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**2023 Rule of Law Report  
Country Chapter on the rule of law situation in Poland**

*Accompanying the document*

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**2023 Rule of Law Report**

**The rule of law situation in the European Union**

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## ABSTRACT

Serious concerns persist related to the independence of the Polish judiciary. Poland adopted legislation to raise the standard of certain aspects of judicial independence and engaged in a further reform of the disciplinary regime for judges. The Court of Justice and the European Court of Human Rights delivered rulings further confirming existing concerns. Serious concerns related to the independence of the National Council for the Judiciary remain to be addressed. There are also serious doubts as to the compliance of a number of Supreme Court judges with the requirement of a tribunal established by law. A number of judges continue to be subject to disciplinary investigations and proceedings and forced transfers. The Commission referred Poland to the Court of Justice for violations of EU law by the Constitutional Tribunal and its case law. Some steps have been taken to ensure functional independence of the prosecution service from the Government, while the functions of the Minister of Justice and the Prosecutor General are still not separate. The digitalisation of justice is progressing well.

The 2018-2020 anti-corruption programme ended and there is currently no new programme in place. No further steps were taken to strengthen lobbying rules and to standardise the asset declaration control system. There have also been no initiatives with a view to enabling a robust track record to address high-level corruption, as previously identified institutional and practical barriers in law persist. Risks also remain concerning the effective enforcement against high-level corruption in practice, including the threat of selective application of the law and impunity caused by the disparity in the treatment of corruption cases for political purposes. New impunity provisions were adopted, creating exemptions from criminal responsibility for public officials, as in previous years, which increase the risk of corruption. New measures have entered into force increasing the transparency of political party finances, yet concerns remain regarding party donations and election campaigns.

A set of constitutional safeguards and legislative measures provide a legal framework for the exercise of freedom of expression, including the protection of editorial independence. While legislative safeguards for the media regulator - the National Broadcasting Council - exist, some concerns persist with regard to its independence. No steps have been taken to enhance the independent governance and editorial independence of public service media, amid concerns as regards independent reporting by public broadcasters. No measures were adopted so far to ensure fair procedures in the granting of operating licences to media outlets. The level of media ownership transparency increased. Journalists continued to face difficulties in their activities and may face challenges with regards to access to public information. The journalistic community is also affected by a lack of a robust self-regulatory mechanism.

A law empowering an administrative committee to deprive individuals of the right to hold public office related to the handling of public funds for up to 10 years, raises serious concerns and triggered amendments. The framework in which the Ombudsperson operates was improved. No steps have been taken to ensure a more systematic follow-up to the findings of the Supreme Audit Office and to ensure a swift appointment of the College Members of that Office, thus putting its effective functioning at risk. The practice of adopting laws through procedures not requiring adequate consultations persists. Stakeholders have raised concerns as regards the introduction of a range of disproportionate sanctions to the Criminal Code. No measures have been taken to improve the framework for the civic space, while civil society remains vibrant.

## **RECOMMENDATIONS**

Overall, concerning the recommendations in the 2022 Rule of Law Report, Poland has made:

- No progress on separating the function of the Minister of Justice from that of the Prosecutor-General and some progress on ensuring functional independence of the prosecution service from the Government.
- No progress on strengthening the existing integrity rules by introducing lobbying rules and a standardised online system for asset declarations of public officials and Members of Parliament.
- No progress on ensuring independent and effective investigations and prosecutions, address the broad scope of immunities for top executives and abstain from introducing impunity clauses in legislation in order to enable a robust track record of high-level corruption cases.
- No progress on ensuring that fair, transparent and non-discriminatory procedures are adhered to for the granting of operating licences to media outlets.
- No progress on strengthening the rules and mechanisms to enhance the independent governance and editorial independence of public service media taking into account European standards on public service media.
- No progress on ensuring a more systematic follow-up to findings by the Supreme Audit Office and ensure a swift appointment of the College Members of the Supreme Audit Office.
- Some progress on improving the framework in which the Ombudsperson operates, taking into account European standards on Ombudsinstitutions, and no progress on improving the framework in which civil society operates, taking into account European standards on civil society.

On this basis, and considering other developments that took place in the period of reference, and in addition to recalling the need to address the remaining serious concerns relating to judicial independence, in particular those set out in the Article 7 TEU procedure initiated by the Commission, as well as the obligation to comply with the rule of law related rulings of the ECJ and the rule of law related infringement procedures referred to in the country chapter, the commitments made under the National Recovery and Resilience Plan relating to certain aspects of the justice system and the checks and balances, and recalling the relevant country-specific recommendations under the European Semester, it is recommended to Poland to:

- Separate the function of the Minister of Justice from that of the Prosecutor-General and continue efforts to ensure functional independence of the prosecution service from the Government.
- Strengthen the existing integrity rules by introducing lobbying rules and a standardised online system for asset declarations of public officials and Members of Parliament.
- Ensure independent and effective investigations and prosecutions, address the broad scope of immunities for top executives and abstain from introducing impunity clauses in legislation in order to enable a robust track record of high-level corruption cases.
- Ensure that fair, transparent and non-discriminatory procedures are adhered to for the granting of operating licences to media outlets.
- Strengthen the rules and mechanisms to enhance the independent governance and editorial independence of public service media taking into account European standards on public service media.
- Ensure a more systematic follow-up to findings by the Supreme Audit Office and ensure, as a matter of urgency, the appointment of the College Members of the Supreme Audit Office in order to ensure its effective functioning.
- Improve the framework in which civil society operates and continue such efforts regarding the Ombudsperson, taking into account European standards on civil society and Ombudsinstitutions.

## I. JUSTICE SYSTEM

The Polish justice system is separated in two main branches, administrative and ordinary judiciary. The Supreme Administrative Court and 16 administrative courts exercise control over public administration, including the lawfulness of measures of local government bodies and of territorial organs of government administration. The ordinary judiciary, supervised by the Supreme Court<sup>1</sup>, consists of three levels: 11 appeal courts, 47 regional courts and 318 district courts<sup>2</sup>. Judges are appointed by the President of the Republic at the request of the National Council for the Judiciary. The Constitutional Tribunal, which adjudicates notably on the constitutionality of legislation, is composed of 15 judges chosen by the Sejm (lower chamber of the Parliament) for a term of office of nine years. The National Council for the Judiciary is tasked by the Constitution to safeguard judicial independence. A particular characteristic of the prosecution system, which is not part of the independent judiciary, is that the Prosecutor General and the Minister of Justice are the same person. The Constitution provides that advocates and legal counsellors can self-regulate their practice.

### **Independence**

**The level of perceived judicial independence in Poland continues to be very low among both the general public and companies.** Overall, 23% of the general population and 17% of companies perceive the level of independence of courts and judges to be ‘fairly or very good’ in 2023<sup>3</sup>. According to data in the 2023 EU Justice Scoreboard, the perceived judicial independence among both the general public and companies has consistently decreased since 2016 (45% for the general public and 35% for companies). Both figures have decreased slightly in comparison with 2022 (24% for the general public and 19% for companies). The main reason cited by the general public and companies for the perceived lack of independence of courts and judges is the perception of interference or pressure from the Government and politicians<sup>4</sup>.

**The Court of Justice has further clarified EU requirements on judicial independence, notably as regards the disciplinary regime for judges in Poland.** On 5 June 2023, in an infringement procedure<sup>5</sup>, the Court of Justice of the EU (Court of Justice) has held that all contested provisions of the Law adopted in December 2019<sup>6</sup> infringe EU law, in particular the principle of judicial independence and of effective judicial protection. The Court of Justice has held in particular that Poland infringed Article 19(1) TEU by conferring to the Disciplinary Chamber – the independence of which was not guaranteed – the power to hear the cases of all judges concerning the lifting of their immunity in order to start criminal proceedings and of

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<sup>1</sup> The Supreme Court also supervises military courts.

<sup>2</sup> As of 1 July 2023, an additional district court will be created in the city of Czeladź (cf. Ordinance of the Minister for Justice of 28 October 2022 on the creation of a district court in the city of Czeladź).

<sup>3</sup> Figures 49 and 51, 2023 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

<sup>4</sup> Figure 51, 2022 EU Justice Scoreboard.

<sup>5</sup> Case C-204/21, *Commission v. Republic of Poland*. See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 4; Commission press release of 31 March 2021 IP/21/1524. See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 7.

<sup>6</sup> The law of 20 December 2019 amending the Law on the Ordinary Courts Organisation, the Law on the Supreme Court and certain other acts.

Supreme Court judges concerning their retirement and social rights<sup>7</sup>. The Court of Justice also held that Poland infringed EU law<sup>8</sup> by adopting provisions qualifying as disciplinary offence that judges ascertain whether they or other judges or courts meet the EU law requirements of an independent and impartial tribunal previously established by law. The Court of Justice has furthermore ruled that by adopting provisions prohibiting all Polish judges to verify whether another judge or court complies with these EU law requirements, Poland infringed Article 19(1) TEU, Article 47 Charter and the primacy of EU law. Poland has furthermore infringed EU law<sup>9</sup> and the primacy of EU law, by conferring to the Chamber of Extraordinary Control and Public Affairs of the Supreme Court an exclusive competence to assess whether a court or a judge is independent. The Court of Justice has also held that Poland infringed the fundamental rights on protection of personal data and private life provided by the Charter and by the General Data Protection Regulation by adopting and applying the legislative provisions requiring all judges before taking the office to disclose their membership in political parties and in other associations and then to publish them online. Prior to the Court of Justice's judgment, Poland had failed to fully comply with the interim measures set out by the Court's Order of 14 July 2021 and was ordered to pay penalty payments<sup>10</sup>. On 21 April 2023, the Vice-President of the Court of Justice lowered the amount of penalty payments from EUR 1 million to EUR 500 000 as of 21 April 2023 in view of notable progress<sup>11</sup> in the implementation of the Order of 14 July 2021<sup>12</sup>. As no payments were made, the amounts due have been offset from EU funds allocated to Poland. Polish courts continue sending preliminary references to the Court of Justice<sup>13</sup>.

**Serious concerns remain relating to the lack of implementation of final judgments and interim measures of the European Court of Human Rights regarding judicial independence.** Poland has not yet taken any steps to implement final judgments of the European Court of Human Rights (ECtHR) relating to compliance with Article 6 of the European Convention on Human Rights (ECHR) by three panels of Chambers of the Supreme Court and one of the Constitutional Tribunal<sup>14</sup>. These steps have not been taken as a consequence of rulings of the Constitutional Tribunal declaring Article 6 ECHR

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<sup>7</sup> The Disciplinary Chamber was meanwhile dismantled by the Law of 9 June 2022 amending the law on the Supreme Court and certain other laws; see below p. 7.

<sup>8</sup> Article 19(1) TEU read together with Article 47 Charter, as well as Article 267 TFEU.

<sup>9</sup> Article 19(1) TEU read together with Article 47 Charter, Article 267 TFEU.

<sup>10</sup> On the basis of the Order, the Commission called on Poland to pay the amount of EUR 556,5 million. In line with the order of 27 October 2021 of the Vice President of the Court of Justice imposing daily penalty payments.

<sup>11</sup> Following the adoption of the law of 9 June 2022 amending the law on the Supreme Court and certain other acts, which has dismantled the Disciplinary Chamber of the Supreme Court (see below). See the Order of the Vice-President of the Court of Justice of 21 April 2023 in the case C-204/21 R paragraph 112.

<sup>12</sup> On 12 March 2023, Poland had requested the Court of Justice to repeal the interim measures order of 27 October 2021 or, in alternative, to vary the amount of the daily penalties imposed due to the entry into force of the Law of 9 June 2022 partially implementing the interim measures.

<sup>13</sup> The Court of Justice remains seized of a number of preliminary ruling requests concerning judicial independence in Poland (cf. cases C-615/20, C-671/20, C-181/21, C-269/21, C-718/21, C-720/21, C-647/21, C-648/21, C-521/21, C-43/22, C-255/22, C-658/22, C-711/22. The Court of Justice found a number of preliminary ruling requests concerning judicial independence as submitted by Polish courts to be inadmissible (see the Order of 22 December 2022 issued in joined cases from C-491/20 to C-496/20, C-509/20, and C-511/20).

<sup>14</sup> See notably the final judgments of 8 November 2021, *Dolińska - Ficek and Ozimek v. Poland*, 49868/19; of 3 February 2022, *Advance Pharma Sp. Z O.O v. Poland*, 1469/20; of 7 May 2021, *Xero Flor w Polsce sp. z o.o. v. Poland*, 4907/18.



unconstitutional in certain cases<sup>15</sup>. Poland is subject to an Article 52 ECHR procedure<sup>16</sup>. In that respect, on 9 December 2022, the Council of Europe’s Committee of Ministers, recalling the grave breaches of the judicial appointment regime in Poland, called on the Polish authorities to re-establish the full independence of its judges in accordance with the relevant ECtHR judgments<sup>17</sup>. Poland has refused to comply with interim measures orders of the ECtHR<sup>18</sup> aimed at safeguarding judicial independence of Polish judges<sup>19</sup>. The ECtHR remains seized of over 350 different applications, which raise issues relating to various aspects of the reorganisation of the judicial system in Poland under laws that mostly entered into force in 2017 and 2018, in particular related to judicial appointments carried out at the request of the National Council for the Judiciary as recomposed in 2018<sup>20</sup>.

