the scope of the FOI act) and dismissed the motion. The Foundation 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 (like e.g. office programs). 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 a decision of August 2022, the Minister of Justice refused to publish the source code of the RCAS.

In April 2021, in another case, initiated by e-State Foundation (*Fundacja ePaństwo*), the Supreme Administrative Court ordered the disclosure of the RCAS algorithm. The MoJ published the algorithm. However, based only on the algorithm it is impossible to assess if the entire system functions properly

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

On 12 May 2022, the Sejm elected 15 judicial members of the National Council of Judiciary. Once again the vast majority of judges boycotted the election process. Only 19 candidates applied to participate in the elections for the next NCJ formation with 14 of those constituting Council incumbents. The vast majority (i.e. 14) of the applying judges sat in district courts. The incumbent Council nominated some of these judges to serve on higher courts, including the Supreme Administrative Court and the Disciplinary Chamber of the Supreme Court, but their appointments were still pending approval by the President of the Republic of Poland. Among the remaining judges,

only four were regional court judges and one candidate was a judge of the Supreme Administrative Court at the time of her appointment (and a former deputy Minister of Justice promoted to Supreme Administrative Court from a district court).

The new group of judicial candidates presented the Speaker of the Sejm with letters of endorsement with a total of 753 signatures from merely 351 judges. The endorsing judges included over 100 court presidents and vice presidents who signed a total of 244 endorsements. Twenty-nine judges seconded to work at the Ministry of Justice made at least 85 endorsements for various candidates. One of these judges endorsed as many as nine candidates.

The endorsing group included at least 181 judges nominated by the then-incumbent National Council of the Judiciary for appointment to a higher judicial position. In eight cases, judges endorsing a candidate received the Council's nominations immediately before (or shortly after) the commencement of the National Council of the Judiciary candidate selection procedure. Moreover, the daughter of a judicial post candidate, whose candidacy was reviewed during the elections of the new National Council of the Judiciary, even became a representative of a candidate applying for the NCJ membership.

All published endorsement lists exhibited yet another similar feature, namely shared endorsements. This phenomenon has appeared among a group of Kraków judges applying for NCJ membership. As many as 19 judges endorsed the same four candidates from Kraków courts. In another 11 cases, the judges supported three of the four candidates from this group applying for Council membership. Similar correlations, although on a smaller scale, could also be observed in other subgroups of judges.

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal/civil (where applicable) liability of judges (incl. judicial review)

On 15 July 2022, the amendment to the Act on the Supreme Court and certain other acts came into force. The key points of the amendment included dissolution of the Disciplinary Chamber of the Supreme Court and establishment of the Professional Accountability Chamber (PAC) in its place. The law also introduced certain changes concerning the disciplinary liability of judges.

The amendment was adopted in relation to the judgement of the CJEU of July 2021, in which the court confirmed that the Disciplinary Chamber's lack of independence results from the participation of the National Council of the Judiciary (NCJ) in nominating its judges.

The new chamber consists of judges appointed by the President of Poland from among Supreme Court judges. The chamber's jurisdiction remains almost the same as that of its predecessor and includes hearing disciplinary cases of judges as a court of second instance and waiving judicial and prosecutorial immunity. The law does not proscribe the NCJ, in its present form from appointing judges, which does not guarantee the chamber's independence.

With respect to judicial disciplinary liability, the amendment on the one hand stipulated that filing a preliminary question in the CJEU should not entail disciplinary liability. However, the amendment also introduced a new type of disciplinary offence,

the "refusal to administer justice", which may be intended to suppress the practice of judges refusing to participate in panels together with peers nominated by the new NCJ.

In 2022, several major developments occurred involving politically-motivated disciplinary and criminal proceedings against judges in Poland. In May 2022, the former Disciplinary Chamber lifted the suspension of Judge Paweł Juszczyszyn, whose disciplinary proceedings for requesting lists of persons supporting candidates to the NCJ is pending. In November 2022, PAC made a similar decision in the case of Judge Igor Tuleya, whose immunity was waived in 2020 as the prosecution intends to charge him with disclosing information from an ongoing investigation.

On the other hand, in December 2022 a special disciplinary officer appointed by the President of Poland brought charges against the former president of the Supreme Court, Małgorzata Gersdorf. The charge concerns a resolution adopted by the joint chambers of the Supreme Court in January 2020, in which the court implemented the CJEU's judgement of 19 November 2019 (related to the status of the NCJ).

In December 2022, the governing majority presented draft legislation introducing further changes in the disciplinary regime. The draft law provides for disciplinary proceedings against judges to be transferred from jurisdiction of the Supreme Court to the Supreme Administrative Court. Yet again, the draft proposal does not prevent the judges appointed by the NCJ in its current composition from adjudicating in disciplinary cases.

Remuneration/bonuses/rewards for judges and prosecutors, including observed changes (significant and targeted increase or decrease over the past year), transparency on the system and access to the information

In 2022, the Polish Parliament changed the rate used to calculate the salaries of judges and prosecutors. Until 2022, the reference rate was the average salary in the second quarter of the previous year. In 2022, the Parliament changed the regulation and introduced the fixed rate of 5444,42 PLN (lower than the 2021 average salary of 6156,24 PLN).

The Association of Polish Judges IUSTITIA and the Trade Union of Prosecutors and Prosecutorial Employees strongly criticised the changes. According to IUSTITIA's estimations, in practice, judicial salaries will shrink by 5% in 2023 in comparison to 2022 and by 16% in comparison to 2020.

On the other hand, there were several developments in 2022 concerning disclosure of Constitutional Tribunal judges' assets. In 2022, the President of the Constitutional Tribunal ruled the asset declarations of five judges should not be published. Former MP Krystyna Pawłowicz was among this group of five judges. The Constitutional Tribunal President based the decision on provisions of the Act on Common Courts, which provides that the declaration of assets may not be published upon a judge's request. The Act on the Status of Judges of the Constitutional Court, however, states that declarations of Constitutional Tribunal judges shall be published.

Independence/autonomy of the prosecution service

In 2022, there have been no legal changes reinforcing prosecutorial independence. All the concerns regarding the unrestricted competences of the Prosecutor General indicated in the 2021 Rule of Law Report persisted.

In 2022, the media reported that spyware was installed on the phone of Warsaw district Office Prosecutor Ewa Wrzosek. In 2020, Ms. Wrzosek opened an investigation into preparation of mail-in voting for Presidential elections. Her supervisors took over the case and soon discontinued it. In 2022, media reports indicated that prosecutors were pursuing disciplinary proceedings against Ms. Wrzosek, planning a motion to lift her immunity and to charge her with disclosing information from an ongoing investigation. Prosecutor Wrzosek was suspended in the course of the disciplinary proceedings.

The HFHR report "The state of accusation. Functioning of the prosecution service in years 2016-2022" indicated the rising number of disciplinary proceedings against prosecutors, especially against those prosecutors who publicly criticise changes in the prosecution service or speak publicly in defence of the rule of law. For example, in 2022, the media reported on new disciplinary proceedings against Prosecutor Katarzyna Kwiatkowska. Ms. Kwiatkowska was disciplined for giving a media interview in which she commented on the National Prosecutor's decision to delegate her to another city. The National Prosecution also sued her for defamation and claimed PLN 250,000 in damages (the lawsuit was filed in 2021).

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

In April 2022, a group of the governing majority's MPs filed a motion to the Constitutional Court, requesting the review of Article 38 of the Law on the Profession of the Advocate (*Prawo o adwokaturze*), as well as Articles 49(1) and 49(3) of the Law on Legal Advisers (*Ustawa o radcach prawnych*). These provisions govern the membership of advocates and legal advisers, respectively, in local bar associations (*izby adwokackie* in the case of advocates and *okręgowe izby radców prawnych* in the case of legal advisers). The provisions make affiliation to a particular local bar association dependent on the place of performance of the profession (advocates) or the place of residence (legal advisers). At the same time, the national bars of both legal professions (*Naczelna Rada Adwokacka* for advocates and *Krajowa Rada Radców Prawnych* for legal advisers) have exclusive competence to determine the number and territorial jurisdiction of the local bars.

As the applicants argued in their pleading, the current provisions grant the national bars of advocates and legal advisers the exclusive power to shape the territorial (local) structures of their self-governments, but, on the other hand, make membership in a particular local bar association dependent solely on the geographical criterion. These violate Article 17(1) of the Constitution, among others. The applicants put forth that, according to Article 17(1), which allows for the establishment of self-governments within professions of public trust, it is possible to establish more than one self-government for each profession. Such self-governments could differ in terms of e.g. worldview.

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 structure

of the Bar in future. In reaction to the MPs' motion, national bar associations of advocates and legal advisers adopted resolutions emphasising that the Bar's autonomy and independence serve the right to defence and the right to a fair trial.

In May 2022, the Commissioner for Human Rights informed the Constitutional Court it was joining the relevant proceedings and requested their discontinuation.

As of January 2023, the case before the Constitutional Court is pending (with no hearings scheduled or any new pleadings filed).