**Serious concerns related to the independence of the National Council for the Judiciary remain to be addressed<sup>21</sup>**. The Court of Justice and the ECtHR confirmed that there are legitimate doubts as to the independence of the National Council for the Judiciary (‘NCJ’)<sup>22</sup>,

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<sup>15</sup> Rulings of 24 November 2021 and of 10 March 2022 in cases K 6/21 and K 7/21. It is recalled that, according to the Constitutional Tribunal, Article 6 ECHR is unconstitutional to the extent that it applies to the Constitutional Tribunal and empowers the ECtHR to assess the legality of the appointment of Constitutional Tribunal judges and to the extent that, among others, it empowers national courts and the ECtHR to carry out a specific assessment in the context of determining the compliance of other courts with the requirement of a ‘court established by law’. See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 8.

<sup>16</sup> According to Article 52 ECHR, on receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention. It is also noted that on 22 November 2022, the Council of Europe Secretary General published a report on Poland’s implementation of the European Convention on Human Rights, noting that Poland’s obligation to ensure to everyone under its jurisdiction the enjoyment of the right to a fair trial by an independent and impartial tribunal established by law is, at this stage, not fulfilled in Polish law. The Secretary General expresses her concerns in view of the rising number of similar judgments and related applications pending before the European Court.

<sup>17</sup> This concerns the ECtHR judgment in *Xero Flor w Polsce sp. z o.o. v. Poland* and the *Reczkowicz* group of judgments, as well as the *Broda and Bojara v. Poland* judgments. See Council of Europe – Supervision of the ECtHR execution of judgments; 1451st CM-DH Meeting, (06-08 December 2022) adopted on 9 December 2022.

<sup>18</sup> Since January 2022, the Court has received a total of 60 requests for interim measures from Polish judges in 29 cases concerning the independence of the Polish judiciary. These cases can be grouped into three main categories: lifting of immunity; suspension from judicial functions; transfer against the will of the judge to other posts. Requests in 17 of these cases have been fully or partly granted. Cf. ECtHR press release ECHR 053(2023) of 16 February 2023 and the appended additional press releases. On 14 March 2023, the Ombudsperson’s Office issued a statement requesting the public authorities to provide explanations on the lack of the necessary follow-up to the interim measures orders of the ECtHR (press release of 16 February 2023; two formal statements of 8 February 2023 VII.510.11.2023.JRO).

<sup>19</sup> ECtHR press release ECHR 053(2023) of 16 February 2023. The interim measure in these three cases indicated to the Government of Poland that the respondent State should suspend the effects of the decisions to transfer the applicants from the Criminal Division to the Labour and Social Security Division of the Warsaw Court of Appeal until the final determination of the applicants’ complaints by the European Court. It also indicated that it should ensure that no decision to transfer the applicants to another division of the Warsaw Court of Appeal against their will was taken in the meantime.

<sup>20</sup> ECtHR press release ECHR 053(2023) of 16 February 2023 and information on 34 communicated cases of 6 March 2023 (Application No. 10374/22, *Joanna Palińska against Poland*).

<sup>21</sup> See the Commission’s Reasoned Proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law (COM/2017/0835 final - 2017/0360 (NLE)), paras 137-145.

<sup>22</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, pp. 3-4. See also the ECtHR judgment (final) of 6 October 2022 in case *Juszczyszyn v. Poland*, Application No. 35599/20.

which continues to play an active role in the judicial appointment procedures by evaluating candidates for judiciary posts and submitting proposals for judicial appointments to the President of the Republic<sup>23</sup>. Whereas the NCJ has criticised measures affecting the remuneration of judges and prosecutors, it continued adopting resolutions that cannot be reconciled with its duty of safeguarding judicial independence. In particular, these resolutions underlined the unconstitutionality of Article 6 ECHR as determined by the Constitutional Tribunal, as well as the unlawfulness of certain interim measures ordered by the ECtHR<sup>24</sup>. Also, on 10 February 2023, the NCJ requested the prosecution services to open a criminal investigation against judges that had implemented the interim measures order of the Court of Justice of 14 July 2021<sup>25</sup>. The NCJ also refused access to files related to judicial proceedings requested by courts in the context of their adjudication, if these were not publicly available<sup>26</sup>. On 14 March 2023, the President of the NCJ sent an open letter to the president of a second-instance court, in which she criticised a ruling issued in first instance by an ordinary court

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<sup>23</sup> In view of the expiry of the joint term of office of the NCJ judges-members, on 12 May 2022, the Polish Sejm appointed new such members. Out of 15 judges-members appointed, all were proposed by the current governing majority in the absence of any proposals from opposition parties, amongst which 11 reappointed members; see 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 4. Entities entitled to submit a candidate for a member of the Council are a group of at least: 1) 2,000 citizens of the Republic of Poland who are at least 18 years old, enjoy full capacity to perform acts in law and have all public rights; 2) 25 judges, excluding retired judges. This means that the candidate for a member of the Council must obtain the support of the 25 judges or 2,000 citizens. The Sejm selects members of the Council for a common four-year term of office at the closest meeting of the Sejm, by a majority of 3/5 of votes cast or, if this majority is not obtained, by absolute majority, in the presence of at least half of the statutory number of members of the Sejm, by voting on the list of candidates.

<sup>24</sup> Resolution of 13 July 2022 concerning the applications Nos. 9988/22, 8687/22, and 8076/22 examined by the ECtHR (WO 41.9.2022). On 27 and 29 July 2022, the NCJ issued further resolutions in which it considered that the judgments of the ECtHR regarding the rule of law in Poland do not bind the Republic of Poland, and that any similar ruling issued by that Court will not be subject to enforcement in Poland. See Resolution of 27 July 2022 concerning the application No. 48530/21 examined by the ECtHR (WO 41.11.2022). Similar statements were made in other resolutions adopted on the same day, registered under the same number, and pertaining to applications Nos. 54461/21, 46453/21, and 159258/22. See also the resolutions of 29 July 2022 (WO 41.17.2022) concerning the applications Nos. 21998/21, 22918/21, 25545/21, 24398/21 examined by the ECtHR; (WO 41.16.2022) concerning the applications Nos 41097/20, 53778/20, 1510/22, 31053/21, 1210/22, 42668/21, 60827/21; (WO 41.15.2022) concerning the application No. 41097/20; (WO 41.14.2022) concerning the application No. 1412/21; (WO 41.13.2022) concerning the applications Nos. 26638/21, 50702/21, 50708/21. See also the position of the National Council for the Judiciary of 10 January 2023, WO.41.5.2023.

<sup>25</sup> This concerns the former President of the Labour Chamber of the Supreme Court who was allowed to adjudicate cases in view of the interim measures order of the Vice-President of the Court of Justice of 14 July 2021 in the case C-204/21 R (which had obliged Poland to suspend the effects of resolutions adopted by the Disciplinary Chamber in cases related to judicial immunities). See the press release of the NCJ of 10 February 2023.

<sup>26</sup> Position of the National Council for the Judiciary of 22 December 2022 WO 41.43.2022, dot. WP 0212.6.2022. It is noted that judges requesting such data in view of the decision-making process are refused access thereto and subsequently become target of disciplinary proceedings; cf. Rzeczpospolita.pl of 5 April 2023, 'Sędzia Wojciech Maczuga z Krakowa na celowniku Przemysława Radzika'.

judge<sup>27</sup>. Stakeholders have underlined that the lack of independence of the NCJ constitutes a core systemic concern of the rule of law in Poland<sup>28</sup>.

**There are serious doubts whether a number of Supreme Court judges, including its First President, comply with the requirement of a tribunal established by law.** As previously reported, there are serious doubts whether certain judges in the Professional Liability Chamber and the Chamber of Extraordinary Control and Public Affairs, which were appointed to the Supreme Court<sup>29</sup>, comply with the requirements stemming from Article 19(1) TEU<sup>30</sup>. Fourteen out of seventeen judges of the Chamber of the Extraordinary Control and Public Affairs and four out of eleven judges of the Professional Liability Chamber have been appointed to the Supreme Court in conditions considered by the ECtHR as violating the right to a court established by law<sup>31</sup>. These doubts also apply to the status of the First President of the Supreme Court itself<sup>32</sup>. Furthermore, a preliminary ruling of the Court of Justice related to a judicial appointment to the Chamber of Extraordinary Control has so far not been implemented<sup>33</sup>. The President of the Labour Chamber of the Supreme Court raised concerns about the handling of case files by the First President of the Supreme Court in sensitive cases concerning judicial independence, alleging that the Supreme Court can no longer administer justice<sup>34</sup>. Furthermore,

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<sup>27</sup> This letter was seriously criticised by the president of the second-instance court, as encroaching upon judicial independence: on 15 March 2023, this president indicated that the letter of the President of the NCJ constitutes an ‘absolutely unacceptable form of a comment on a judicial ruling and is inconsistent with the NCJ’s task of safeguarding judicial independence. See the Letter of the President of the Regional Court in Poznań of 20 March 2023, ref. A-070-1/23. In the open letter, the President of the NCJ requested that the President of the Regional Court could consider the possibility of directing a judge to receive training in constitutional law, including in particular the protection of religious worship. The President of the NCJ also indicated that, listening to the oral reasoning of the decision, she had the impression that the judge had not fulfilled her duty of objectivity.

<sup>28</sup> Written contribution submitted by Association of European Administrative Judges (p. 13); Consortium of seven NGOs (pp. 11, 13 and 14); by MEDEL (pp. 11-12); Human Rights Watch (p. 11). Statements made during the virtual country visit to Poland by representatives of the Ombudsman’s Office, of judges’ and prosecutors’ associations, of the National Bar Council and of the National Chamber of Legal Councillors and by NGOs. The NCJ disagrees with this view.

<sup>29</sup> In October 2018 and in February 2019.

<sup>30</sup> Order of 21 April 2023 of the Vice-President of the Court of Justice in the case C-204/21 R, paragraph 89-91 where the Commission’s position is set out.

<sup>31</sup> See notably the judgment of 8 November 2021 in *Dolińska-Ficek and Ozimek v. Poland* and of 3 February 2022 in *Advance Pharma v. Poland* (above). This also concerns judges appointed to the Supreme Court in October 2018 on the basis of NCJ resolutions Nos. 318/2018 (giving rise to the appointments to the Criminal Chamber) and 330/2018 (giving rise to the appointments to the Civil Chamber). Recusals of judges based on the ECtHR rulings have been contested. The Supreme Court informed that from 19 until 25 November 2022, the Civil Chamber issued seven rulings asserting that decisions taken by various composition of the Civil Chamber’s judges, ruling on recusal of judges, are ‘non-existent’ (see a press release of the Supreme Court of 29 November 2022).

<sup>32</sup> On the contested procedures related to the appointment of the respective Presidents of the Supreme Court, see notably: 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, pp. 9-10 and 2020 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 6.

<sup>33</sup> This concerns the implementation of the judgment of 6 October 2021 in the case C-487/19 W.Ż. The letter was published by ‘Iustitia’ association of judges on 1 March 2023 (Iustitia.pl, ‘*Małgorzata Manowska ponownie uniemożliwia wykonanie orzeczeń TSUE co do neosędziów*’). According to the Polish Government, there were serious and objective obstacles preventing the final conclusion of the case.

<sup>34</sup> The concerns were expressed in two letters – dated 14 February and 28 March 2023 – addressed to, amongst others, the President of the Court of Justice, in which it is alleged that the First President did not return to judicial panels case files in specific cases concerning irregularities in the appointment of Supreme Court judges. According to the President of the Labour Chamber, the First President was directly interested in the



the First President of the Supreme Court, refused to swear in 26 out of 30 lay judges of the Supreme Court following their appointment by the Senate on 7 October 2022<sup>35</sup>. Further changes in the management of the Supreme Court took place<sup>36</sup>.

**Poland adopted legislation to raise the standard of certain aspects of judicial independence and engaged in a further reform of the disciplinary regime for judges.** On 1 June 2022, the Commission issued a positive assessment of Poland's Recovery and Resilience Plan (RRP), which was approved by the Council of the European Union on 17 June 2022<sup>37</sup>. It contains several commitments from Poland to improve the investment climate, including a comprehensive reform of the disciplinary regime applicable to judges, aimed at strengthening certain aspects of the independence of the judiciary. On 15 July 2022, a new law entered into force<sup>38</sup>, with the aim of strengthening the independence of the judiciary in Poland. This law explicitly excludes disciplinary liability of judges for making a preliminary ruling request to the Court of Justice. It also introduced a test allowing judges to assess, under certain conditions, the independence of other judges and dismantled the Disciplinary Chamber of the Supreme Court<sup>39</sup>, creating in its stead a new Chamber of Professional Liability. The new Chamber issued a number of rulings, reviewing measures imposed on judges in the context of disciplinary and judicial immunity cases, and annulled all suspensions from office decided by the Disciplinary Chamber<sup>40</sup>. On 13 January 2023, a new law was adopted by the Polish parliament to reinforce the provisions protecting judges against disciplinary liability based on the content of their judicial decisions, including if they assess, also ex officio, compliance of other courts with the

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outcome of these cases. In reply, the First President argued that the panels concerned were irregularly composed contrary to the applicable framework. See press release of the Supreme Court of 22 March 2023 and Prawo.pl of 30 March 2023, '*Ostra wymiana pism w SN: Dyscyplinarka dla Prusinowskiego i oskarżenie Manowskiej o instytucjonalne bezprawie*' where the contents of the letters are reproduced.

<sup>35</sup> See a press release of the Senate of 7 October 2022 and a press release of the Supreme Court of 7 February 2023. On 1 June 2023, the First President eventually decided to swear in all lay judges as appointed by the Senate; see Oko.press of 9 June 2023, '*Manowska z SN skapitulowała. Dopuszczyła do orzekania ławników wybranych przez opozycję*'.