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

In 2022, an investigation continued into the so-called hatred scandal in the Ministry of Justice. The scandal refers to the series of incidents when either the media loyal to the governing majority or anonymous social media accounts spread defamatory content targeting specific judges or judicial associations. In 2019, the media reported that former top rank officials of the Ministry of Justice, among others, inspired some of the incidents. The prosecution has been investigating the case since 2019, however no one has been charged.

In 2022, the media reported on the cases of two judges who shared, along with a group of other judges, information used in the smear campaigns. Interviews with both judges confirmed the information reported by the media three years earlier.

In 2022, the appellate court discontinued proceedings against one of the journalists, Ewa Siedlecka, who reported on the scandal.

B. Quality of justice

Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section 2

Resources of the judiciary (human/financial/material)
(Material resources refer e.g. to court buildings and other facilities)

Excessive length of judicial proceedings remains the burning issue of the Polish justice system. Among 1027 ECHR rulings in which the Court found Poland to violate the European Convention of Human Rights, 445 included excessive length of the proceedings.

The 2022 report "The cost of the 'reform'. Functioning of judiciary system in 2015-2022" by HFHR indicate the average duration of proceedings before Polish courts increased over 2015-2021. In 2021, the duration of judicial proceedings was, on average, 7.1 months. This means it has increased by about 66 percent since 2015.

The HFHR report also highlights the long-running problem of the declining number of professional judges. According to the report, there were 901 fewer judges in 2020 than in 2016. The highest number of judges (over 600) left district courts, which examine the largest portion of cases submitted to all common courts. These negative

developments were not even partially mitigated by the appointment of associate judges; in 2020, there were 434 associate judges.

The secondment of judges to posts in the government administration and higher instance courts also influenced the staffing situation in the courts. According to information obtained by HFHR on 31 March 2022, a total of 153 judges were seconded to the Ministry of Justice and the organisational units subordinate to or supervised by the Ministry, whereas 221 judges were seconded to the higher courts.

Furthermore, it is difficult to ignore the negative situation of court support staff (including judicial clerks) and the stability of their employment. Both administrative staff and judicial clerks are among the categories of lowest-earning justice system employees. Their salaries have long been uncompetitive, especially when compared to the responsibilities and the pressure associated with these roles. This, in turn, translates into staff shortages and the necessity to often repeat the onboarding process for newly recruited employees, reducing overall court efficiency.

As of 31 December 2021, the justice system included 28,693 administrative employees and 3,855 judicial clerks (compared to 27,045 administrative employees and 2,749 judicial clerks ten years ago).

Each year the Polish justice system processes from anywhere from 13 to 17.5 million cases.

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

The digitization of the judiciary remains a problem in Poland. The COVID-19 pandemic accelerated some reforms in this realm. These included, *inter alia,* introduction of an electronic information delivery system from courts to advocates and legal advisers. However, the hasty adoption of the new tools resulted in various problems with their functioning.

In the context of digitization of the justice system, Poland lacks solutions that maintain case files in electronic form. The court case files are generally kept in paper form with the exception of administrative courts and some higher-level prosecutorial offices. This significantly extends the communication between the courts and the parties thus lengthening the duration of Polish court proceedings.

In 2022 the Commissioner for Human Rights urged the Minister of Justice to use the Electronic Platform of Public Administration Services (ePUAP) for process communication of citizens with courts and prosecutors' offices. The Minister of Justice has not yet responded to the Commissioner's statement.

Geographical distribution and number of courts/jurisdictions ("judicial map") and their specialisation, in particular specific courts or chambers within courts to deal with fraud and corruption cases

On 21 July 2022, the European Court of Human Rights delivered a judgement in the case Bieliński v. Poland (case no. *48762/19)*. The case originated from the 2016

amendment to the Act on Old-Age Pensions of Functionaries of the Police, the Internal Security Agency, the Intelligence Agency, the Military Counterintelligence Service, the Military Intelligence Service, the Central Anti-Corruption Bureau, the Border Guard, the Government Protection Bureau, the State Fire Service, the Prison Service and Their Families. It significantly decreased the amount of retirement pension received by people serving in those formations during the communist era in Poland. The applicant in the case Bieliński v. Poland challenged the decision of the Director of the Board for Pensions that decreased his pension. Due to statutory requirements, all appeals challenging the decision of the Director of the Board for pensions must be lodged at the Warsaw Regional Court. Moreover, in the beginning, the proceedings in the case of the applicant have been stayed, since in a similar case pending before the same court, the court referred a legal question to the Constitutional Tribunal regarding the constitutionality of the provisions introducing new calculation methods for old-age pensions.

In its judgement, the European Court of Human Rights noted that the Warsaw Regional Court had to deal with an exceptionally heavy workload following the reduction of social benefits for thousands of former functionaries of the uniformed services. It referred to data provided by HFHR, which indicated that the vast majority of cases challenging the decisions of the Director of the Board of Pensions have still not been reviewed. According to HFHR, only 2100 appeals out of 26,000 lodged to the court have been reviewed.

The European Court of Human Rights found such a situation to be in violation of art. 6 and 13 of the Convention. It pointed out that it is a State's duty to organise its judicial system in such a way that its courts can meet the obligation to hear cases within a reasonable time.

C. Efficiency of the justice system

Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section 2

Length of proceedings

The excessive length of judicial proceedings remains one of the Polish justice system's most important and long-standing problems.

Although no comprehensive data showing the length of the proceedings in Poland in 2022 is available as of this writing, the situation is not likely to deviate significantly from the trend visible throughout preceding years. As indicated in the 2022 HFHR report "Cost of a reform. The work of the justice system 2015-2022" except for 2018, the average duration of proceedings has been increasing year-by-year since 2015. In 2021, the duration of judicial proceedings was, on average, 7.1 months, which means that it has increased by about 66 percent since 2015. This resulted mainly from the ongoing changes in the judiciary (including the significant number of judicial vacancies occurring in 2015-2017), lack of improvements in the organisation of judicial work, and, for the last two years, the limitations on the work of the courts related to the COVID-19 pandemic.

Against the background of the increasing length of proceedings, the Ministry of Justice made an effort to artificially understate the problem. At the beginning of 2022, the Ministry changed the rules of work of court registries and ordered that proceedings for the declaration of enforceability of a judgement or a court-approved settlement be treated as a separate category of proceedings. As the process of granting the enforceability clause is brief, this will lead to a reduction in the average duration of all civil proceedings.

II. Anti-Corruption Framework

A. The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

List any changes as regards relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption and the resources allocated to each of these authorities (the human, financial, legal, and technical resources as relevant), including the cooperation among domestic authorities. Indicate any relevant measure taken to effectively and timely cooperate with OLAF and EPPO (where applicable)

In 2022, there were no significant institutional changes that would increase the state's capacity to prevent corruption.

It is worth noting, however, that CBA, a law-enforcement body specialised in combating corruption, published a report covering 2021 (in April 2022), which shows the institution's budget decreased by about PLN 23 million compared to 2020, while it had gradually increased in previous years.

Safeguards for the functional independence of the authorities tasked with the prevention and detection of corruption

As in the case of institutional anti-corruption solutions, nothing has changed in this aspect compared to the previous report. The main problem remains the far-reaching politicisation of the prosecutor's office, the main source of which is the personal union at the level of the Minister of Justice and the Prosecutor General. In addition, prosecutorial regulations, amended in 2016, allow the Minister of Justice / Prosecutor General to exert powerful pressure on individual prosecutors in connection with their cases, as well as in the course of investigations. The Minister of Justice / Prosecutor General's broad prerogatives allow him to slow and often dismiss cases concerning people in the highest positions and thus prevent them from the judicial stage. Even when they do, since 2016 there have been regulations which the prosecutor's office can use, under pressure from the Minister, to force the court (under the pretext of new circumstances related to a given case) to "return" the case to the prosecutor's office from the court, where it can be discontinued.

The pressure on the common judiciary is also not decreasing, which, combined with the politicisation of the prosecutor's office and law enforcement agencies, is not conducive to the effective prosecution of corruption offences, in particular.

There has also been no change in the operating conditions of the Central Anti-Corruption Bureau, an institution delegated to fight corruption. It is under the full control of the ruling party, which is possible because the regulations allowing for the political appointment of the bureau's leadership have not changed.

Information on the implementation of measures foreseen in the strategic anti-corruption framework (if applicable). If available, please provide relevant objectives and indicators

In 2020, the implementation of the Government Anti-Corruption Program for 2018-2020 was completed. Since then, no new program, plan or strategy has emerged. This indicates that preventing corruption in government policy is not a priority.

It is worth noting, however, that in mid-December 2022, the Supreme Audit Office (NIK) published a detailed and very critical report on the aforementioned program's implementation[1]. NIK pointed out, among other things, that the program was prepared carelessly, without proper consultations, even within the government itself. The program was adopted just three weeks before its implementation began.

The Central Anti-Corruption Bureau was again delegated as the program coordinator. This repeats the same mistake that characterised previous government anti-corruption programs. The CBA, meanwhile, is a kind of special service. It has neither the competence (e.g. legislative initiative) nor the resources to coordinate any public policy.

Moreover, NIK pointed out that the Interministerial Team for the implementation of the program was established six months after its implementation formally began. The team was to ensure proper coordination of anti-corruption activities between individual ministries and other central government bodies. Its first meeting took place nine months after the start of the program (in general, the Team met only four times during the implementation of the Program). However, the plan for the implementation of the government's anti-corruption programme was created in 2019, 14 months after program adoption. These three facts alone show how badly program implementation was organised.

In addition, NIK pointed out many inconsistencies in the documentation along with a lack of adequate indicators and mechanisms to monitor its implementation. What's more, the CBA, responsible for reporting, submitted four out of six reports on time, while its final report did not contain key information that would allow for verification of what was finally accomplished. Most of the program objectives related to the introduction of legal and institutional changes have not been achieved. Most of the implemented activities were limited to the publication of recommendations and training for public sector officials and employees.

NIK found that only one of GRECO's 21 recommendations was implemented under the program with five implemented only partially. Therefore, the program did not contribute to implementation of GRECO's recommendations from the fifth round of evaluation, although this should be an absolute priority of anti-corruption policy.

In the face of the results of the NIK audit, it is impossible to conclude that the Government Anti-Corruption Programme for 2018-2020 was an expression of a well-thought-out anti-corruption policy and actually improved the state's resistance to corruption.

[1] https://www.nik.gov.pl/plik/id,27014,vp,29814.pdf

B. Prevention

Measures to enhance integrity in the public sector and their application (including as regards incompatibility rules, revolving doors, codes of conduct, ethics training). Please provide figures on their application

In 2022, there were no legal changes and no significant actions taken to improve public sector integrity.

The problems in this area, signalled in previous reports, still remain valid.

General transparency of public decision-making, including rules on lobbying and their enforcement, asset disclosure rules and enforcement, gifts policy, transparency of political party financing

In 2022, there have been no significant legal or institutional changes or actions to improve the transparency of decision-making processes, lobbying, asset declarations or transparency, or political financing. However, three notable situations show significant problems in this area and the need for changes (both in law and in practice) regarding the system of asset disclosure, lobbying and financing of political parties.

In the second half of 2022, the Constitutional Tribunal President sealed the asset declarations of some judges, including her own, despite the ruling party having extended the obligation to publish judicial asset declarations a few years prior. However, it turned out that those provisions have a loophole that allows, under any pretext, to avoid the publication of judicial asset declarations, as happened in the aforementioned case.

As regards to lobbying, at the end of 2022 controversies arose regarding changes in the regulations governing the reimbursement of medicines, for which the National Health Fund reserved over PLN 20 million for 2023. Works on these regulations accelerated in the middle of 2022, but the proposed changes aroused doubts even within the government, on the part of the Office of Competition and Consumer Protection and special services, which warned that the Ministry of Health is being pressured by pharmaceutical industry lobbying. Pharmaceutical market regulations are one of the main risk areas for illegal lobbying and corruption. In Poland, since 2006, the law regulating lobbying has been in force, but it is a sham regulation and the influence of interest groups on public decisions is largely beyond the control of public opinion. This situation illustrates, the law fails to facilitate transparent relations with lobbyists, even within the government.

The third event worth mentioning in this point concerns the financing of political activity and in particular election campaigns. In November 2022, investigative journalists from TVN television, in a series of reports, showed how people who were employment in high positions in state-owned enterprises thanks to the political support of the ruling party, made donations to the election funds of friendly politicians and to the ruling party. This is not a new practice. In principle, it is also not illegal unless it is proven that such payments were the result of coercion. What is new, is the unprecedented institutionalisation and scale of this practice. As the journalists showed, in the elections to the European Parliament in 2019 alone, the Law and Justice election

fund received over PLN 2 million thanks to this mechanism. This is a striking illustration of clientelistic networks around state-owned enterprises and how the lack of sufficient transparency in the financing of politics and the flawed regulation of state-owned enterprises contribute to inequality in the election process and in the entire sphere of political activity.

Rules and measures to prevent conflict of interests in the public sector. Please specify the scope of their application (e.g. categories of officials concerned)

In 2022 there were no legal changes and no significant actions were taken to improve public sector integrity.

The problems in this area, signalled in previous reports, still remain valid.

Measures in place to ensure whistleblower protection and encourage reporting of corruption.

In 2022, the situation of whistleblowers has not changed. In principle, such persons have limited legal protection and, in order to defend themselves against retaliation, they must rely on general legal provisions, including the provisions on mobbing in particular.

No law has been passed implementing Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. Work on the bill failed to proceed past the governmental stage. At the end of 2022, the sixth version of the draft law implementing the directive[2] was published. Notably, public consultations ended at the first version of the bill, in 2021. Stakeholders therefore have almost no influence on the evolving regulation. The comments made by CSOs were taken into account only to a small extent. The draft still does not provide, e.g., for the protection of whistleblowers in connection with corruption crimes, it almost completely excludes the protection of uniformed services employees, and reports related to fraud or the risk of fraud in the area of defence procurement will not be protected. These are just some of the problems with the project signalled at the stage of public consultations, which still remain valid.

Unfortunately, the December version of the bill implementing the Whistleblowers Directive contains changes that further reduce the quality of this regulation. The Ombudsman used to be the central authority responsible for supervising implementation of act provisions and the central institution receiving reports from whistleblowers in situations where internal whistleblowing schemes did not perform their functions and/or other public institutions were passive. Meanwhile, the proposed legislation takes this authority from the Ombudsman and transfers it to the National Labour Inspectorate (PIP).

However, the PIP mission is only to oversee the implementation of labour law. Unlike the Ombudsman, it is susceptible to politicisation and has even fewer resources and competences to deal with whistleblower cases.

[2] https://legislacja.rcl.gov.pl/projekt/12352401/katalog/12822867#12822867

Importantly, the PIP mandate is inadequate with respect to the very idea of whistleblowing, which stems from the need to protect freedom of speech, which is a fundamental civil liberty. In addition, the bill's new version includes a special procedure for whistleblowers informing law enforcement authorities when there is the possibility of a crime being committed. Implementation of this mode is difficult to imagine in practice, and if the proposed regulations become law as proposed, they may significantly disorganise the functioning of the prosecutor's office and law enforcement agencies.

List the sectors with high-risks of corruption in your Member State and list the relevant measures taken /envisaged for monitoring and preventing corruption and conflict of interest in these sectors (e.g. public procurement, healthcare, citizen investor schemes, risk or cases of corruption linked to the disbursement of EU funds, other), and, where applicable, list measures to prevent and address corruption committed by organised crime groups (e.g. to infiltrate the public sector)

The list of areas with a high risk of corruption has not changed substantially compared to the reports of recent years. Nor have there been any new solutions that would help counteract corruption, whether in the area of public procurement, the health care sector or other areas prone to corruption.

In the context of spending EU funds, it may be worthwhile to note the problems with the establishment of the Monitoring Committee for the National Reconstruction Programme (KPO). The committee was supposed to start work in the summer of 2022, but by the end of the year the entire composition had not yet been formally established. In the meantime, the government has changed its decision several times to appoint committee members representing non-governmental organisations, seeking to elect most of those organisations that are politically and ideologically aligned with the ruling party. This is a clear manifestation of the desire for a partisan body that is to oversee expenditures from the National Reconstruction Program. At the same time, it is a risk factor for corruption in the area of spending EU funds in Poland.

C. Repressive measures

Criminalisation, including the level of sanctions available by law, of corruption and related offences, including foreign bribery

An amendment to the Criminal Code adopted in October 2021 is worthy of mention here. This amendment was already mentioned in the previous report for 2021. In the field of preventing corruption, it introduced a ban on simultaneous employment in state and local government institutions and in companies owned at least 10 percent by local governments or central authorities. These provisions entered into force in January 2022 unchanged, which is noteworthy as it is not uncommon for laws already passed and signed by the president to be amended in the Polish legislative process.

In 2022, another amendment to the Criminal Code was passed, which also included some changes regarding anti-corruption regulations. New types of prohibited acts, aggravated acts related to passive and active bribery have been introduced into the Code. They concern crimes causing extensive damages (i.e. exceeding PLN 1 million), which will be punishable by two to fifteen years in prison.

These changes are part of the general tendency of the government to conduct penal policy not by increasing the effectiveness of the application of penalties, but by tightening them in regulations. Bearing in mind all criminological studies showing that the effectiveness of penal policy is primarily decided by the inevitability of punishment, and not its severity, there is reasonable doubt whether the described changes will in any way contribute to reducing the prevalence of corruption crimes in Poland.

Criminal Code provisions concerning passive paid protection have also been clarified so that they clearly allow for prosecution of such crime also when they concern state and local government enterprises, banks or commercial law companies. The provision on active paid protection has also been amended, extending the scope of criminalisation by analogy to passive paid protection.

There is also one more change in the Criminal Code regarding abuses in business transactions (abuse of authority). The new regulations expand the catalogue of entities that can formulate a private indictment in connection with the commission of this type of crime, which will limit the discretion of the prosecutor's office in this matter. This change should be assessed positively.