<sup>36</sup> On 10 May 2023, the President of the Republic appointed a new President of the Criminal Chamber. (see a press release of the Supreme Court of 10 May 2023). On 27 October 2022, the President of the Republic appointed the President of the Professional Liability Chamber (see a press release of the Supreme Court of 27 October 2022). In addition, the budget for the Supreme Court and the number of vacant posts increased; see written contribution of the Supreme Court (p. 12): According to the Budget Act for 2022, the Supreme Court's expenditure plan includes an amount of over PLN 197 million, i.e. an increase of over PLN 6 million compared to the plans for 2021. At the end of 2022, there were 89 judges in the Supreme Court over 125 overall posts. In 2022, the President of the Republic of Poland, acting on a motion of the NCJ, appointed a total of 10 new Supreme Court judges. Moreover, a total of 13 Supreme Court judges retired in 2022. The vacancy of 36 unfilled judicial positions contributes to the protraction of proceedings, according to the Supreme Court.

<sup>37</sup> Council Implementing Decision of 17 July 2022 on the approval of the assessment of the recovery and resilience plan for Poland (ST 9728/22; ST 9728/22 ADD 1).

<sup>38</sup> The Law of 9 June 2022 amending the Law on the Supreme Court and certain other acts.

<sup>39</sup> The Disciplinary Chamber of the Supreme Court had been found by the Court of Justice to no longer comply with the requirements of an independent and impartial court within the meaning of Article 19(1) TEU; see judgment of 15 July 2021 in the case C-791/19, *Commission v Poland*. On 7 September 2021, the Commission issued a letter of formal notice under Article 260 TFEU regarding the implementation of this judgment. The ECtHR has ruled that the Disciplinary Chamber of the Supreme Court was not a lawful tribunal: Judgment (final) of 6 October 2022 in case *Juszczyszyn v. Poland*, Application No. 35599/20, reiterating the reasoning already presented by the ECtHR in the judgment of 22 July 2021, *Reczkowicz v. Poland*, Application No. 43447/19.

<sup>40</sup> See press releases of the Supreme Court of 19 October and 9 December 2022. However, the new Chamber has not restored the immunity of a judge in all cases, see e.g. case of judge I.T. II ZIZ 4/22 and a press release of the Supreme Court of 29 November 2022.

requirements stemming from Article 19(1) TEU. On 21 February 2023, the President of the Republic referred the new law, prior to signing it, for review to the Constitutional Tribunal where it is still pending<sup>41</sup>. The new law has therefore not yet entered into force. The Commission will assess whether the relevant legislation in force complies with the commitments made under the RRP upon the submission by Poland of the first payment request. A reform introducing a new institution of judges of peace<sup>42</sup> continues to be subject to parliamentary works with no indication as to when these would be finalised<sup>43</sup>. A comprehensive reform of the ordinary judiciary as prepared by the Government, including a significant change of the judicial map, is still subject to public consultations<sup>44</sup>.

**Serious concerns persist related to the Constitutional Tribunal.** On 15 February 2023, the Commission decided to refer Poland to the Court of Justice for violations of EU law by the Constitutional Tribunal and its two rulings issued in 2021<sup>45</sup>. The Commission considered that the two rulings of the Constitutional Tribunal breached the general principles of autonomy, primacy, effectiveness, uniform application of Union law and the binding effect of rulings of the Court of Justice as well as Article 19(1) TEU, which guarantees the right to effective judicial protection; and that the Constitutional Tribunal no longer met the requirements of an independent and impartial tribunal previously established by law. The Constitutional Tribunal continues to be seized in cases concerning judicial independence. In particular, on 14 March 2023, the President of the Republic seized the Constitutional Tribunal<sup>46</sup>, contesting the competence of the Supreme Administrative Court to review the appointment acts of judges issued by the President of Poland<sup>47</sup>. On 15 December 2022, a bench of the Chamber of Extraordinary Control and Public Affairs of the Supreme Court requested the Constitutional

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<sup>41</sup> Press release of the President of the Republic of 21 February 2023.

<sup>42</sup> The draft laws No. 1760 and 1761 proposed on 4 November 2021 by the President of the Republic. See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 6.

<sup>43</sup> The draft law on the judges of peace was discussed by the Sejm's Committee for Justice and Human Rights on 1 March 2023, where it was concluded that a separate law (introducing this new institution) now needs to be revised to reflect amendments introduced to the Polish justice system meanwhile. See: Prawo.pl of 1 March 2023, '*Sejmowa podkomisja kończy prace nad projektem o sędach pokoju*', where statements of members of the Sejm's Committee are reproduced.

<sup>44</sup> Draft law No. UD322, containing a draft law on the Ordinary Courts Organisation and draft law No. UD 323, containing a draft law implementing the former law; both published by the Government Legislation Centre on 26 and 27 April 2022 respectively. See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 5.

<sup>45</sup> The Commission opened the infringement procedure against Poland on 22 December 2021, by sending a letter of formal notice. This followed the rulings of the Polish Constitutional Tribunal of 14 July 2021 and 7 October 2021, where it had considered Article 19 TEU and 279 TFEU as interpreted and applied by the Court of Justice incompatible with the Polish Constitution, expressly challenging the primacy of EU law.

<sup>46</sup> The Constitutional Tribunal was seized in a special procedure whereby a central body of state submits that another state body encroaches upon its own competences by acting or failing to act in a specific way.

<sup>47</sup> See case Kpt 1/23. The President of the Republic referred in that respect to a set of rulings whereby the Supreme Administrative Court annulled NCJ proposals issued in 2018 for appointments to the Supreme Court relying on the preliminary ruling of the Court of Justice of 2 March 2021 in the case C-824/21 A.B. See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 4. The Supreme Administrative Court considers that no ruling can be issued by the Constitutional Tribunal as there is no dispute over authority in the present case (see the Supreme Administrative Court's position in the case Kpt 1/23). In result of the request of the President of the Republic, the Supreme Administrative Court suspended proceedings in case II GSK 986/19 concerning a cassation appeal against a ruling of a regional administrative court in Warsaw of 24 January 2019 (ref. No. VI SA/Wa 2287/18), rejecting an appeal against the decision of the President of the Republic on a judicial appointment. See the Supreme Administrative Court's press release of 5 April 2023 and of 16 March 2023.

Tribunal to assess the constitutionality of the lack of judicial review of NCJ resolutions related to transfers of judges carried out without their consent<sup>48</sup>. Also, following a motion of the First President of the Supreme Court, the Constitutional Tribunal requested case files from the Supreme Court in a number of cases concerning judicial independence, thereby preventing it from issuing rulings in those cases<sup>49</sup>. The Constitutional Tribunal also remains seized of other cases concerning the constitutionality of EU Treaty provisions, including as regards the power of the Court of Justice to impose penalty payments for non-compliance with interim measures orders related to the functioning of the judiciary<sup>50</sup>. Since December 2022, a number of Constitutional Tribunal members issued open statements contesting the legitimacy of the current President of the Constitutional Tribunal, considering that her term of office had expired. As a result, these judges refuse to adjudicate cases upon request of the President of the Constitutional Tribunal<sup>51</sup>. As indicated above, the Constitutional Tribunal has also been seized to assess the constitutionality of the law of 13 January 2023 concerning the judiciary.

**A number of judges continue to be subject to disciplinary investigations and proceedings related to the content of their judicial decisions and forced transfers.** In spite of the interim measures order issued by the Vice-President of the Court of Justice<sup>52</sup>, a number of judges continued being subject to disciplinary investigations due to the content of judicial decisions they rendered, on the basis of provisions that should have been suspended pursuant to the interim measures ordered by the Court of Justice<sup>53</sup>. Disciplinary proceedings were also brought against the former First President of the Supreme Court for a judicial decision<sup>54</sup>. Several judges reinstated in office were transferred without their consent to another division in their courts,

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<sup>48</sup> The Court of Justice has held that, even where such transfer measures without consent are adopted by the president of the court to which the judge who is the subject of those measures belongs outside the disciplinary regime applicable to judges, those measures may only be ordered on legitimate grounds, in particular relating to the distribution of available resources to ensure the proper administration of justice, and that such decisions may be legally challenged in accordance with a procedure which fully safeguards the rights enshrined in Articles 47 and 48 of the Charter, in particular the rights of the defence (judgment of 6 October 2021 in the case C-487/19 W.Ż. paragraph 118).

<sup>49</sup> Case K 24/20, initiated at the request of the First President of the Supreme Court, in which the Constitutional Tribunal is requested to rule on the constitutionality of provisions of the Code of Civil Procedure to the extent that they allow Polish courts to rule on the (non)existence of an employment relationship of a judge. The request to transfer casefiles in such cases is confirmed in a press release of the Supreme Court of 22 March 2023.

<sup>50</sup> Case K 8/21. As regards other cases, see 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, pp. 8-9.

<sup>51</sup> See e.g. an open letter reproduced by the press of 28 February 2023: doRzeczy.pl, 'Sędziowie TK ponownie piszą do Przylębskiej. Ujawniamy treść listu' and a statement of the press bureau of the Constitutional Tribunal invoked by the media: Polish Press Agency of 2 March 2023, 'Trybunał Konstytucyjny rozstrzygnął sprawę kadencji Prezesa TK'; Wiadomości of 3 March 2023, 'Koniec sporu w Trybunale Konstytucyjnym'.

<sup>52</sup> In the case C-204/21 R.

<sup>53</sup> See the decision of the Deputy Disciplinary Officer for Ordinary Court Judges, RDSP.8011 47 2022 of 8 October 2022 where Article 107(1) item 3 of the Law on ordinary courts was invoked; two decisions of a deputy Disciplinary Officer at the Regional Court in Olsztyn of, respectively, 7 December 2022 (case No is K-0083-90/22; SD 55/22) and of 3 January 2023 (case No is K-0083-76/22; SD 44/22) where Article 107(1) item 2 and 3 of the Law on ordinary courts was invoked; and a decision of the Deputy Disciplinary Officer for Ordinary Court Judges, RDSP.8010.58.2022 of 27 March 2023, where Article 107(1) point 2, 3, and 5 and Article 42a(1) and (2) of the Law on ordinary courts was invoked.

<sup>54</sup> On 7 December 2022, the former First President was presented with disciplinary charges related to the convening of a joint sitting of three Chambers of the Supreme Court on 23 January 2020. See Prawo.pl of 7 December 2022, 'Zarzuły dla prof. Gersdorf za dopuszczenie do uchwały trzech izb SN'.

upon a decision by court presidents appointed by the Minister of Justice<sup>55</sup>. Some of these judges sued the court presidents concerned before labour courts<sup>56</sup>. The Minister of Justice continues using his competence — to second judges adjudicating in criminal cases to higher judicial posts<sup>57</sup>, despite concerns expressed by the Court of Justice on the legislative provisions regarding these secondments<sup>58</sup>.

**Some progress has been made to ensure functional independence of the prosecution service from the Government, while no progress has been made to separate the office of the Minister for Justice and the Prosecutor General.** The 2022 Rule of Law Report recommended to Poland to “[s]eparate the function of the Minister of Justice from that of the Prosecutor General and ensure functional independence of the prosecution service from the Government”<sup>59</sup>. On 27 October 2022, Parliament adopted an amendment to the Law on the Prosecution Service, transferring the competence to appoint and dismiss persons to management positions within the prosecution service from the Prosecutor General to the National Prosecutor (who can be dismissed solely with the consent of the President of the Republic)<sup>60</sup>. The Government is working on an additional reform of the prosecution services that would further increase the powers of the National Prosecutor<sup>61</sup>. These changes could

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<sup>55</sup> The practice is confirmed by a number of interim measures issued by the ECtHR (see above). See also a ruling of the Supreme Court of 17 November 2022 in the case II ZZ 6/22 where the Supreme Court noted that its decision suspending the effects of a Disciplinary Chamber’s decision to suspend a judge in office means that the judge ‘*is to be reinstated immediately in the division of the Regional Court in W. in which he has hitherto adjudicated. Any attempt to transfer the judge, without his consent, to another position, including to another division, will constitute a defiance of a Supreme Court’s ruling and should result in, at the very least, disciplinary liability of the judge so deciding. This caveat is necessary in view of repeated cases of transferring judges to another post when disciplinary courts issue rulings favourable to such judges, which constitutes an additional, intentional and unlawful ailment that may even have the character of harassment.*’

<sup>56</sup> See *Oko.press* of 22 November 2022, ‘*Trzy represjonowane sędzię z Warszawy pozywają ludzi Ziobry za karną zsyłkę do innego wydziału*’; one of the judges, concerned by the Court of Justice ruling of 6 October 2021 in the case C-487/19 *W.Z.*, successfully opened a case against the NCJ President who is also the president of the court where he adjudicates and who had transferred him to another division of the court without his consent, Ysee *Onet.pl* of 15 March 2023, ‘*Porażka szefowej KRS. Sędzia Żurek wygrał proces o mobbing*’.

<sup>57</sup> The secondment decision was served after the judge subject to the secondment issued a ruling convicting a Polish activist for assisting a pregnant woman to obtain an emergency contraception, giving rise to concerns that the decision was a form of reward for the content of the ruling. The Minister for Justice denied such allegations, indicating that the decision had been made prior to the ruling but was only served after the ruling had been handed down. See *Prawo.pl* of 16 March 2023, ‘*Sędzia awansowała i od razu skazała aktywistkę proaborcyjną*’.

<sup>58</sup> Judgment of 16 November 2021 in joined cases C-748/19 to C-754/19 *W.B. and others*, where the Court of Justice found that EU law precludes the regime in force in Poland which permits the Minister for Justice to second judges to higher criminal courts; secondments which that minister – who is also the Public Prosecutor General – may terminate at any time without stating reasons the secondment of a judge to higher criminal courts.

<sup>59</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 2.