Data on investigation and application of sanctions for corruption offences, including for legal persons and high level and complex corruption cases and their transparency, including as regards to the implementation of EU funds

Please include, if available the number of (data since 2019): indictments; first instance convictions; first instance acquittals; final convictions; final acquittals; other outcomes (final) (i.e. excluding convictions and acquittals); cases adjudicated (final); imprisonment / custodial sentences through final convictions; suspended custodial sentences through final convictions; pending cases at the end of the reference year

Unfortunately, in 2016, the CBA stopped publishing comprehensive statistics on corruption crimes. Only police statistics on the number of reports of a crime and the number of crimes established in pre-trial investigations are publicly available. This information is available at the following addresses:

- https://statystyka.policja.pl/st/przestepstwa-ogolem/przestepstwa-gospodarcz/przestepstwa-korupcyjne/122279,Przestepstwa-korupcyjne.html
- https://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-10/63537,Lapownictwo-bierne-art-228.html
- https://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-10/63538,Lapownictwo-czynne-art-229.html
- https://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-10/63541,Platna-protekcja-art-230-i-230a.html
- https://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-10/63570,Naduzycie-wladzy-art-231.html
- https://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-17/63915,Naduzycie-zaufania-art-296.html
- https://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-17/63917,Korupcja-gospodarcza-art-296a.html

A bit more detailed data on the prosecution of corruption crimes and control activities are published only by the CBA. However, the office deals with only a small percentage of the total number of corruption crimes identified in Poland.

- https://cba.gov.pl/pl/o-nas/informacja-o-wynikach

The available data also refer in most cases to 2020 or 2021 at best.

Potential obstacles to investigation and prosecution as well as to the effectiveness of criminal sanctions of high-level and complex corruption cases (e.g. political immunity regulation, procedural rules, statute of limitations, cross-border cooperation, pardoning)

In late 2022 the ruling majority passed legislation introducing impunity for mayors who broke the law during the 2020 presidential election. In a nutshell, this act releases local authorities from criminal liability for providing personal data of voters (a breach of GDPR regulations) to the Polish Post. The matter stemmed from the government's attempt to organise mail-in ballot presidential elections in 2020 due to the COVID-19 pandemic. The idea was later abandoned, while the preparations cost Polish taxpayers over PLN 70 million.

The problem with the attempt to organise a presidential election with mail-in balloting only was that the Polish prime minister unlawfully authorised the Polish Post to organise the vote by mail. In September 2020, the Voivodeship Administrative Court found that by doing so, the prime minister violated the authority of the National Electoral Commission, the only constitutional body authorised to organise elections.

Furthermore, the minister responsible for the Polish Post began to implement this idea. The authorities demanded that local authorities provide the Polish Post with voters' personal data so that it could mail out ballot packages. Some local government officials followed this order ignoring the warnings of experts that the legal basis created by the government is questionable and exposes them to criminal liability. In doing so, they violated the rules for the privacy protection, abused their authority (in a typical abuse of power situation that is emblematic of a corruption offence). Most officials did so to satisfy the ruling party, which wanted to bring about the re-election of its presidential candidate as soon as possible, ignoring requirements to maintain equality and transparency of elections and avoid the risk of manipulation of the electoral process.

In 2022 NGOs successfully fought in the courts for the rule of law, holding those breaking the law at the time accountable. Therefore, the ruling majority introduced an abolition and amnesty.

General elections are due to take place in 2023. At the very least, the impunity introduced has the effect of undermining confidence in the electoral process. At worst, it may also provide an indication that it pays to listen to those in power urging people to break the law, as there is no punishment for doing so anyway[3].

[3] https://siecobywatelska.pl/the-president-of-the-republic-of-poland-signed-the-abolition-law-related-to-the-elections-for-his-position-he-also-did-so-in-his-own-interest/?lang=en

Importantly, the aforementioned "impunity law" obviously contravenes recommendations of the 2022 Rule of Law report, which provide that Polish authorities shall "abstain from introducing impunity clauses in legislation in order to enable a robust track record of high-level corruption cases."

Information on effectiveness of non-criminal measures and of sanctions (e.g. recovery measures and administrative sanctions) on both public and private offenders

As in case of criminal data, there are no up-to-date sources to answer this question.

III. Media Freedom and Pluralism

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding media freedom and pluralism (if applicable)

The recommendations regarding media freedom received in the 2022 report concerned procedures for granting the operating licences to media outlets and the independence of public service media. No measures whatsoever have been taken to follow-up on these recommendations. On the contrary, the President of the National Media Council has taken steps that could be interpreted as another measure intended to create legal uncertainty around the licences granted to TVN S.A (see below, point A.)

A. Media authorities and bodies

(Cf. Article 30 of Directive 2018/1808)

Measures taken to ensure the independence, enforcement powers and adequacy of resources (financial, human and technical) of media regulatory authorities and bodies

The functioning of media regulatory bodies indicates that Poland has failed to effectively implement Directive 2018/1808. One of the indicators is their biased approach, e.g. differences between the way in which the National Broadcasting Council (KRRiT) exercises its oversight powers over the public service media (PSM) and private broadcasters. Despite the PSM's strong bias, incompatible with their statutory obligations, the KRRiT fails to react to such irregularities. Meanwhile, its approach toward the private media is different.

In December 2022 the KRRiT chairman initiated an review of whether a documentary broadcast by the TVN24 channel had "propagated false information and activities contrary to the Polish *intérêt de l'état* and endangered public security," and, "to what extent, if any, the dissemination of untrue and unreliable information breaches the terms of TVN S.A.'s licence". The review may result in the chairman imposing a fine on the broadcaster (up to PLN 986,010). Moreover, should the examination lead KRRiT to a conclusion that the broadcaster is "in flagrant breach" of the conditions set out in the Broadcasting Act or the terms of its licence, KRRiT would be legally obliged to withdraw its licence; KRRiT may also withdraw the licence if dissemination of the programme endangers security. The proceedings can be therefore seen also as another manifestation of creating a legal uncertainty around the licences granted to TVN S.A.

It is further doubtful whether the law provides for an effective and independent appeal mechanism against the KRRiT chairman's decisions. Such an appeal would be eventually examined by the Chamber of Extraordinary Control and Public Affairs in the Supreme Court, which, according to the ECtHR case-law, is not a 'court established by law' within the meaning of the European Convention on Human Rights.

Another example that raises concern about media authorities' impartiality is the way in which a new broadcasting system for terrestrial television was introduced (i.e. how the decision of the European Parliament and the EU Council 2017/899 was

implemented). The change of the broadcasting standard meant that older models of TV sets and tuners that are not adapted lost access to television. In March 2022 the Minister of Interior Affairs requested the President of Electronic Communication Office (UKE) to grant an exception to public television, so it would reach households with old receivers until the end of 2023. According to the minister, continued access to public television was needed to "boost the morale of the population and counter disinformation". After receiving approval from the KRRiT, the UKE granted the requested exception, amending the frequency reservation decision. According to the latest estimates published on 25.10.2022 by the state National Institute of Media, 0.99 million households still haven't changed their old receivers – and therefore receive only public television.

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

The conditions and procedures for the appointment of regulatory authority members do not provide sufficient guarantees for their functional independence and impartiality. In 2022, the full composition of the five-member National Broadcasting Council has changed, but past activities of the majority of newly elected members cast doubt on whether they will exercise their powers in accordance with requirements provided in the Article 30 of Directive 2018/1808.

Current Chairman Maciej Świrski is well known for his harsh criticism of TVN, one the biggest private TV stations. For example, in 2018, he called on ruling party politicians to boycott the station and, referring to TVN, wrote "Down with the FakeNewsMedia" on his Twitter account. Between 2016 and 2018, he was a vice-president of the Polish National Foundation (*Polska Fundacja Narodowa,* PFN), which was set up and funded by state-owned companies to promote Poland abroad.

In 2017 PFN organised the "Fair Courts" campaign*,* which was supposed to counter mass protests from July 2017 under the slogan "Free Courts". The government "Fair Courts" campaign attempted to promote judicial "reform" by presenting cases of alleged judicial misconduct. In fact, most of the information presented turned out to be either misinterpreted or simply false.

Mr. Świrski also founded the "Polish League Against Defamation", which he headed until December 2022. The organisation, supported by governmental funds, claims to "defend Poland's good name". It supported the plaintiff in the court case against two renowned Holocaust historians, Barbara Engelking and Jan Grabowski.

Hanna Karp, another newly elected member, authored a review that served as the basis for imposing in 2017 an exceptionally high fine on the TVN channel by the previous National Broadcasting Council Chairman. The penalty was imposed because of the manner in which the TVN24 channel covered the events in and outside the Polish Parliament in December 2016, including demonstrations. The KRRiT found the coverage to endanger state security and being contrary to the Polish *intérêt de l'état*.

Marzena Paczuska, also a new member, headed the public television main news programme, *Wiadomości,* from January 2016 to August 2017. During this period, *Wiadomości,* along with others, ran a smear campaign against several NGOs and harshly criticised the Commissioner for Human Rights (the Ombudsman) for

cooperating with international organisations, including the UN Human Rights Committee.