<sup>60</sup> The competence applies to the appointment and dismissal of the Director and Deputy Director of the Department or Office of the National Public Prosecutor’s Office and the Head of the Internal Affairs Division, as well as the entrustment of the performance of duties in this area.

<sup>61</sup> The draft law, currently examined by the Sejm (draft No. 3216), would transfer further competences from the Prosecutor-General to the National Prosecutor, notably as regards the use of the budget of the National Prosecutor, carrying out supervision over cases conducted by the National Prosecutor’s Office, taking individual decisions on prosecutors and assistant prosecutors, including as regards the secondment without their consent. According to commentators, the reform would allegedly also affect the procedural position of parties by depriving them, under specific circumstances, of the right to lodge a subsidiary indictment. See *Prawo.pl* of 13 April 2023, ‘*Jeśli PiS przegra wybory, zostawi sobie władzę w prokuraturze*’.



increase the functional independence of the prosecution service from the Government. However, the separation of the office of the Prosecutor General from that of the Minister of Justice has not been carried out. Prosecutors are still being seconded without their consent, which risks affecting prosecutorial independence, while courts continue considering such secondments as a form of harassment<sup>62</sup>. Disciplinary proceedings against prosecutors in sensitive cases continue<sup>63</sup>. As regards the environment for legal professions, the Constitutional Tribunal remains seized of a case<sup>64</sup> concerning the constitutionality of certain provisions regarding the organisation, powers and membership of Bar associations, which triggered strong criticism by the Polish Bar Council and the National Chamber of Legal Councillors<sup>65</sup>. As new rules were adopted to increase the functional independence of the prosecution service and further measures are being prepared, while there is still no separation between the Minister for Justice and the Prosecutor General, there has been some progress on the recommendation made in the 2022 Rule of Law Report.

## Quality

**The digitalisation of the justice system has significantly improved.** As reported in previous years, Poland is progressing well with the digitalisation of the justice system, and ranks high as regards digital solutions to initiate and follow proceedings in civil, commercial and administrative cases<sup>66</sup>. Further improvements could be envisaged as regards the admissibility of evidence in a digital format in criminal cases<sup>67</sup> and the increase of the use of digital technology by the prosecution services<sup>68</sup>. The Supreme Administrative Court underlined that solutions introduced during the COVID-19 pandemic, allowing court hearings to be organised remotely, should be kept in place<sup>69</sup>. Poland ranks high as regards the promotion of incentives for using Alternative Dispute Resolutions methods and ensuring specific arrangements for access to justice of persons at risk of discrimination and of older persons<sup>70</sup>.

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<sup>62</sup> According to a statement of 4 April 2023 the association of prosecutors ‘Lex Super Omnia’, a regional prosecutor was transferred to a district prosecutor’s office located within 70 km of distance from the place of the original employment. The secondment was made without the prosecutor’s consent and the decision, that cannot be subject to judicial review, was not reasoned. On 21 March 2023, a district court ruled that a secondment of a prosecutor, which took place in 2016, was a form of discrimination at work (see: Oko.press of 29 March 2023, ‘*Pierwszy wyrok za degradowanie prokuratorów przez Ziobrę. Prokuratura ma zapłacić 45 tys zł.*’).

<sup>63</sup> This concerns e.g. a prosecutor reportedly targeted with Pegasus surveillance software in 2021, who was also responsible for opening a criminal investigation in the matter related to the organisation of postal presidential elections in 2020. The prosecutor is now accused of disclosing details related to another criminal investigation and has been suspended in the course of the ongoing disciplinary proceedings. See written contribution by the Consortium of seven NGOs (p. 16).

<sup>64</sup> Case K 6/22.

<sup>65</sup> According to documents transmitted by representatives of the Polish Bar Council during the virtual country visit to Poland (‘Executive summary’ motion to the Constitutional Tribunal in Poland contesting certain provisions of the Act on the Advocates Profession and the Act on the Attorneys Profession as of September 2022’). According to the statement, the motion appears to be aimed at partitioning the bar associations, depriving disciplinary and other powers from the bar associations. See also a written contribution of the Consortium of seven NGOs (p. 15-16).

<sup>66</sup> See Figure 45, 2023 EU Justice Scoreboard.

<sup>67</sup> See Figure 41, 2023 EU Justice Scoreboard.

<sup>68</sup> See Figures 42 and 44, 2023 EU Justice Scoreboard.

<sup>69</sup> Information received during the virtual country visit to Poland from representatives of the Supreme Administrative Court.

<sup>70</sup> See Figures 26 and 27, 2023 EU Justice Scoreboard.



**The budgetary law for 2023 adversely affected the remuneration of judges and prosecutors.** The law accompanying the budgetary law for the year 2023<sup>71</sup> provides for a set salary base, although the legislation applicable to ordinary and administrative court judges indicates that the salary is to be determined on the basis of an average salary received in Poland in the second quarter of the preceding year<sup>72</sup>. This has given rise to concerns expressed notably by the Supreme Court<sup>73</sup>, the National Council for the Judiciary<sup>74</sup>, the Ombudsperson<sup>75</sup>, and associations of judges and prosecutors<sup>76</sup>. The President of the Supreme Administrative Court<sup>77</sup>, the First President of the Supreme Court<sup>78</sup> and the National Council of the Judiciary<sup>79</sup> requested the Constitutional Tribunal to declare the contested provisions unconstitutional (the case remains pending).

## **Efficiency**

**The overall performance of ordinary and administrative courts in terms of efficiency remains stable.** As regards ordinary courts, their overall performance continues to be average. The estimate time needed to resolve civil, commercial and administrative cases has remained stable<sup>80</sup>, while the estimated time needed to resolve litigious civil and commercial cases has increased<sup>81</sup>. On 9 March 2023, the Polish Parliament adopted amendments to the civil procedure with the aim of simplifying the existing procedures and ensuring a reduction in the workload of the courts and the length of proceedings. As regards administrative courts, their performance stays above average<sup>82</sup>, although the rate of resolving administrative cases is declining<sup>83</sup>.

## **II. ANTI-CORRUPTION FRAMEWORK**

Several authorities are responsible for anti-corruption in Poland, including the Prosecutor General, who is also the Minister of Justice, and the Minister of Internal Affairs and Administration who is in charge of prevention aspects, such as the lobby register for public officials. The Central Anti-Corruption Bureau is the specialised law enforcement body

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<sup>71</sup> The law of 1 December 2022 on particular solutions aimed at the implementation of the budgetary law for 2023.

<sup>72</sup> The same salary basis is applied, *mutatis mutandis*, to prosecutors. See also written contribution by the Supreme Court (p. 11).

<sup>73</sup> Letter of the First President of the Supreme Court of 2 September 2022 addressed to the Minister for Finances (BSA III.021.22.2022).

<sup>74</sup> Statement of the NCJ of 2 September 2022 (WO 420.89.2022, UD 378).

<sup>75</sup> Submission of the Ombudsperson of 8 February 2023 (III.7042.2.2023.LN) lodged with the Constitutional Tribunal in the case K 1/23.

<sup>76</sup> Open letter addressed to the President of the Republic, Prime Minister and Marshals of the Sejm and the Senate of 4 October 2022, signed by associations of judges ‘Iustitia’, ‘Themis’, National Association of Administrative Court Judges, ‘Pro Familia’ Association of Family Court Judges, Association of Family Court Judges in Poland, Association of Prosecutors ‘Lex Super Omnia’, Association ‘Independent Prosecutors’, ‘Votum’ Association of Graduates of the National Magistracy School, Association ‘Lex et Iustitia’ of Court Referendaries.

<sup>77</sup> Case K 3/23 submitted on 21 December 2022.

<sup>78</sup> Case K 1/23 submitted on 21 December 2022. See written contribution of the Supreme Court (pp. 10-11).

<sup>79</sup> Case K 4/23 submitted on 22 December 2022.

<sup>80</sup> Figure 5, 2023 EU Justice Scoreboard.

<sup>81</sup> Figure 6, 2023 EU Justice Scoreboard.

<sup>82</sup> Figures 8 and 9, 2023 EU Justice Scoreboard.

<sup>83</sup> Figure 12, 2023 EU Justice Scoreboard.

combating corruption in the public and the private sector alongside the Central Police Investigation Bureau and the regular police, the Internal Security Agency and the Prosecution Service<sup>84</sup>. The Central Anti-Corruption Bureau combines intelligence and police functions, and can trigger both administrative and criminal proceedings. It has also been tasked with policy coordination<sup>85</sup> and corruption prevention<sup>86</sup>, including educational awareness-raising activities against corruption and an e-learning platform<sup>87</sup>. The Supreme Audit Office (NIK) has a preventive role monitoring the public spending of the government administration bodies, including the National Bank of Poland and state legal persons<sup>88</sup>.

**The perception among experts and business executives is that the level of corruption in the public sector remains relatively high.** In the 2022 Corruption Perceptions Index by Transparency International, Poland scores 55/100 and ranks 19<sup>th</sup> in the European Union and 45<sup>th</sup> globally<sup>89</sup>. This perception has deteriorated over the past five years<sup>90</sup>. The 2023 Special Eurobarometer on Corruption shows that 61% of respondents consider corruption widespread in their country (EU average 70%) and 37% of respondents feel personally affected by corruption in their daily lives (EU average 24%)<sup>91</sup>. As regards businesses, 55% of companies consider that corruption is widespread (EU average 65%) and 25% consider that corruption is a problem when doing business (EU average 35%)<sup>92</sup>. Furthermore, 37% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 32%)<sup>93</sup>, while 18% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 30%)<sup>94</sup>.

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<sup>84</sup> Cf. Law of 9 June 2006 on the Central Anti-Corruption Bureau. The Law of 24 May 2002 on the Internal Security Agency and Foreign Intelligence Agency. The Law of 28 January 2016 on the Prosecution Service. Law of 6 April 1990 on the police. Within the police, the Police Internal Affairs Bureau is appointed to combat and reduce corruption within the police itself. According to the Bureau's 2019 report, 25% of accusations against police officers concern corruption crimes (see statistical data provided by the Internal Affairs Bureau of the Police).

<sup>85</sup> The Central Anti-Corruption Bureau replaced the Minister of Interior and Administration in the overall coordination of the Governmental Anti-Corruption Programme.

<sup>86</sup> The Supreme Audit Office audit flagged concerns as to the appropriateness of entrusting the Central-Anticorruption Bureau's with corruption prevention policy coordination tasks, as it would neither have the competence (i.e. legislative initiative) as a law enforcement body nor the resources to coordinate public policy. Supreme Audit Office (2022), Post-audit presentation of the audit Implementation of the Government Anti-Corruption Programme for 2018-2020.

<sup>87</sup> Educational website of the Central Anti-Corruption Bureau, and its e-learning platform.

<sup>88</sup> Law of 23 December 1994 on the Supreme Audit Office.

<sup>89</sup> Transparency International (2022), Corruption Perceptions Index 2021. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

<sup>90</sup> In 2018 the score was 60, while in 2022 the score is 55. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points), and is relatively stable (changes from 1-3 points) in the last five years.

<sup>91</sup> Special Eurobarometer 534 on Corruption (2023). The Eurobarometer data on citizens' corruption perception and experience is updated every year. The previous data set is the Special Eurobarometer 523 (2022).

<sup>92</sup> Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023). The Eurobarometer data on business attitudes towards corruption as is updated every year. The previous data set is the Flash Eurobarometer 507 (2022).

<sup>93</sup> Special Eurobarometer 534 on Corruption (2023).

<sup>94</sup> Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023).

**There has been no announcement yet to renew Poland’s anti-corruption commitments under a new Anti-Corruption Programme.** The 2021 Report of the Central Anti-Corruption Bureau<sup>95</sup> includes a reference to preparatory work on a new national anti-corruption strategy entitled ‘National Integrity Programme’. The Supreme Audit Office recommended in its December 2022 report<sup>96</sup> to prepare and adopt an anti-corruption programme well in advance<sup>97</sup> to allow ministries and central government offices sufficient time to prepare and plan their respective tasks under the new anti-corruption programme. However, no plans have been announced by the Government so far. The Council of Ministers’ list of legislative and programmatic work for 2023 does not include any reference to a new anti-corruption plan either<sup>98</sup>. No stakeholder consultation has taken place yet<sup>99</sup>. Therefore, there is currently no strategy, action plan or new policy initiative on anti-corruption in place in Poland that would address prevalent corruption risks for the years to come.<sup>100</sup>

**Poland’s criminal code was amended to increase the level of penalties for corruption.** The Polish Criminal Code broadly criminalises corruption<sup>101</sup>. Following the President’s signature on 2 December 2022, the reform of the Criminal Code entered into force on 14 March 2023 introducing stricter levels of criminal responsibility, higher sanctions and new types of offences to capture certain aggravating circumstances<sup>102</sup>. According to the Ministry of Justice, the

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<sup>95</sup> Information on the results of operations of the Central Anti-Corruption Bureau in 2021.

<sup>96</sup> Supreme Audit Office, Implementation of the Government Programme Counteracting Corruption for the Years 2018-2020 (December 2022). As previously reported in the 2022 Rule of Law Report, Country chapter on the rule of law situation in Poland, pp. 13-14, the Supreme Audit Office has audited the programme, identifying several irregularities, while highlighting that its goal was not achieved (11 out of 27), that several delays in implementing key legislative tasks had taken place and that there was a lack of monitoring indicators, of implementation monitoring in practice and of reporting that would allow for the verification of the programme’s accomplishments, see for more information Supreme Audit Office (2022), Post-audit presentation of the audit Implementation of the Government Anti-Corruption Programme for 2018-2020.

<sup>97</sup> For upcoming audits of the Supreme Audit Office in 2023, see Supreme Audit Workplan 2023 information of 26 January 2023.