B. Safeguards against government or political interference and transparency and concentration of media ownership

No rules ensure fair allocation of public advertising spending in Poland. Ads purchased by the government, self-government, state-owned (SOEs) and municipal companies, as well as other public institutions, can be freely allocated to selected media outlets, regardless of their circulation and how this circulation is bought.

SOEs take advantage of this situation to pressure dailies. The Gazeta Wyborcza daily, which is the third largest title in PL in terms of reach, is consistently bypassed by the SOEs as a means of advertising. In 2021, the number of digital subscribers to Gazeta Wyborcza reached over 280,000, so it is a mass channel to reach a wide range of readers. At the same time, the niche daily Gazeta Polska Codziennie, whose pro-government profile is unquestionable and whose sales results were withdrawn from the survey in mid-2021 (may indicate that circulation is very low and sales results are getting worse) has an increasing public advertising market share. The level of advertising spent by SOEs in this title is more than 30 times higher than in 2015.

There are no regular studies of this topic at the self-government level and an electronic public register of such contracts is not yet in place. Some conclusions coming from the FOI requests can be used to exemplify that lack of rules allow authorities to "punish" media which are not supportive to them and to favour those who support them.

In 2019, the Dziennik Wschodni from Lublin, an independent daily, received orders from city hall for PLN 58,000, in 2020 it received around PLN 1,200 and in 2021 less than PLN 25,000. It was in 2019 that the battle began in the city to build facilities on one of the green spaces, the Górki Czechowskie. The newspaper reported local citizens' resistance to the idea and the flow of ads suddenly dropped.

In Wrocław, municipal companies outright buy media to use in their political efforts. In Nov 2022, a year and a half before the local government elections, the little-known (less than 3,000 observers on FB) Lower Silesian portal TuDolnySlask.info, run by a company registered in May 2022, was supported by two municipal companies. At the same time, it published an article about Akcja Miasto, a Wrocław-based urban movement that is often critical of the actions of the Mayor of Wrocław. It suggested that the organisation had fraudulently obtained funding and alleged ties to Poland's ruling party, Law and Justice. The portal promoted it in social media. Apart from that, the portal did not write about anything relevant.

SAFEGUARDS AGAINST STATE / POLITICAL INTERFERENCE, IN PARTICULAR:

- **safeguards to ensure editorial independence of media (private and public)**
- **specific safeguards for the independence of heads of management and members of the governing**
- **boards of public service media (e.g. related to appointment, dismissal), safeguards for their**
- **operational independence (e.g. related to reporting obligations and the allocation of resources) and**
- **safeguards for plurality of information and opinions**

- **information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licences, company operation, capital entry requirements, concentration and corporate governance**

The coverage of public media remains extremely biassed, e.g. with the opposition leaders being systemically demonised. This is also the case with regard to EU-level politics. For instance, public media portrayed the European People's Party as "European Putin's Party" in March 2022.

While the political interference is mostly visible on screen, leaked alleged email conversations involving M. Dworczyk, the Prime Minister's Chief of Staff at the time, might potentially provide insights into what is going on behind the scenes. (M. Dworczyk refused to comment on specific mails, but he claimed that some of the leaked emails are genuine, some are manipulated and some are fakes). In the emails published in January 2022, M. Chłopik, an advisor to the prime minister, wrote to J. Olechowski, the head of the *Wiadomości* news programme, and, referring to a court judgement unfavourable to the prime minister, requested that, "tomorrow TVP should beautifully attack those people who made this judgement and the Warsaw Court of Appeal in general", adding some ideas for the "attack". Once the email was published, J. Olechowski commented that he does not recall receiving it. At the same time, after the mail was allegedly sent, the main edition of *Wiadomości* aired a piece on the judgement that used, among other things, the ideas provided in the alleged Chłopik's email communication.

Cases of potentially politically-inspired interference have been also identified within the regional media owned by Polska Press, bought by 2021 state-owned oil giant PKN Orlen. For instance, in July 2022 an interview with a professor of economy criticising the government tax reform was withdrawn from the "Dziennik Polski" daily website. According to the official comment of its editor-in-chief, the decision to remove the interview was only related to the fact that "the interview was unreported to the editorial board and published arbitrarily without consultation with the editorial management".

There has also been a case of interference with editorial independence with regard to a fully private outlet. In December 2022 at "Dziennik Wschodni", a regional daily published in Lublin, a new management board blocked the online publication of an investigative article about a Lublin real estate developer accused of influence peddling. The article described the real estate developer's close contacts with the Mayor of Lublin, K. Żuk. The publisher explained that the publication was withheld because of legal risks (the real estate developer issued a pre-litigation letter). In response to the publisher's decision, deputy editor-in-chief P. Buczkowski resigned, explaining that "It is the editor-in-chief, or in his absence the deputy editor-in-chief, who decides which articles are published". After that, the deputy editor in chief was disciplinarily dismissed for "statements in the media negatively assessing the work of the management board".

Transparency of media ownership and public availability of media ownership information, including on direct, indirect and beneficial owners, as well as any rules regulating the matter.

C. Framework for journalists' protection, transparency and access to documents

Rules and practices guaranteeing journalistic independence and safety, including as regards protection of journalistic sources and communications

The current legal regime governing secret surveillance fails to offer sufficient safeguards for the protection of journalistic sources and communications. With regard to the access by authorities to retained communications data, the law does not envisage prior judicial review (or by any other independent body), contrary to the requirements of the Directive 2002/58/EC on privacy and electronic communications. Therefore, there are no effective safeguards to prevent authorities from accessing communications data of an individual, targeted journalist.

While surveillance of communication content in general requires prior judicial authorisation, it does not provide effective protection in practice. Courts grant authorisation based only on very limited information provided by the requesting authorities. As a result, courts approve about 98-99% of the authorities' requests. What is more, there is no independent oversight body that could later effectively review legitimacy of the applied surveillance measures.

In addition, there is no general ex-post notification mechanism of the persons concerned about the surveillance measures applied. If a given case does not lead to opening of a criminal proceedings against the persons concerned, they will most likely never learn about the measure applied – contrary to the requirements stemming from the Directive 2002/58/EC.

On top of that, even when journalists manage to learn that they were subjected to targeted surveillance, this might not lead to an effective examination of the official actions. This, among others, is the case of an investigative journalist Mariusz Gierszewski, whose communications data was accessed by police in 2014. The prosecutor's office has decided to discontinue the proceedings, the complaint against this decision is still pending.

Additionally, in December 2022 the government has submitted a draft Electronic Communication Law, which extends current rules on general and indiscriminate retention of traffic and location data to a new group of service providers and broadens the category of data that must be retained. Such regulation would deepen the incompatibility of the domestic electronic communication rules with Directive 2002/58/EC – and increase the risks for protection of journalistic sources and communications.

Law enforcement capacity, including during protests and demonstrations, to ensure journalists' safety and to investigate attacks on journalists

Last year provided new examples of problems with effective investigation into cases of excessive force used by law enforcement officers against journalists.

In April 2022 the prosecutor's office closed an investigation into police violence against journalists covering demonstrations on 11 November 2020 because of the failure to identify perpetrators. Video footage of the event showed police using truncheons to beat media workers despite them either wearing PRESS signs or being clearly

identifiable as journalists. According to the prosecutor's office, police officers on site were either wearing a mask or a helmet and this made it impossible to identify them. Moreover, interviewed police officers and their supervisors who participated in the events that were questioned were also unable to identify anyone.

Prosecutors have also refused to open an investigation into harassment of photojournalists Maciej Moskwa and Maciej Nabrdalik near the Polish-Belarusian border by soldiers. The soldiers aggressively stopped, handcuffed and searched the photojournalists, as well as examined photos stored in their cameras, despite their protests invoking journalistic secrecy. Even though the whole situation was voice recorded and the recording includes, among others, officers discussing wiping their fingerprints off the searched cameras, the prosecutor's office deemed that the actions did not amount to an abuse of authority. The photojournalists appealed the prosecutorial decision and that case is pending.

Access to information and public documents (incl. transparency authorities where they exist, procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities, possible obstacles related to the classification of information)

While 2022 was not as fraught with problems related to the right to information as 2021, it was a year in which Poland was subject to the UPR, which was conducive to a deeper analysis of the problems[4].

As has been identified, the RtI does not work. If public authorities "skilfully" use existing procedures to withhold information, there is a good chance they will succeed and face no real sanction for doing so.

The structure of court procedures protecting the RtI enables parties to delay answering requests for years. First, the obligated entities can claim that the requests do not concern public information. If they lose in court, they can restrict the information on grounds such as the protection of other rights.

An example of this is the allocation of cases in courts. It took 4.5 years to establish in the courts that the source code of the RCAS is public information. After the court ruling, the MoJ did not provide this information and issued a decision to deny it on the grounds of system security and integrity. It may take another four years until the next final judgement. During this time, the public is unable to learn whether the system is working properly and whether it is indeed random.

Due to long and inefficient procedures, many journalists do not use the FOI Act at all, to which they are referred by Article 3a of the Press Law[5].

The situation of changing reasons for withholding information is very common, and the only sanction is usually a small reimbursement of court costs to the winner, paid from the public budget anyway (if the public entity loses). Sometimes, though extremely rarely, a fine can be enforced and is also paid from public coffers.