<sup>98</sup> The list of legislative and program works of the Council of Ministers.

<sup>99</sup> Information received from Supreme Audit Office, Helsinki Foundation for Human Rights, and Batory Foundation in the context of the country visit to Poland.

<sup>100</sup> As previously reported, the fight against corruption, including in key areas of public administration, has been included as a priority for the police for 2021-2023. See Priorities of the Commander-in-Chief of the Police for 2021-2023. These tasks include the strengthening of police activity in counteracting economic crime in the areas of tax crime, crimes against the fundamental interests of the European Union and crimes in the area of public procurement; as well as increasing police effectiveness in combating corruption in key areas of public administration activity. Details on how these priorities will be implemented and on the concrete expected results are not published.

<sup>101</sup> The key offence penalised by the Criminal Code is bribery of public officials in its passive (accepting a bribe) and active (offering a bribe) forms. The term ‘person holding a public position’ as defined by law has a broad scope, including among others the President of the Republic of Poland, members of Parliament, judges, notaries, officers of a public authority, members of local authorities, etc.

<sup>102</sup> Amendments concern the Criminal Code Articles 228 (passive bribery), 229 (active bribery), 230 (passive paid protection), 230(a) (active paid protection), 305 (distortion in public tendering), while Article 306(b) was newly introduced criminalising aggravated types of offences due to the value of the property exceeding five or ten times the amount considered as great value property (i.e. approximately EUR 215,000). By introducing the concept of ‘great value’ to the criminal code as an analogy to property of great value (Article 115(5)), the maximum sanction, for example, for passive bribery of significant value (Articles 228(5) and 229(4)), was increased from 12 to 15 years. For all minor cases of bribery (and other corruption crimes), the minimum sanction was increased from 1 to 3 month, while the daily rate of fines was increased from 10 to 100. For previous amendments to the Criminal Code that entered into force on 1 January 2022 to counter corruption practices, introducing among others stricter sanctions for corruption, see 2022 Rule of Law report,

increase in corruption sanctions was necessary as the levels were lower compared to other crimes<sup>103</sup>. Stakeholders criticised the lack of consultation as well as questioned the proportionality and justification of the proposed changes<sup>104</sup>, arguing that the challenges of fighting corruption are not necessarily linked to the level of sanctions but to the effectiveness of the proceedings (see also pillar IV). On foreign bribery, effective enforcement in practice remains poor<sup>105</sup>. Legislative amendments are under preparation. The Ministry of Justice presented a new draft law on 2 September 2022 on the liability of collective entities<sup>106</sup>. The initiative aims at removing the rule according to which private companies can be held criminally liable for foreign bribery only after the final instance court sentence convicting the natural person(s) involved in the foreign bribery case or after the termination of the proceedings for other reasons<sup>107</sup>. Work is ongoing at Government level and the draft law has not yet been transmitted to the Parliament (*Sejm*)<sup>108</sup>.

**There have been no steps yet to enable a robust track record of addressing high-level corruption, as previously identified institutional and practical barriers persist.** The 2022 Rule of Law Report recommended to Poland to “ensure independent and effective investigations and prosecutions, [...] in order to enable a robust track record of high-level

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Country chapter on the rule of law situation, p. 14. See also Pillar IV on additional concerns related to this point.

<sup>103</sup> See the justification of the draft law of the Law on amending the Law - the Criminal Code and certain other Acts, 2022, pp. 1-3, 75-76, 95-96, making an analogy with property crimes, which allow for more severe sanctions in the aggravated circumstance that the damage is five times the value of the property, to justify increased sanctions also for corruption crimes where a high financial benefit is at stake.

<sup>104</sup> Lawyers' associations have complained about the procedure, the government justification and lack of consultation, as they see the problem not in the level of sanctions but in the effectiveness of the proceedings, and therefore issued a resolution and an open letter questioning the impact of the amendments. Information received by National Chamber of Legal Councillors/ Supreme Bar Council/ Free Courts Initiative in the context of the country visit to Poland. See in this context also the press release of the Ombudsperson of 18 July 2022; the Opinion of the Ombudsperson of 15 July 2022 (II.510.1043.2021.PZ); resolution No. 82/2022 of the National Bar Council of 19 November 2022; Prawo.pl of 26 November 2022, ‘*Karniści apelują o zawetowanie drakońskiego prawa*’ where a statement signed by over 170 experts in criminal law. Krakowski Instytut Prawa Karnego Fundacja, Populist amendment to the criminal law: Act of July 7, 2022 amending the Act - Penal Code and some other acts (Senate Paper No. 762) (19 July 2022), pp. 36-39, <https://kipk.pl/ekspertyzy/populistyczna-nowelizacja-prawa-karnego/>. Polska Akademia Instytut Nauk Prawnych Zdzisław Kryminologii, How neoclassical criminology, penal populism and COVID-19 helped to escalate the repressiveness of criminal law – the case of Poland (2022), <https://czasopisma.inp.pan.pl/index.php/ak/article/view/2210>.

<sup>105</sup> The OECD reports one single conviction of an individual as the only successful prosecution to date. OECD Anti-Bribery Convention, Phase 4 Report – Poland (8 December 2022), p. 4. See also Transparency International, Exporting Corruption (2022), pp. 99-100, reporting little or no enforcement, with one investigation having been opened in the period of 2018-2021, while no cases were commenced or concluded with sanctions.

<sup>106</sup> Draft law amending the act on liability of collective entities for acts prohibited under penalty.

<sup>107</sup> *Ibid.* For other reasons includes scenarios such as a final judgement conditionally terminating the criminal proceedings against the natural person, or a ruling to grant that person the right to voluntary surrender, or a court ruling to terminate the proceedings against the natural person due to circumstances preventing him/her from being punished. In addition, the act includes changes regarding the amount and method of calculating penalties for private companies, which would - just like the changes of the criminal liability for companies rules - have the potential to address some of the long-standing OECD recommendations on foreign bribery. See OECD, Implementing the OECD Anti-Bribery Convention, Phase 4 Report – Poland (8 December 2022), p. 63, urging PL to repeal the natural person conviction requirement for corporate liability and investigations as a matter of utmost priority.

<sup>108</sup> The Permanent Committee of the Council of Ministers has provided its analysis on 18 November 2022.



corruption cases”. The institutional independence of the anti-corruption institutions in charge of investigating and prosecuting corruption remains an issue. No developments have taken place to separate the position of the Prosecutor-General from the position of Minister of Justice, which remains to be held by one and the same person<sup>109</sup>. Similarly, no developments are noted as regards the independence of the Central Anti-Corruption Bureau, which remains subordinated to the executive<sup>110</sup>. Concerns regarding the politicisation of the prosecution service<sup>111</sup> have also been reiterated by stakeholders, including risks of selective application of the law and disparity in the treatment of corruption cases for political purposes<sup>112</sup>. Reportedly, in some cases no investigations are initiated, despite serious allegations<sup>113</sup>. The reported suspicion of a corruption and fraud case, including on EU funds spending, was not followed up. The police however questioned the reporting authorities and other stakeholders<sup>114</sup>. A further issue is that lengthy investigations and prosecutions, due in some extent to the prosecution service’s insufficient human and technical resources, continue to present obstacles to the effective prosecution of corruption<sup>115</sup>. Since allegations of institutionalised corruption,

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<sup>109</sup> See in this context also pillar I, p. 14.

<sup>110</sup> No changes have taken place regarding the conditions, under which the Central Anti-Corruption Bureau operates, including on the rules that allow for the political appointment of the Bureau's leadership. For more details, see 2020, 2021 and 2022 Rule of Law Reports, Country Chapters on the rule of law situation in Poland, p. 8 and 11 (for 2020), p. 18 (for 2021), p. 16 (for 2022); GRECO Fifth Evaluation Round – Evaluation Report, paragraph 78.

<sup>111</sup> For more details, see in this context also further above in Pillar II.

<sup>112</sup> Cf. 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 16. Contribution from Citizens Network Watchdog Poland/ Civil Development Forum/ Free Courts Foundation/ Institute of Public Affairs/ Helsinki Foundation for Human Rights/ Polish Federation of Non-governmental Organisations/ Stefan Batory Foundation for the 2023 Rule of Law Report, p. 15. Journalists and media organisations emphasise the existence of political corruption and the use of corruption as a stick to fight the opposition; information received from Towarzystwo Dziennikarskie and Izba Wydawców Prasy in the context of the country visit to Poland. There are also allegations of little interest of the prosecution service to follow up on information received by the Supreme Audit Office on potential irregularities and corruption with only 2% of notices sent to the prosecution service ending in indictment, see Notes from Poland (NfP) of 1 February 2023, ‘*State audit office notifies prosecutors of alleged crimes by Polish oil giant Orlen*’. Regarding concerns and recommendations to ensure the prosecutorial independence from political and executive influence in the context of foreign bribery investigations and prosecutions, see also OECD, Implementing the OECD Anti-Bribery Convention in Poland, Phase 4 Report (December 2022), p. 64, para. 15. See also Oko.press of 14 August 2022, ‘*The defeat of the Ziobro prosecutor's office in the case of Judge Morawiec - The court did not believe the evidence of her alleged corruption*’.

<sup>113</sup> For example, the investigation and prosecution of the findings of misuse of per diem allowances of a member of the European Parliament has so far not taken place after more than two years have passed. Information received by Helsinki Foundation for Human Rights/ Batory Foundation in the context of the country visit to Poland. For more details on prior EU-level investigations conducted and forwarded to the Polish prosecution office by the European Anti-Fraud Office (OLAF), see Politico of 3 August 2020, ‘*Top Polish MEP under investigations over travel expenses*’; Euronews of 4 August 2020, Ryszard Czarnecki: Senior Polish MEP under investigation over travel expenses. See in this context also Helsinki Foundation (2022), A state of accusation: Polish prosecution service 2015-2022.

<sup>114</sup> Information received from the Supreme Audit Office and Batory Foundation in the context of the country visit to Poland. The police carried out several criminal investigations and interrogations of Supreme Audit Office representatives in connection with the activities of the Supreme Audit Office on the basis of allegations that controls of expenditure of state funds were not conducted in accordance with the law, while submissions on potential irregularities made by the Supreme Audit Office to the prosecution service were not pursued.

<sup>115</sup> Information received from the National Chamber of Legal Councillors/ Supreme Bar Council/ Free Courts Initiative/ Supreme Audit Office in the context of the country visit to Poland. As previously reported, major cases are still pending also in 2022, including for example the case against the Polish Senate Speaker whose immunity was not waived and statutes of limitation now bar some of the charges brought forward, see PolskieRadio24.pl of 7 December 2022, ‘*Dozens of people charged with corruption in the hospital headed by*



politicisation and the instrumentalisation of corruption investigations and prosecutions particularly in high-level corruption cases remain a serious concern<sup>116</sup>, no progress has been made on the implementation of the recommendation in the 2022 Rule of Law Report.

**Broad immunities of top executives who are also members of Parliament have not yet been limited.** The 2022 Rule of Law Report recommended to Poland to “[...] address the broad scope of immunities for top executives [...] in order to enable a robust track record of high-level corruption”. Concerns regarding the broad scope of immunities of persons exercising top executive functions who are also members of Parliament have not yet been addressed and act as obstacles to criminal accountability for corruption crimes, in as much as they relate to activities outside the member’s official duties<sup>117</sup>. The European Public Prosecutor’s Office (EPPO) was recognised by Poland as a competent authority for the relevant EU instruments on judicial cooperation in criminal matters and the necessary amendments to the Criminal Code of Procedure on cooperation between the EPPO and Poland entered into force on 27 December 2022<sup>118</sup>. As no steps have yet been taken to ensure independent and effective investigations and prosecutions and to address the broad scope of immunities for top executives, there is no progress yet in this regard on the implementation of the recommendation made in the 2022 Rule of Law Report.

**New impunity provisions have been adopted, jeopardising the efficient fight against high-level corruption.** The 2022 Rule of Law Report recommended to Poland to “[...] abstain from introducing impunity clauses in legislation in order to enable a robust track record of high-level corruption cases”<sup>119</sup>. On 22 December 2022, a new act entered into force abandoning

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*Grodzki*; Gazeta Wyborcza – Szczecin of 8 November 2022, ‘25 patients of the hospital in Zdunów were accused of corruption. But what does this have to do with the Speaker of the Senate?’; PolandDaily24 of 7 January 2022, ‘Senate Speaker Tomasz Grodzki’s corruption accusation mounts’. The case against lawyer and former Deputy Prime Minister and former Minister of Education Roman Giertych, see Gazeta Prawna of 29 March 2022, ‘The court did not consent to the prosecutor’s request to arrest Roman Giertych’; and the corruption case against the former Minister of Transport, see Polish Press Agency of 14 April 2022, ‘Former head of GROM convicted of corruption in the case related to Sławomir Nowak’.

<sup>116</sup> Cf. 2022 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 16 (for 2022) and p. 17 (for 2021).

<sup>117</sup> GRECO Fifth Evaluation Round – Compliance Report, paragraphs 54-63; and GRECO Fifth Evaluation Round – Evaluation Report, paragraphs 82-91, reiterating its recommendation that in respect of persons exercising top executive functions, an in-depth reform of the system of immunities be carried out with a view to facilitating the prosecution of corruption offences by excluding these from the scope of immunities and by ensuring that the procedure for the lifting of the immunity is transparent and based on objective and fair criteria used effectively in practice (see paragraph 87). See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 17.

<sup>118</sup> Law of 27 October 2022 amending the Act - Code of Criminal Procedure and the Act - Law on Public Prosecution). See in this context also European Public Prosecutor’s Office, Letter sent to European Commission regarding Poland’s refusal to cooperate with the EPPO (16 February 2022), indicating that cooperation was conditioned on a prior approval of an amendment of the Polish Criminal procedure. According to the European Public Prosecutor’s Office, Annual Report 2022, the EPPO received in 2022 seventeen private parties’ reports originating from the non-participating Member States Poland (p. 77), while Poland was involved in 31 EPPO cases in 2022 (p. 96). The working arrangement for the cooperation, finalised at technical level, has not yet been signed. Poland abstains from joining the EPPO as a full member and remains a non-participating state. The working arrangement facilitates the cooperation in investigations and prosecutions relating to criminal offences within their respective competences, with respect to the exchange of strategic and operational information and evidence, extradition and other forms of cooperation, as with other third, non-EU countries.

<sup>119</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 2.

prosecution for crimes committed in the context of the organisation of the 2020 presidential elections<sup>120</sup>. The draft law had been introduced following lower-level courts' decisions<sup>121</sup>, which had argued that the COVID-19 pandemic could not justify that public administrative bodies were authorised to act in an extra-legal manner without a legal provision in place<sup>122</sup>. The new act presents an amnesty law for local government officials. It stipulates that no proceedings shall be initiated, and those already initiated shall be discontinued, for any act relating to the provision of voters' lists for the 2020 presidential elections to postal operators, committed during the state of the pandemic<sup>123</sup>. Furthermore, existing convictions shall be removed from the National Register of Criminal Records<sup>124</sup>. In addition, previously introduced impunity clauses remain unchanged and in force<sup>125</sup>. Such exemptions from criminal responsibility increase the risk of corruption and may foster the abuse of political and administrative power, given the lack of deterrence and the perception of impunity. Therefore, no progress has been made on the implementation of the recommendation made in the 2022 Rule of Law Report.

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<sup>120</sup> The Law of 1 December 2022 on the abandonment of prosecution for certain acts related to the organisation of the elections for the office of President of the Republic of Poland, ordered for 10 May 2020, was adopted by the Parliament - rejecting the veto of the Senate pointing out its unconstitutionality - on 15 December 2022 and signed by the President on 18 December 2022.

<sup>121</sup> The courts had had found that the decision of the Prime Minister ordering the state-owned Polish national postal service to prepare and deliver the postal ballot for the 2020 presidential elections was invalid, see Ruling of the Provincial Administrative Court in Warsaw of 15 September 2020 in the case no VII SA/Wa 992/20. On 3 April 2020, the head of the postal service was removed and replaced by the Deputy Defense Minister, who initiated preparations for the elections to meet the electoral deadline before an enabling draft law had entered into force. See Notes from Poland of 27 May 2020, '70 million zloty bill for Poland's abandoned presidential election' of 27 May 2020. See justification of the draft law indicating that "the need and purpose of adopting the proposed solutions results from the formation of lines of jurisprudence, which are based on a reductive and formalistic interpretation made by provincial administrative courts and some common courts. These courts, without a clear legal basis for doing so, have ruled on the overstepping of powers by mayors who transferred the register of voters [...]".

<sup>122</sup> *Ibid.* At the time of the Prime Minister's decision instructing the Post Office to conduct preparations for the elections (16 April 2020), Article 99 of the Covid Act (stipulating that the Post Offices as a designated operator has the right to request from all public entities access to any registers and directories of personal data) was not yet in force. At a later stage, it was declared illegal by the Administrative Court in Warsaw. See Prawo.pl of 7 June 2022, 'WSA: Sharing data for postal elections violated GDPR'. Local municipalities had been requested by the postal service to deliver voters' names, addresses and identification numbers. Some had refused to submit such personal data without legal grounding, see Notes from Poland of 27 May 2020, '70 million zloty bill for Poland's abandoned presidential election'. Others submitted voters' lists and, as a consequence, some Mayors were prosecuted and convicted, see Prawo.pl of 22 December 2022, 'The law is already in force – there will be no penalties for mayors who have handed over voter lists to the Postal Office'. Reportedly, the Civic Network Watchdog filed notifications to the prosecutor's office of 200 cases against mayors that had submitted voters' lists, most of which are still pending. Batory Foundation of 9 December 2022, 'Corrupt gifts on the occasion of December 9'.

<sup>123</sup> Art. 1 of the Act of 1 December 2022 on the abandonment of prosecution for certain acts related to the organisation of the elections for the office of President of the Republic of Poland, ordered for 10 May 2020.

<sup>124</sup> Art. 2(1) *ibid.*

<sup>125</sup> In April 2022, amendments to Art. 483(1) of the Commercial Company Code Act were introduced abolishing liability of management and supervisory boards for actions to the detriment of the company, see Polish News of 17 January 2023, "'Lex Obajtek", changes in the Code of Commercial Companies – Comments of politicians'; Gazeta Wyborcza of 17 January 2023, 'Another 'impunity law' pushed through by PiS: They call it 'lex Lotos', 'lex Obajtek''. For more information on state-owned enterprises, see further above in this text. On impunity clauses in public procurement rules, first introduced during the COVID-19 pandemic in 2020, and proposals introduced for the draft law on aid for Ukrainian refugees in 2022, see 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, pp. 19-20.

**There has been no progress yet to strengthen Poland’s lobbying rules.** The 2022 Rule of Law Report recommended to Poland to “strengthen the existing integrity rules by introducing lobbying rules [...]”<sup>126</sup>. The 2018-2020 anti-corruption programme<sup>127</sup> had included the revision of the lobbying regulation, dating back to 2005<sup>128</sup>. This has, however, not materialised so far. Poland does not have lobbying rules in place obliging persons exercising top executive functions to disclose their contacts with interest representatives<sup>129</sup>. This lack of rules was highlighted in public debates in December 2022, when the Government was extensively lobbied by the pharmaceutical industry during the negotiations of amendments to the Reimbursement Act<sup>130</sup>. Concerns also persist as to the effectiveness of the registers for lobbyists currently in place<sup>131</sup>. Therefore, there has been no further progress on the recommendation made in the 2022 Rule of Law Report.

**There have been no steps yet to standardise Poland’s asset declarations and control system.** The 2022 Rule of Law Report recommended to Poland to “strengthen the existing integrity rules by introducing [...] a standardised online system for asset declarations of public officials and Members of Parliament.” This was foreseen in the 2018-2020 anti-corruption programme<sup>132</sup>, but has not materialised so far<sup>133</sup>. As a result, a uniform, centralised submission and monitoring system is still lacking, and the level of digitalisation of politicians’ asset

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<sup>126</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 2.

<sup>127</sup> The resolution No. 207 of 19 December 2017 of the Council of Ministers – the Governmental Anti-Corruption Programme for years 2018-2020, (M.P. z 2018 r. item 12). See also above in the paragraph on the Anti-Corruption Programme.

<sup>128</sup> Law of 7 July 2005 on Lobbying. The applicable law defines lobbying, establishes a public register as well as determines obligations and sanctions for unregistered lobbyists. While most of the objectives to provide educational material and trainings have been met, the implementation of important legislative initiatives specified in the programme has not been completed. These include, in particular, the draft law on Liability of Collective Entities, the reform of the asset declaration system, and the revision of the lobbying legislation, as previously reported in the 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 14.

<sup>129</sup> GRECO Fifth Evaluation Round - Compliance Report, paragraphs 32-36. In practice, there are three lobby registers in place, one for the Government (based on the lobbying regulation), one for the lower chamber of Parliament (Sejm), and one covering its higher chamber (Senate). For lobbying activities towards the government, the Minister of Internal Affairs and Administration is the supervisory body maintaining the register. For members of Parliament, the two chambers have supervisory tasks over lobbying activities.

<sup>130</sup> For more details, see, for instance, GazetaPrawna of 27 December 2022, ‘A story of one amendment. The secret services suspect the pharmaceutical industry of lobbying’ (27 December 2022); see also BakerMcKenzie of 13 October 2022, Poland: Amendment to the new Reimbursement Act.

<sup>131</sup> Registration rates are declining and the oversight is not systematic and no information is available on whether sanctions have been applied to unregistered lobbyists, as previously reported in 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 17.

<sup>132</sup> The programme was based on resolution No. 207 of 19 December 2017 of the Council of Minister – the Governmental Anti-Corruption Programme for the years 2018-2020, (M.P. z 2018 r. item 12). The Programme was accompanied by an Action Plan, Governmental Anti-Corruption Programme for the years 2018-2020. While most of the objectives to provide educational material and trainings have been met, the implementation of important legislative initiatives specified in the programme has not been completed. These include, in particular, the draft law on Liability of Collective Entities, the reform of the asset declaration system, and the revision of the lobbying legislation, as previously reported in the 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 14.

<sup>133</sup> As previously reported, the Central Anti-Corruption Bureau had prepared a draft regulation, however, it has not been made public, while the technical work towards a more standardised, electronic system was suspended until appropriate legislative steps were to be taken. Access to document requests by stakeholders regarding the regulation were declined, see 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 18.

declaration continues to be low<sup>134</sup>. Most declarations are still filled out by hand and in a variety of formats<sup>135</sup>. Therefore, there has been no progress on the recommendation made in the 2022 Rule of Law Report.

**The dedicated legislation to protect whistleblowers continues to be under preparation.**

Following the deliberations of the Council of Ministers in early March 2022, the draft law transposing the relevant EU directive was not yet forwarded to the Parliament (*Sejm*) and no timeline is available, according to the Ministry of European Affairs<sup>136</sup>. The draft law, representing a political priority for the Government, shifts the competence as the administrative authority<sup>137</sup> and reporting channel for whistleblower disclosures from the Ombudsman Office, as originally planned, to the National Labour Inspectorate<sup>138</sup>. Stakeholders have flagged concerns regarding this envisaged change for institutional, legal and practical reasons surrounding the National Labour Inspectorate<sup>139</sup>. Until amendments are introduced to the current whistleblower framework, whistleblowers' protection is provided for in different legal provisions<sup>140</sup>.

**New measures have entered into force increasing the transparency of political party finance, yet concerns remain regarding party donations and election campaigns.** On 1 July 2022, legislation entered into force requiring political parties to publish up-to-date information of the register of donations<sup>141</sup> and the register of contracts<sup>142</sup> of political parties in a party

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<sup>134</sup> GRECO Fifth Evaluation Round – Evaluation Report, recommendations x and xi, paragraphs 72 and 78.

<sup>135</sup> *Ibid.* 2022 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 18 (for 2022) and p. 19 (for 2021), where it was reported that, at least, 16 different forms are in use. Provisions on asset declarations are scattered among several legislative acts.

<sup>136</sup> Due to the transposition delay since 17 December 2021, the Commission decided to refer Poland to the Court of Justice for failure to transpose the Directive on time, see Press release, The European Commission decides to refer 8 Member States to the Court of Justice of the European Union over the protection of whistleblowers (IP 23/703 of 15 February 2023). For more information on the steps taken by Poland to transpose the directive, see <https://www.whistleblowingmonitor.eu/?country=poland>.

<sup>137</sup> Article 1 and 57 of the draft law of 22 July 2022 of the act on protection of persons who report breaches of law.

<sup>138</sup> According to information received from the Ombudsman Office in the context of the country visit to Poland, the Ombudsman Office welcomes this change due to its more limited mandate to infringements caused by organs, not by individuals.

<sup>139</sup> The Helsinki Foundation for Human Rights and the Batory Foundation raised stakeholder concerns regarding the effectiveness of whistleblower protection, if the National Labour Inspectorate were to become the authority to receive whistleblower disclosures due to the lack of resources and competence and risks of politicisation due its political appointments, pursuant to information received from the Helsinki Foundation for Human Rights and the Batory Foundation in the context of the country visit to Poland.

<sup>140</sup> Poland reported that whistleblowers are benefiting from protection on the basis of general principles of labour law and provisions protecting whistleblowers from retaliation, such as anti-discrimination provisions and the provisions that prohibit mobbing in the place of employment, while reviews found that the effectiveness of the labour code provisions in practice is low and only covering part of the working population. See UN Conference of the State Parties to the UN Convention against Corruption (2015), Implementation Review Group – Poland, p. 5, and OECD (2015), Poland: Follow up to the Phase 3 Report and Recommendations (2015), pp. 5 and 29.

<sup>141</sup> New Article 25(6)-(13) of the Political Parties Act. The register of donations is in electronic form, searchable and made available in a public information bulletin operated by the political parties, including information only on those donations exceeding the amount of approximately EUR 2,500 (i.e. PLN 10,000) of a person in a single year, excluding membership fees. In case of failure of compliance with the new obligation, an administrative monetary sanction is applied (equal to 50% of the amount of payments made).

<sup>142</sup> New Articles 27(a)-(c) of the Political Parties Act; Article 4 of the Law amending the Criminal Code and certain other acts (14 October 2021). The register of contracts is in electronic form and made public. The



information bulletin available to the public<sup>143</sup>. Stakeholders consider the public availability of this information as a significant step toward more transparency in political party finance, noting however that the reliability of the published data still needs to be tested<sup>144</sup>. Publication practice still varies<sup>145</sup>. Stakeholders highlighted the practice of simultaneous donations by a large number of individuals of the same state-owned enterprise to individual politicians as a concern<sup>146</sup>. Since these donations are just below the annual ceiling for donations from natural persons, they raise questions as to conflicts of interest and the effectiveness of the ban of donation from legal entities to political parties and of political campaign finance transparency in practice<sup>147</sup>. In this context, some stakeholders flag systemic challenges relating to clientelist networks around state-owned enterprises and an increasing institutionalisation and scale of such practice that contributes to inequality in the election process<sup>148</sup>. The Supreme Audit Office was not granted the possibility to audit whether such donations of State Treasury companies were in accordance with the applicable rules, on grounds of a lack of a legal basis to audit companies, despite a state ownership of more than 50%<sup>149</sup>. In view of the parliamentary elections planned in autumn 2023, the OSCE Office for Democratic Institutions and Human

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register includes information on the contract number, data and place of the contract signature, contract period, parties to the contract and their representatives, the subject, value and mode of the contract. In case of failure of compliance with the new obligation, the same administrative monetary sanctions apply as for the register of donations, see footnote above.