[4] https://siecobywatelska.pl/watchdog-polands-submission-in-the-4th-cycle-of-the-universal-periodic-review/?lang=en

[5] https://siecobywatelska.pl/sadowa-ochrona-prawa-do-informacji-podsumowanie-seminarium-na-uniwersytecie-wroclawskim/

A viable sanction may be the criminal provision of Article 23 of the FOI Act. However, in the absence of the RoL, it does not work either. The prosecution cannot be counted on to bring an indictment against institutions associated with those in power. With persistent efforts, private parties can become subsidiary prosecutors. Nonetheless, this route was also undermined by a judgement of the District Court in Warsaw (IX Ka 815/22). The court ruled that in cases involving access to information, as concerning the general good of transparency in public life, neither a natural person nor a legal entity can have the status of a victim and therefore cannot become a subsidiary accuser. A cassation has been filed in the case. If the verdict is upheld, there will be no sanction for failure to implement the RtI nor will there be any possibility for citizens to act on their own in the face of the inaction of a prosecution service dependent on the ruling majority[6].

Lawsuits (incl. SLAPPs - strategic lawsuits against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against manifestly unfounded and abusive lawsuits

The number of SLAPPs against journalists has been constantly rising. From 2015 to June 2022, "Gazeta Wyborcza" alone was targeted with at least 100 legal actions, while many more legal actions have been initiated against several other outlets. Public institutions, state-owned companies and public officials brought many of the lawsuits. The problem of SLAPPs has also been particularly acute for local media, especially since they have fewer resources to face long court proceedings and, at the same, their cases receive less attention from public opinion.

While civil and criminal defamation are the most frequently applied tools, sometimes more serious criminal charges are brought. This has been, for example, the case of Piotr Maślak, a journalist at TOK FM radio, who was charged in March 2022 by the military prosecutor's office of defaming and insulting the Polish Border Guard. The charges refer to the journalist's Twitter post, in which he criticised the actions of the Polish Border Guard against a group of refugees at the Polish-Belarusian border. Reacting to the tweet, the interior minister and the vice-president of the ruling party, M. Kamiński, filed a notification to the prosecutor's office. The charges pressed against the journalist, criminal defamation through mass media and criminal insult of a public official, are both punishable with up to one year of imprisonment.

The Ministry of Justice, responding to the HFHR request for public information, declared in July 2022 that "at this moment, the government has not set designated actions for the implementation of the European Commission's Recommendation [on SLAPPs]" and emphasised that "The Recommendation [(EU) 2022/758] has no binding force and aims to present the European Commission's point of view […] without imposing any legal obligations on Member States".

At the same time, United Poland, one of the parties in the ruling coalition, submitted a draft law that would tighten the existing "blasphemy law". The draft law, supported by the Minister of Justice, would criminalise, among others, insulting or ridiculing church or religious dogmas (the current regulations criminalise only an insult to "objects of religious worship or a place intended for the public performance of religious rites"). The "blasphemy law" in its current form has also already been used to open proceedings against journalists, e.g. with regard to a cartoon showing Virgin Mary wearing a face

[6] https://siecobywatelska.pl/apelacja-w-sprawie-fundacji-lux-veritatis-ustne-uzasadnienie-wyroku/

mask with lightning, the symbol of women's resistance against limitations on reproductive rights in Poland, published in "Wysokie Obcasy" weekly. The law's new proposed form would significantly increase the risks of more criminal investigations being opened against journalists.

Other - please specify

An important risk for media pluralism also stems from the state-owned company PKN Orlen purchasing Polska Press, the publisher of most regional media in Poland, as well as the second-largest press distribution company, Ruch. While the acquisition of Ruch was completed in 2020, later events indicate some concerning cases where, potentially, vertical ties between the press distribution company (Ruch) and the press publisher (Polska Press) could have been exploited to the detriment of media market competitors.

For instance, Ruch refused to distribute the newly founded "Zawsze Pomorze" weekly (created by former journalists of the Polska Press "Dziennik Bałtycki"), explaining that the title "*does not promise optimal sales*" (the other major press distribution companies agreed to the distribution).

Moreover, in May 2022 Ruch started terminating press distribution contracts with several independent local media who did not respond to Ruch's offers on the additional distribution fee and announced further terminations with other media outlets. According to the magazine "Press", "the publishers claim that Ruch's decision may be politically motivated. The issue may be that local titles - usually weeklies - compete with daily editions of regional titles owned by Polska Press"[7].

The Chamber of Press Publishers (*Izba Wydawców Prasy)* assessed Ruch's proposed additional distribution fees as unjustified and indicated that they could harm not only publishers, but also the distributor itself. According to the Chamber, the additional fees could only temporarily improve Ruch's financial condition while drastically worsen the situation of local publishers who are already working at the limit of their possibilities. Eventually, Ruch offered local publishers new contracts, but with higher fees and follow-up negotiations were to follow[8]. In December 2022, Ruch again started terminating press distribution contracts with some independent local media[9].

In December 2022, the lower chamber of the parliament, the Sejm, adopted the government draft Act introducing the Electronic Communications Law, so-called Lex pilot. If the draft comes into force, television operators will have to make available in the first five channel slots only to public media channels. While the government explained that the regulation is intended to implement article 7a of the EU Amended Audiovisual Media Services Directive, the current state of the public media does not allow to classify them as genuinely offering 'media services of general interest', referred to in the article 7a.

[7] https://www.press.pl/tresc/71063,ruch-sa-wypowiada-umowy-wydawcom-lokalnym-i-zada-dodatkowej-oplaty-za-dystrybucje

[8] https://www.press.pl/tresc/71698,ruch-wycofuje-sie-z-wypowiadania-umow-lokalnym-wydawcom_-renegocjacje-nowych---jesienia

[9] https://www.press.pl/tresc/74188,ruch-znow-wypowiada-kolportaz-gazetom-lokalnym

IV. Other institutional issues related to checks and balances

A. The process for preparing and enacting laws

Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'[1] /public consultations (particularly consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process
This includes also the consultation of social partners

Despite the commitments made in the National Recovery Plan, Poland did not implement the legislative process reform (milestone F 2.1) by the agreed deadline (30 September 2022). The commitment consisted of limiting the ability to proceed with bills in an urgent procedure, increasing the possibility of public consultations at the legislative process level in parliament and preparing an impact assessment for bills submitted as parliamentarian initiatives. According to available sources, as of the date of submitting the opinion to the Report, no steps towards this reform have been initiated.

Two public hearings were held in the Sejm - the lower house of the Polish parliament in 2022. One concerned a bill on conducting business operations during the pandemic period and the other a bill on real estate management. These were the only public hearings in the Sejm in the 2019-2023 term.

Detailed statistics on the transparency of public consultations in 2022 are not yet available. These will be compiled by the Citizens' Legislation Forum of the Stefan Batory Foundation in the second half of 2023 and will cover 2022-2023. A report released in April 2022 revealed that more than half of the bills submitted by the United Right MPs were actually created by the government. As many as 36 government bills were not made public on the Government Legislative Process platform before being submitted to the Parliament.

The problem of government bills bypassing the drafting stage and being reported as MP bills remains at a similar level as in 2021.

For example, a bill on limiting the participation of NGOs in the public school education process was submitted as an MP's bill and therefore without public consultation. Originally drafted by the Ministry of Education, it was vetoed by the president in February 2022. After being resubmitted in a similar form, the president once again vetoed it in December 2022. One of the grounds given for the veto was precisely the lack of public consultation.

Another example is the bill amending judicial disciplinary proceedings, which the Polish government also committed to in the National Recovery Plan. The bill was submitted in November 2022 as an MP draft, which resulted in no prior consultation, including with the judiciary. The only institution independent of the authorities to which the draft was referred for consultation was the Supreme Bar Council.

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

At the level of the government legislative process, at least 18% of the bills were fast-tracked in 2022[10].

The lack of formal decisions declaring the handling of certain bills as urgent remains a problem in practice. Although such may be justified by exceptional circumstances, the Law of 12 March 2022 on Assistance to Ukrainian Citizens in Connection with the Armed Conflict on the Territory of Ukraine[11] was not formally marked as urgent. Meanwhile, it was published on the portal of the Government Legislative Platform a day after the draft was submitted to parliament[12], there was no public consultation and the entire procedure in the parliament took five calendar days.

On the other hand, it seems that the formal fast-track procedure is sometimes abused. The draft law of 16 November 2022 amending the Law on the Profession of Physician and Dentist and certain other laws[13], which burdens the state budget with significant expenses for healthcare, was pushed through very quickly and without public consultation. The draft was published on the website of the Government Legislative Platform on 8 November 2022, two days later it was referred to the Sejm, and three readings in the lower house of the Polish Parliament took place in less than 24 hours. As experts pointed out, there was no reasonable explanation for processing this legislation so quickly[14].

Regime for constitutional review of laws

Problems relating to the lack of independence of the Constitutional Court remain. Some experts and the judges of the Court themselves believe that President Julia Przyłębska's term of office ended in December and she is illegally continuing to remain in office (see e.g. Position of the Legal Experts Team of the Stefan Batory Foundation on the expiry of the term of office of the President of the Constitutional Tribunal on 20 December 2022[15] and W. Tumidalski (2023) Six Tribunal judges do not recognise Julia Przyłębska as president and want a new one elected[16].