<sup>143</sup> As previously reported, the registers were introduced by Act amending the Criminal Code and certain other acts (14 October 2021), see also 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 18.

<sup>144</sup> See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 19.

<sup>145</sup> The information is published on the party's website partly in downloadable pdf-format (see website of the Civic Platform party at [http://bip.platforma.org/rejestr\\_umow\\_i\\_wplat/](http://bip.platforma.org/rejestr_umow_i_wplat/) or the Left Together party at <https://partiarazem.pl/informacje/bip>); partly as embedded tables (see websites of the Law and Justice party, <http://bip.pis.org.pl/rejestr-wpat>, and the New Left party at <https://bip.lewica.org.pl/rejestr-wplat>); while some parties have not yet made the relevant registers available at all (see the website of the New Hope party at <https://wolnosc.pl/>).

<sup>146</sup> Information received from Helsinki Foundation and Batory Foundation in the context of the country visit. In 2022, journalists uncovered that on the same day in 2019 a total of 22 managers of the state-owned petrol company Orlen transferred donations in support of election campaigns of two politicians amounting to equal shares of each approximately EUR 16.000. See in this context TVN24 of 31 October 2022, *'Together with PiS – Paracampaign'*, and TVN24 of 5 August 2022, *'Money flows to the party. Payments from MEPs and members of supervisory boards of State Treasury companies'*, raising allegations of quid-for-pro, i.e. whoever was given a good job in a state-owned company by the authorities should repay according to party custom. Notably, the list of donors for the year 2019 is not published, but it is accessible on the website of the National Electoral Commission (<https://wybory.gov.pl>). See also on election campaign support for a former Minister of Energy from employees of a state-owned mining company that his ministry supervised, TVN24 of 7 November 2022, *'"Chris is my colleague, I paid for his position". Who else paid for the position and paid money for PiS campaign?'*. See also Business Insider of 21 December 2022, *'The authorities of state-owned companies generously subsidise PiS'*. TVN24 of 27 February 2023, *'Payments to the PiS account from managers of state-owned companies. "Pre-established pumping station for the party fund'*.

Art. 25 of the Act of 27 June 1997 on political parties prohibits the acceptance of donations from legal entities.

<sup>148</sup> Contribution from Citizens Network Watchdog Poland, Civil Development Forum, Free Courts Foundation, Institute of Public Affairs, Helsinki Foundation for Human Rights, Polish Federation of Non-governmental Organisations, Stefan Batory Foundation for the 2023 Rule of Law Report, p. 18.

<sup>149</sup> Reportedly, the prosecution service has refused to initiate proceedings in five cases brought by the Supreme Audit Office, upon which the Supreme Audit Office has filed complaints to the Warsaw district court, see Notes from Poland of 1 February 2023, *'State audit office notifies prosecutors of alleged crime by Polish oil giant Orlen'*, and Euractiv of 19 December 2022, *'Polish opposition notifies prosecution of irregularities in state fuel merger'*. See also Polityka of 11 February 2023, *'The PiS machine to siphon millions out of companies. NIK Controllers are left without any attention'*.



Rights (ODIHR) recommended not to introduce amendments to fundamental elements of the electoral legal framework this year ahead of the parliamentary elections and to consult the public<sup>150</sup>, while some stakeholders fear corruption to become a more prominent feature in the run up to the elections<sup>151</sup>.

**Concerns of corruption risks exist in public procurement.** In October 2022, the government enacted amendments (commonly referred to as the ‘Legal Shield’) simplifying and accelerating administrative procedures that apply also to contracts concluded under public procurement law<sup>152</sup>. The law now permits the modification of public procurement contracts due to significant, unforeseeable cost changes that the contracting authority could not have envisaged<sup>153</sup>. Suspicion of irregularities in a call for proposals issued by the National Centre for Research and Development raised the public’s awareness. While investigations were initiated by the Anti-Corruption Bureau relating to EU structural funds that were procured in fast-track procedures in this case<sup>154</sup>, stakeholders flagged concerns of increasing political corruption in the allocation of funds to specific entities just before the elections<sup>155</sup>. Among others, these concerns were triggered by the significant increase of the investigated call for proposals’ budget during the proposal assessment phase<sup>156</sup>, and the awards of grants to companies that were established shortly before the call or did not provide for sufficient

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<sup>150</sup> The Draft Law of 26 January 2023 amending the Election Code and certain other acts combines several draft laws introduced to the lower chamber of Parliament on 22 December 2022, many of which were adopted in the second and third, final reading on the same day of 26 January 2023. The Law would introduce extensive amendments to the 2011 Election Code, and some changes to selected provisions of the 1997 Act on Political Parties, the 1997 Law on Restrictions on Conduct of Business Activities by Persons Performing Public Functions, the 2000 Law on the National Criminal Register, the 2000 Law on Local Referendum, the 2003 Law on Nationwide Referendums, and several other legislative acts. See OSCE/ODIHR, Opinion on the Draft Act amending the Election Code and certain other Acts (Senate paper No. 911) – Poland (20 February 2023), p. 2. The draft Act would introduce extensive amendments to the 2011 Election Code and some changes to selected provisions of the 1997 Act on Political Parties, the 1997 Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions, the 2000 Act on the National Criminal Register, the 2000 Act on Local Referendum, the 2003 Act on Nationwide Referendums and several other legislative acts.

<sup>151</sup> Information received from media and journalists organisations/ journalists (Towarzystwo Dziennikarskie; Stowarzyszenie Polskie Telewizje Lokalne i Regionalne; Fundacja Bona Notitia; Izba Wydawców Prasy; Stowarzyszenie Polskich Mediów) in the context of the country visit to Poland.

<sup>152</sup> See Arts. 44 and 48 of the Act of 7 October 2022 on Amending Certain Laws to Simplify Administrative Procedures for Citizens and Businesses. See in this context also European Semester report for Poland (2023), p. 11, emphasising that, in 2022, approximately half of public tenders had only one bidder participating, which was the highest percentage among all EU countries. The Flash Eurobarometer on Businesses’ attitudes towards corruption in the EU shows that 22% of companies in Poland (EU average 26%) think that corruption has prevented them from winning a public tender or a public procurement contract in practice in the last three years. Flash Eurobarometer 524 on Businesses’ attitudes towards corruption in the EU (2023).

<sup>153</sup> *Ibid*, Article 48 of the Act.

<sup>154</sup> See Anti-Corruption Bureau, CBA control at the National Centre for Research and Development (2023). See also Research Professional News of 23 February 2023, ‘Polish research funder probed by anti-corruption bureau’. The respective call for proposals financed with EU structural funds was launched in October 2022 for research projects in cybersecurity, digitisation of industry, and digital creative technologies.

<sup>155</sup> Information received from journalists and media associations (Towarzystwo Dziennikarskie; Stowarzyszenie Polskie Telewizje Lokalne i Regionalne; Fundacja Bona Notitia; Izba Wydawców Prasy; Stowarzyszenie Polskich Mediów) and Helsinki Foundation for Human Rights, Batory Foundation, and Associations of Judges and Prosecutors in the context of the country visit to Poland, linking the indicated awards and changes in the call on EU structural funds to political corruption and the upcoming elections in autumn 2023.

<sup>156</sup> *Ibid*. The budget saw an increase from EUR 138 million to EUR 178 million, see *Oko.press - Rule of Law, ‘What is the NCR&D scandal about? Huge grants for suspicious firms’* (28 February 2023), <https://ruleoflaw.pl/what-is-the-ncrd-scandal-about-huge-grants-for-suspicious-firms/>.

evidence of their financial stability<sup>157</sup>. Members of Parliament have filed a request for a control by the Supreme Audit Office of this EU structural funds-related case<sup>158</sup>.

### III. MEDIA PLURALISM AND MEDIA FREEDOM

In Poland freedom of the press and other means of social communication and freedom of expression are constitutionally protected. The Constitution stipulates that the public interest in radio broadcasting and television shall be safeguarded by the media regulator, the National Broadcasting Council (KRRiT), whose members are appointed by the Sejm (lower chamber of the Parliament), the Senate and the President of the Republic. The Law on Broadcasting, and the Press Law are key instruments which establish, respectively, a detailed legal framework regulating the media regulator and safeguards for the exercise of the journalistic profession, including the relevant rules governing the access to public information<sup>159</sup>.

**In spite of positive changes introduced in 2021, some concerns have been raised on the functional independence of the media regulator.** The 2021 amendments to the Broadcasting Act modified the procedure for the rejection of the annual report of the KRRiT by the Sejm and the Senate, which results in the automatic expiry of the mandate of the KRRiT's members, primarily by introducing additional formal requirements in the rejection procedure. In spite of this legal change, the full independence of the new Board of the media regulator is called into question<sup>160</sup>. The 2023 Media Pluralism Monitor reports medium risks in relation to the independence and effectiveness of the media regulator<sup>161</sup>. In August 2022, the Senate elected one member of the KRRiT. Subsequently, in September 2022, the Sejm appointed two members, and in October 2022, the President of Poland appointed two members of the KRRiT. Stakeholders consider that the current composition of the KRRiT may further increase its politicisation<sup>162</sup>. Representatives of the media community and NGOs pointed out divergences in KRRiT's approach when exercising its oversight powers<sup>163</sup> over public service media on the one hand and private broadcasters on the other<sup>164</sup>. Certain stakeholders have also questioned

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<sup>157</sup> *Ibid.* Reportedly, one grant award-winning company had made financial losses since its establishment in 2020, while the other had been established as virtual entity 10 days before the extended deadline with a small capital of approximately EUR 1,000, while scoring just above the minimum score and still being granted 20% of the call's budget. Other concerns related to the extension of the deadline for submissions just before the closing of the deadline. See also Polish News, 'The scandal at the National Center for Research and Development. National Center for Research and Development, "Fast track" competition. New arrangements, conflict of interest (23 February 2023).

<sup>158</sup> See Science Business of 8 March 2023, 'Police in Poland launch investigation into fast-track grants disbursed by national research funding agency'.

<sup>159</sup> Poland ranks 57 in the 2023 Reporters without Borders World Press Freedom Index (compared to 66th in the previous year).

<sup>160</sup> Contribution from the Consortium of seven NGOs for the 2023 Rule of Law Report, p. 28; Contribution from the Polskie Towarzystwo Dziennikarskie for the 2023 Rule of Law Report, p.16. See also the 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 21.

<sup>161</sup> 2023 Media Pluralism Monitor, p. 11.

<sup>162</sup> Liberties 2023 Rule of Law Report – Poland p. 17.

<sup>163</sup> Article 18 of the Broadcasting Act authorizes KRRiT to investigate and sanction the promotion of actions contrary to law and Poland's *raison d'Etat*, and attitudes and views contrary to morality and social good.

<sup>164</sup> In 2023 the Council of Europe Platform to promote the protection of journalism and safety of journalists alerted about the proceedings launched against the radio stations TOK FM and Radio Zet. On 28 April 2023, the KRRiT imposed a financial penalty of PLN 80,7 thousand on the TOK FM radio station, submitting that TOK FM programmes promoted illegal activities, views and attitudes contrary to morality and social good. See: Press.pl of 28 April 2023, "Przewodniczący KRRiT Maciej Świrski nakłada 80 tys. zł kary dla nadawcy Tok FM" Also, in December 2022 KRRiT launched proceedings in relation to a documentary

whether the legal framework provides for an effective appeal mechanism against the KRRiT chairman's decisions<sup>165</sup>.

**There has been no further progress to ensure fair, transparent and non-discriminatory procedures for the granting of operating licences to media outlets.** The 2022 Rule of Law Report recommended to Poland to “ensure that fair, transparent and non-discriminatory procedures are adhered to for the granting of operating licences to media outlets”. While, following the Presidential veto of 27 December 2021, a legislation that would have entailed a possibility not to grant broadcasting concessions to operators directly or indirectly controlled by persons registered outside the European Economic Area was effectively blocked there were no notable actions to address the 2022 Rule of Law Recommendation. Some stakeholders reported that the exercising of KRRiT oversight powers could be seen as an attempt to create legal uncertainty around the licences granted to certain media<sup>166</sup>. Therefore, there has been no further progress on the implementation of the recommendation made in the 2022 Rule of Law Report.

**The level of media ownership transparency increased.** The entry into force of the 2021 amendment of the Law on Broadcasting, adopted in the context of the transposition of the revised Audiovisual Media Services Directive, introduced further requirements regarding media ownership transparency. The new rules require from broadcasters, video-on-demand and providers of video-sharing platforms to make available information on partners, shareholders and beneficial owners of their companies to the Central Register of Beneficial Owners and on their websites. Moreover, these providers are also obliged to disclose information on all media services offered by them or belonging to the same company, such as newspapers, magazines or video-sharing platforms. Consequently, due to this legislative change, the 2023 Media Pluralism Monitor reported an improvement as regards media ownership transparency<sup>167</sup>.