In 2022, the Court issued judgments in 14 cases of which:

- Four motions filed by representatives of the authorities to declare the compliance of laws or ratified international agreements with the Constitution and the compliance of laws with international agreements whose ratification required prior consent expressed by law.
- Nine constitutional complaints submitted, inter alia, by citizens.

[10] Data gathered from the official website: https://legislacja.rcl.gov.pl/
[11] https://www.sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?nr=2069
[12] https://legislacja.rcl.gov.pl/projekt/12357354
[13] https://www.sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?nr=2768
[14] K. Klinger, D. Beker (2022) An assault on the NFZ piggy bank. The government has adopted a draft. Dziennik Gazeta Prawna, 8th November 2022
[15] https://www.batory.org.pl/oswiadczenie/stanowisko-zespolu-ekspertow-prawnych-fundacji-im-stefana-batorego-w-zwiazku-z-uplywem-w-dniu-20-grudnia-2022-r-kadencji-prezesa-trybunalu-konstytucyjnego/
[16] https://www.rp.pl/sady-i-trybunaly/art37729061-szostka-sedziow-tk-nie-uznaje-julii-przylebskiej-za-prezesa-i-chce-wyboru-nowego

- One legal question from a court on the compliance of a normative act with the Constitution, ratified international agreements or a law.
- One of the government motions was filed by the Minister of Justice - the Prosecutor General concerning the assessment, pursuant to Article 6(1), sentence 1, of the ECHR, by national or international courts of the compliance with the Constitution and the ECHR of laws concerning the organisation of the judiciary, jurisdiction of courts and the act concerning the National Council of the Judiciary.

The Court granted the Prosecutor General's request and consequently held that the four ECHR judgments: the judgement of 29 June 2021 in the case of Broda and Bojara v. Poland, the judgement of 22 July 2021 in the case of Reczkowicz v. Poland, the judgement of 8 November 2021 in Dolińska-Ficek and Ozimek v. Poland, and the judgement of 3 February 2021 in Advance Pharma sp. z o.o. v. Poland do not have for the Polish State the attribute provided for in Article 46 ECHR (obligation of enforceability).

In the opinion of the Legal Expert Team at the Batory Foundation, the ruling in case K 7/21 is an attempt to deprive citizens of the right to control whether Polish courts meet constitutional and convention standards of independence and impartiality.

COVID-19: provide update on significant developments with regard to emergency regimes/measures in the context of the COVID-19 pandemic:

- **judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic**
- **oversight (incl. ex-post reporting/investigation) by Parliament of emergency regimes and measures in the context of COVID-19 pandemic**
- **processes related to lessons learned/crisis preparedness in terms of the functioning of checks and balances**

The COVID-19 pandemic has not led to significant developments with regard to emergency regimes and measures, despite various critical judgments of common and administrative courts. Moreover, the executive branch of power is still using some of the mechanisms established during the COVID-19 pandemic, e.g. limiting the number of judges adjudicating specific cases.

At the beginning of 2022, media reports exposed the details of the draft law on civil protection and the state of natural disaster which establishes two new types of states of emergency: the state of emergency and the state of threat. According to the draft legislation, the voivode (the representative of the government in the region) or the Minister of Interior Affairs will have the power to announce a state of emergency, whenever, due to unfavourable circumstances caused by forces of nature or human activity, including the occurrence of a crisis situation in a specific area, it is necessary to increase the readiness of administrative authorities to carry out tasks in the field of civil protection. On the other hand, the state of threat will be introduced by the Prime Minister of Poland, whenever the introduction of a state of emergency will be insufficient to perform tasks in the field of civil protection and it will be necessary for public administration authorities to take additional actions and to introduce restrictions, prohibitions and orders binding upon civil protection entities. The introduction of the state of threat will enable the Prime Minister of Poland to issue immediately enforceable binding orders that will not require justification. Such orders will be applicable not only to government administration bodies and state legal

persons but also to local government bodies, local government legal persons, local government organisational units without legal personality and businesses. Moreover, the draft act allows the Prime Minister of Poland to assume the tasks of local self-government whenever the representatives of the local self-government bodies refuse to carry out the order of the government administration or they carry such out improperly.

B. Independent authorities

Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

According to the HFHR report "Safeguards. Functioning of the office of Ombudsman in years 2015-2022" the activity and independence of the Ombudsman's office was heavily impacted by the on-going rule of law crisis. According to report findings, in 2015-2021 the Ombudsman's office and the Ombudsman himself were confronted with an unprecedented number of attacks. These included public statements made by the members of the governing majority, to limiting the areas of work, including the politically-biassed approach of certain Constitutional Tribunal judges to motions and cases submitted by the Ombudsman, as well as trimming the office's budget. At the same time, however, the Ombudsman managed to intensify strategic litigation efforts before national and international courts and expanded cooperation with different stakeholders by e.g. organising series of expert meetings, local meetings and consultations.

Statistics/reports concerning the follow-up of recommendations by National Human Rights Institutions, ombudsman institutions, equality bodies and supreme audit institutions in the past two years.

C. Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data)

Judicial review of administrative decisions:
short description of the general regime (in particular competent court, scope, suspensive effect, interim measures, and any applicable specific rules or derogations from the general regime of judicial review)

Follow-up by the public administration and State institutions to final (national/supranational) court decisions, as well as available remedies in case of non-implementation

D. The enabling framework for civil society

Measures regarding the framework for civil society organisations and human rights defenders (e.g. legal framework and its application in practice incl. registration and dissolution rules)

A number of legal changes proposed in 2022 or continued from 2021 can negatively affect the CSOs' ability to operate. The first dates back to July 2021, when a governmental draft bill on NGOs reporting was published. It proposed new obligations on CSOs on top of the already extensive regulations in this area. It gives broad supervisory powers over CSOs to the Chairman of the Public Benefit Committee, a central body supposed to coordinate the government's work on civil society. The draft assumes also that CSOs with a certain level of income will be obliged to submit a financial report on the sources of income, costs incurred and the type of their activities. Thus, the vast majority of CSOs will have to disclose data about their donors (domestic and foreign), which would be available to everyone online. The government failed to meaningfully consult CSOs on the bill.

Work on this bill is ongoing, while in March 2022 a ruling majority's minor coalition partner proposed a draft bill introducing new regulations for CSOs funded from foreign sources (known as "Lex Woś" after its promoter, MP and Vice-Ministry of Justice). It would oblige CSOs receiving funds from abroad to register as recipients of "foreign funding" with the relevant authority, but also display this information in a way that resembles stigmatisation (via audio and visual means). They would also have to maintain a register of all payments received and publish such on their websites. This regulation may be used to create an atmosphere of mistrust and undermine the functioning of CSOs. It can also be considered a typical example of CSOs' administrative harassment.

In 2022, work on the so-called "Lex Czarnek" (after the Minister of Education and Science) amendments to the education system continued. Several provisions thereof focus on increasing the authority of school superintendents, regional representatives of the central government in the educational system, thereby reducing local schools autonomy.

But, the bill would also directly affect the CSOs active in schools, obliging them to undergo an extensive and lengthy procedure to obtain a permit. It primarily involves the school management and parents, but the very final approval would always be made individually by the school superintendent without a need to consider opinions of the remaining stakeholders. It could potentially considerably hinder CSO work in schools. The current government's approach to CSOs and statements by the Minister of Education suggest that school superintendents might be particularly reluctant to allow there human rights, anti-discrimination, and sex education. The relevant bills have already been introduced twice and were vetoed in 2022 by President Duda. The Minister of Education claims he will submit the same bill again (as a citizens' project now).

The rules, requirements, and procedures for registering new CSOs continue to be very lengthy and cause significant difficulties, especially for smaller entities.

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or online –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services

Public authorities, ruling majority politicians or/and entities loyal to the authorities have diminished the role of and outright attacked CSOs in a pervasive manner in Poland. This occurs along with intimidation, legal as well as administrative harassment of civic activists, including the use of SLAPPs.

The government, which, according to Polish courts, acts based on unlawful or/and unconstitutional legal grounds regarding the "exclusion zone" or "push-back" procedures, criminalises solidarity with refugees from Syria, Iraq or Afghanistan along the PL-BY border. This resulted in increased numbers of humanitarian aid workers being detained in 2022. Criminal proceedings were instituted against some aid workers, which may be intended to have a chilling effect, as observed in the HFHR report. Such government's actions stand in stark contrast to the kind of support from CSOs the government tacitly accepts or, to a limited extent, provides, in case of Ukrainian refugees.

Activists who deliver humanitarian aid at the PL-BY border or journalists who try to cover the illegal "push-back" practices are intimidated by law enforcement and prosecuted. As humanitarian CSOs were not allowed to work in the border area, local inhabitants and grassroots initiatives took up the effort to protect migrants' lives and health. It translated into a heavy psychological burden for these people and exposed them to harassment from law enforcement.

The legal situation of all activists at the PL-BY border improved somewhat due to termination on 1 July of a regulation temporarily prohibiting presence in 183 locations in the PL-BY border area.. However, at the same time, the Podlasie provincial governor introduced a ban on staying within 200 metres of the international border.

Further attacks affected women/reproductive rights defenders and LGBTQI+ activists. Cases were brought before the courts against Justyna Wydrzyńska (Aborcyjny Dream Team) for providing assistance with abortion, against the organisers of Women's Strike, or the authors of Atlas of Hate, a portal listing all municipalities and local governments that adopted the anti-LGBTQ resolutions or Local Government Charter on the Rights of Families. In the latter case, at the end of 2022 the court in Piotrków Trybunalski dismissed the suit and recognized that activists acted in the public interest.

In all such cases, CSOs organise their own legal and financial support for their defendants. There are no additional mechanisms of support other than media coverage or reporting to international bodies and human rights agencies (i.e. FRA, CoE). There is no systemic solution to provide legal assistance to activists and CSOs in conflict with the law. They can only rely on a growing group of lawyers offering *pro bono* assistance, but are otherwise left to their own devices, which burdens them financially.

Organisation of financial support for civil society organisations and human rights defenders (e.g. framework to ensure access to funding, and for financial viability, taxation/incentive/donation systems, measures to ensure a fair distribution of funding)

Rules for CSO access to funding did not change in 2022. They can conduct economic activity, charge fees for services or products, and fundraise. CSOs can also accept funds from foreign donors. However, the parliamentary majority has repeatedly attempted to reinforce the public's belief that accepting foreign funding implies

having bad intentions and being hostile to the Polish nation, and from time to time proposes draft laws imposing additional obligations on such CSOs.

On average, over 50 percent of individual Polish CSO budgets comes from public funding from local authorities, central government and the European Union. The importance of public funds has recently increased even though there have been consistent increases in government funding for CSOs, especially through the National Freedom Institute (a central agency). However, government funds are still often distributed in a nontransparent way. In addition, a significant part of this money is allocated to entities ideologically close to the ruling majority, including Catholic and radical right-wing groups. The Justice Fund, administered by the Minister of Justice, is a leading example of this. In principle, it is supposed to support victims of crime and provide post-penitentiary assistance. However, as shown by the Supreme Audit Office report from September 2021, it has been used to support entities affiliated with the ruling coalition and to build voter support. These funds also have been spent in violation of public finance rules. Meanwhile, human rights, minority-led, environmental protection CSOs and watchdogs have little to no access to government funding.

The tax reforms introduced by the government through the Polish Deal program at the end of 2021 can lead to a decrease in the revenues of local governments. The latter are already struggling with financial difficulties stemming from extra pandemic-related expenses, growing fuel and energy costs, and a reduction in revenues caused by government policies. In effect, it is likely to lead to a reduction in funding for local CSOs. Such was already reported in 2021 in many communities, especially those with smaller tax bases.

The taxation of CSOs did not change in 2022. Every taxpayer can deduct up to 6 percent of their income earned in a given year from their taxes if they make donations to social causes. However, this mechanism is not widely known. Moreover, the taxpayers can designate a small part of their income tax to CSOs with public benefit status; before 2022 that amount was 1 percent of the income tax due. However, the Polish Deal introduced significant tax reforms that could reduce the overall pool of 1 percent tax assignments available to CSOs. Thus, the government passed an amendment in mid-2022 extending the amount of the possible tax deduction to 1.5%. On the other hand, the Polish Deal also proposed additional tax relief for entities supporting sports, culture, and education, areas in which many CSOs provide services.

Rules and practices on the participation of civil society organisations and human rights defenders to the decision-making process (e.g. measures related to dialogue between authorities and civil society, participation of civil society in policy development and decision-making, consultation, dialogues, etc.)

In recent years dialogue between the government and CSOs has been reduced to a minimum. CSOs are either not invited or given a very short time to provide comments. This is the case even on laws affecting the sector, in violation of existing regulations. E.g., a draft law proposing major changes to NGOs reporting and oversight was drafted without the meaningful participation of CSOs. They were not consulted in the initial stages of the bill's developments and then the government presented an already completed draft for consultation in the middle of the summer holidays, ignoring CSOs' appeals to extend the process. Work on the bill on social economy followed a similar pattern.

The majority of the draft laws developed by the government were passed on to further proceedings as parliamentary bills, without involving CSO consultation, which is mandatory for government draft laws. CSOs also do not receive information or responses to their comments. These were confirmed by the Stefan Batory Foundation Citizens' Legislative Forum reports on the quality of law making.

The activities of existing civil dialogue bodies are also a façade. The selection of their members is often not transparent. E.g., it was unclear how the Deputy PM decided who to appoint to the current Council for Public Benefit Work (a consultative and advisory body to the Chairman of the Committee for Public Benefit). Among other things, the candidate supported by the largest number of CSOs was not selected.

In absence of formal avenues CSOs actively undertake advocacy campaigns. Often they form coalitions opposing the government's work, cooperating with other stakeholders, e.g., to support refugees crossing the PL-BY border or independent education.

The National Federation of Non-Governmental Organisations (OFOP) campaigned for transparency and the inclusion of CSOs in the programming of new European funds for 2021-27 at both the regional and national levels. Faced with a lack of activity from the government, OFOP organised a series of public hearings itself. It also advocated for establishing monitoring committees for national and regional programs under the EU Cohesion Policy and the National Recovery Plan (NRP). But, the government failed to respond to these requests. This was only changed in 2022, when through the EU rules, CSOs got themselves into the Monitoring Committee of the NRP. Although the government annulled the elections twice when it turned out that CSOs that the government disliked were elected, in the end the same CSOs - working on fundamental rights - got to this Monitoring Committee. Also thanks to the involvement of civil society, most of the Cohesion Fund Monitoring Committees include CSOs that uphold fundamental rights.

The advocacy of alt-right, homophobic, or extremely conservative entities continue to expand as such groups get increasingly professional and receive large amounts of public funds. At the same time administrative measures are used to silence other CSOs.

E. Initiatives to foster a rule of law culture

Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, contributions from civil society etc.)

It is difficult to identify public authorities' actions aimed at fostering rule of law culture. Polish government representatives do not usually take part in public debates, conferences, and actions focusing on the rule of law issue. In fact, they rather took several actions undermining the rule of law principle, e.g. by bringing cases before the Polish Constitutional Tribunal challenging the validity of the law of the European Union Treaties in Poland or by word and deed disobeying precautionary measures and judgments of the European courts.

In such a situation, it is civil society organisations and independent media that are trying, to the extent possible for them, to fill this gap. In this context, one can cite the example of the Pact for the Repair and Reform of the Judiciary, signed by a group of

CSOs and opposition politicians, the action of activists and lawyers called "Tour de Konstytucja" (Tour de Constitution), which educates about constitutional rights during public meetings in different parts of the country (also in more remote areas), or the 'Constitutional Week' initiative of the Prof. Zbigniew Hołda Association, in which judges and lawyers hold workshops in for school children.

The Legal Expert Team of the Stefan Batory Foundation drafted a bill on the Constitutional Tribunal and a draft bill introducing its provisions, which were supported by, among others, judicial organisations. The authors, recognising that restoring a functional system of judicial review does not require constitutional amendments, proposed, inter alia, the annulment of judgements issued with the participation of so-called 'doubles' - i.e. individuals who unconstitutionally took the seats of duly elected judges in 2015. The draft states that Tribunal judgements issued with the participation of people who are not authorised to adjudicate are invalid and do not have the legal effects provided for in Article 190(1) and (3) of the Polish Constitution. The draft also stipulates that, with regard to constitutional complaints and legal questions, the invalidity of a Tribunal judgement does not entail consequences for the validity of judgements issued in individual cases.

F. Other

Thanks to European Union regulations[17], NGOs protecting fundamental rights successfully lobbied to be included in the Monitoring Committee of the National Recovery Plan. Moreover, thanks to the involvement of the civil society, most of the Cohesion Policy Programmes' Monitoring Committees included organisations that uphold fundamental rights. At the same time, the Ordo Iuris Foundation, which provides legal support to local authorities adopting anti-LGBT resolutions, has also entered them. Regardless of that, beside strong EU regulations there is no political will to protect fundamental rights. So combination of the acquis and civil society efforts may contribute to protecting of the EU values[18].

Since 2021, every 4 June (the anniversary of the first half-free elections in 1989), the initiative named Tour de Konstytucja (Constitutional Tour) begins.The idea is to visit local communes all over Poland to talk about the Constitution and the rule of law. The events usually take place at central locations in the visited localities, outdoors and during the summer events to attract as many residents out of the bubble as possible. The Tour goes throughout the summer and visits around 80 communes[19].

[17] The provisions of the Article 9 (Horizontal Principles) of the Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 „Member States and the Commission shall ensure respect for fundamental rights and compliance with the Charter of Fundamental Rights of the European Union in the implementation of the Funds." followed by Article 15 (Enabling conditions)
[18] https://ofop.eu/tag/fundusze-europejskie/
[19] https://tour-de-konstytucja.pl/trasa-2022