**While legal safeguards for editorial independence are in place, there are claims of political influence over the media in practice.** The Polish legal order includes a set of provisions related to editorial independence enshrined in the Press Law and the Law on Broadcasting. Nonetheless, stakeholders have highlighted several allegedly politically-inspired cases of interference in editorial decisions of media outlets<sup>168</sup>. Examples include the deletion of an

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broadcast by the TVN24 channel. See: Contribution from the Consortium of seven NGOs for the 2023 Rule of Law Report, p. 27; Contribution from the Reporters Without Borders for the 2023 Rule of Law Report, p.15; Liberties 2023 Rule of Law Report – Poland p. 15.

<sup>165</sup> Stakeholders' concerns are related to the fact that an appeal would in last instance be examined by the Chamber of Extraordinary Control and Public Affairs; see in this respect page 6 above. Liberties 2023 Rule of Law Report – Poland p. 15.

<sup>166</sup> For instance, in December 2022 KRRiT initiated proceedings in relation to a documentary broadcast by the TVN24 channel. As reported by Liberties, “the broadcaster risks a fine of 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 in the terms of the licence, KRRiT would be legally obliged to withdraw the broadcaster’s licence’. Liberties 2023 Rule of Law Report – Poland p. 17. Similarly, the TOK FM representatives consider that the penalty imposed by the KRRiT on 28 April 2023 may be seen as a sign of the potential reluctance from the side of the KRRiT to extend the TOK FM licence, which will expire on 3 November 2023. See: press.pl of 8 May 2023, “‘Biała księga” - korespondencja nadawcy Radia Tok FM z przewodniczącym KRRiT w sprawie kary nałożonej za “podręcznik dla Hitlerjugend””.

<sup>167</sup> 2023 Media Pluralism Monitor, p. 9.

<sup>168</sup> Contribution from the Consortium of seven NGOs for the 2023 Rule of Law Report, p. 30. In that respect, see also an open letter of 14 November 2022 of the Ombudsperson addressed to the Prime Minister, calling for

interview critical towards the governmental tax reforms from the online website of a regional media outlet owned by Polska Press, bought by state-owned oil giant PKN Orlen, and the blocking, by the management board, of a piece of investigative journalism in the local newspaper “Dziennik Wschodni”<sup>169</sup>. The 2023 Media Pluralism Monitor reports high risks in relation to editorial independence from commercial and owners influence, pointing to the lack of explicit regulatory or self-regulatory measures enabling to disclose actual or potential conflicts of interests of media owners<sup>170</sup>.

**There has been no progress to enhance the independent governance and editorial independence of public service media, amid ongoing concerns related to the independent reporting by public broadcasters.** The 2022 Rule of Law Report recommended to Poland to: “strengthen the rules and mechanisms to enhance the independent governance and editorial independence of public service media taking into account European Standards on public service media”. The National Media Council remains competent for the appointment and removal of the management and supervisory boards of the Polish Television, the Polish Radio and the Polish Press Agency. KRRiT has powers related to the charters of duties of public service media, and to their yearly programming and financial plans. It also assesses yearly reports regarding the performance of their public service remit. The 2023 Media Pluralism Monitor highlights high risks in relation to the independence of public service media, underlining that in practice, the appointments and dismissals of the public service media management and supervisory boards are guided by political choice and that KRRiT does not systematically monitor the performance of public service media<sup>171</sup>. Similarly, stakeholders report about KRRiT’s inaction with regard to multiple cases of biased reporting by public service media<sup>172</sup>, in particular on opposition leaders and minorities<sup>173</sup> and selective and unbalanced reporting<sup>174</sup>. No further measure has been taken to strengthen the rules and mechanisms to enhance the independence of public service media. Therefore, there has been no progress on the implementation of the recommendation made in the 2022 Rule of Law Report.

**State controlled entities allocated advertising mainly to pro-government media.** While there were no new legislative developments concerning the framework on the allocation of state advertising, stakeholders reiterate challenges related to fairness in distribution of such advertising<sup>175</sup>. According to one recent study, Government-friendly media are reported to be the main beneficiaries of advertising coming from state-owned companies<sup>176</sup>. The study concludes that the distribution of state advertising can be seen as an instrument of political

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measures to protect the freedom and plurality of media, following the acquisition of Polska Press by PKN Orlen.

<sup>169</sup> Liberties 2023 Rule of Law Report – Poland p. 20.

<sup>170</sup> 2023 Media Pluralism Monitor p.16.

<sup>171</sup> 2023 Media Pluralism Monitor, p. 19.

<sup>172</sup> Contribution from the Consortium of seven NGOs for the 2023 Rule of Law Report, p. 27.

<sup>173</sup> Contribution from the ILGA for the 2023 Rule of Law Report, p. 19.

<sup>174</sup> Contribution from the International Press Institute for the 2023 Rule of Law Report, p. 19, Contribution from the Consortium of seven NGOs for the 2023 Rule of Law Report, p. 27.

<sup>175</sup> Contribution from the Reporters Without Borders p.18. See also a report on the public funds expenditure on advertising of 30 March 2022, presented by Wirtualne Media and a report advertising spending by state owned companies, presented by Notes from Poland.

<sup>176</sup> See: money.pl of 3 March 2022, ‘1,23 mld zł wydały Spółki Skarbu Państwa na reklamę. Pieniądze szły do "przyjaznych" mediów’, Rzeczpospolita.pl of 28 February 2023, ”Kampanie informacyjne rządu warte miliony. Opozycja łączy je z nadchodzącymi wyborami”.



manipulation, serving to further polarise attitudes in society. Civil society also points out to the lack of the regular monitoring of state advertising spending<sup>177</sup>.

**Challenges are reported with regard to the right of access to information by journalists.**

The International Press Institute reports cases of denying access to public information without any justification, or routinely refusing communication or interviews with certain media by public officials connected to the ruling parties<sup>178</sup>. Similarly, the 2023 Media Pluralism Monitor reports medium risks in relation to the protection of the right to information and refers to frequent and various forms of denial of access to public information for journalists<sup>179</sup>. Stakeholders also point out to delays in judicial procedures relevant for protecting the right to information. Consequently, due to the length of such procedures many journalists do not make use fully of their rights under the Law on the Access to Public Information<sup>180</sup>.

**Journalists have continued to encounter difficulties in their activities.** A freelance journalist was arrested in February 2022 by the Polish Security Services and accused of conducting illegal espionage on behalf of the Russian state<sup>181</sup>. Press freedom organisations have raised concerns about the lack of evidence for arresting the journalist<sup>182</sup> who still remains in pre-trial detention<sup>183</sup>. Associations of journalists highlight the long-lasting criticism of the Criminal Code provision on offences for insulting State symbols, senior public officials and religion<sup>184</sup>. They consider that it potentially affects the framework for journalists' protection given that defamation could be sufficiently tackled on the basis of the civil liability framework<sup>185</sup>. In 2023, the Council of Europe Platform to promote the protection of journalism and safety of journalists registered four alerts concerning Poland with two considered as defamation proceedings against journalists<sup>186</sup>. In addition, the journalistic community is affected by a lack of self-regulatory measures that could contribute to the strengthening of the status of journalists<sup>187</sup>. The incentives for fostering such self-regulation appear to be weakened by the increased polarisation of the journalistic community<sup>188</sup>.

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<sup>177</sup> Contribution from the Consortium of seven NGOs for the 2023 Rule of Law Report, p. 29, Liberties 2023 Rule of Law Report – Poland p. 17.

<sup>178</sup> Contribution from the International Press Institute for the 2023 Rule of Law Report, p. 19.

<sup>179</sup> 2023 Media Pluralism Monitor, p. 11.

<sup>180</sup> Under Article 3a of the Press Law; see Contribution from the Consortium of seven NGOs for the 2023 Rule of Law Report, p. 32.

<sup>181</sup> The freelance journalist Pablo González was arrested in February 2022 in the city of Rzeszów by the Polish Security Services, where he was reporting on the refugee crisis caused by Russia's war of aggression against Ukraine. He was accused of conducting illegal espionage on behalf of Russia.

<sup>182</sup> Contribution from Human Rights Watch for the 2023 Rule of Law Report, p. 18.

<sup>183</sup> On 28 February 2023, it was reported that a district court prolonged the detention until 24 May 2023; see Euractiv of 28 February 2023, '*Sąd w Lublinie przedłużył areszt hiszpańskiego dziennikarza. Jest podejrzewany o szpiegostwo*'; as also confirmed by the Council of Europe Platform to promote the protection of journalism and safety of journalists.

<sup>184</sup> Contribution from the Reporters Without Borders for the 2023 Rule of Law Report, p.15.

<sup>185</sup> The Resolution 1577 (2007) of Parliamentary Assembly of the Council of Europe of 4 October 2007 on towards decriminalisation of defamation, encouraged Member States to favour the use of administrative or civil law to deal with defamation cases.

<sup>186</sup> For instance, in October 2022, an investigative journalist Tomasz Piątek was convicted by the Warszawa-Śródmieście District Court in Warsaw of criminal defamation (Article 212 of the Polish Criminal Code) and sentenced to eight months of community service. However, the judicial proceeding was criticised due to the fact that Tomasz Piątek did not attend any hearings as he was not duly informed about them.

<sup>187</sup> Contribution from the Reporters Without Borders for the 2023 Rule of Law Report, p.15.

<sup>188</sup> Contribution from the Polskie Towarzystwo Dziennikarskie for the 2023 Rule of Law Report, p.16.

#### IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Poland is a representative democratic republic with a directly elected President, a bicameral Parliament (Sejm and Senate) and a Constitutional Tribunal in charge of constitutional review of laws. The Sejm has the final decision-making power when adopting laws. The President of the Republic, the Senate, a group of 15 Members of the Sejm, the Council of Ministers and a group of at least 100 000 citizens have the right to propose new legislation. The independent Ombudsperson is tasked with safeguarding the freedoms and rights of persons and citizens specified in the Constitution and other normative acts. The Supreme Audit Office is the chief organ of state audit, subordinate to the Sejm, acting in accordance with the principles of collegiality.

**The practice of adopting laws through procedures not providing for adequate consultations persists.** Stakeholders<sup>189</sup> have reiterated concerns about the pace of the adoption of laws and the fact that laws are often submitted as proposals of members of Parliament instead of Government proposals<sup>190</sup>, an approach which means public consultation is not required<sup>191</sup>. Under the RRP, Poland has committed to amend the Rules of Procedure of the Sejm, the Senate and the Council of Ministers to enhance the use of public consultations and impact assessments in the law-making process<sup>192</sup>. The reform would also limit the use of fast-track procedures to well-specified and exceptional cases. No legislative steps have been taken so far. The only part of the legislative procedure that allows for a reflection on opinions related to draft laws is in the Senate<sup>193</sup>. The quality of law-making and the frequent changes in legislation remain a significant cause for concern about the effectiveness of investment protection among companies in Poland<sup>194</sup>.

**On 1 January 2023, Poland had 46 leading judgments of the European Court of Human Rights pending implementation, an increase of eight compared to the previous year<sup>195</sup>.** At that time, Poland's rate of leading judgments from the past 10 years that remained pending was at 56% (compared to 48% in 2022), and the average time that the judgments had been pending

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<sup>189</sup> Written contribution provided by Consortium of seven NGOs p. 34 and MEDEL p. 23.

<sup>190</sup> Ombudsperson's annual activity report for 2021 as presented by the Ombudsperson on 30 November 2022. Also NGOs signalise that the dialogue between the Government and CSOs has been subject to a gradual reduction in recent years, while now NGOs are either not invited or given a very short time to provide comments on draft legislation (see written contribution provided by Consortium of seven NGOs (p. 41).

<sup>191</sup> It is noted that throughout 2022 out of 277 draft laws brought to the Sejm a formal urgent procedure was adopted as regards 14 drafts (mostly concerning issues of energy and aid to Ukraine; cf. written contribution provided by the Supreme Court (p. 19)). At the same time, 18% of draft laws coming from the Government were subject to a formal urgent procedure (cf. written contribution provided by Consortium of seven NGOs, p. 35).

<sup>192</sup> Milestone F2.1, set out in the Annex to the Council Implementing Decision of 14 June 2022 on the approval of the assessment of the recovery and resilience plan for Poland (9728/22).

<sup>193</sup> Information received from representatives of the Ombudsperson's Bureau during the virtual country visit to Poland.

<sup>194</sup> Figure 54, 2023 EU Justice Scoreboard.

<sup>195</sup> The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

implementation was 5 years and 6 months (compared to 5 years and 10 months in 2022)<sup>196</sup>. The oldest leading judgment, pending implementation for 17 years, concerns the excessive length of proceedings before administrative bodies and courts and absence of an effective remedy<sup>197</sup>. On 15 June 2023, the number of leading judgments pending implementation has increased to 49<sup>198</sup>.

**There has been no progress as regards the appointment of members of the College of the Supreme Audit Office, putting at risk its effective functioning.** The 2022 Rule of Law Report recommended to Poland to “[e]nsure a more systematic follow-up to findings by the Supreme Audit Office and ensure a swift appointment of the Members of the College of the Supreme Audit Office”<sup>199</sup>. The Marshal of the Sejm has however still not appointed any new member of the College, which now consists of nine out of 19 members<sup>200</sup>. The Supreme Audit Office reported that this puts it at risk of losing the capacity to carry out its functions as of September 2023, including on the sound and independent audit of public funds’ expenditure<sup>201</sup>. A Director General of the Supreme Audit Office was still not appointed, and the Office’s budget was not increased<sup>202</sup>, which may further impact its proper functioning<sup>203</sup>. Auditors face severe obstacles when carrying out audits in state-owned companies, being denied access to the necessary documentation<sup>204</sup>. The public prosecution does not follow up on the Supreme Audit Office’s requests<sup>205</sup>, while auditors themselves are subject to criminal investigations<sup>206</sup>. Given that there have been no further appointments of College Members of the Supreme Audit Office, and that no more systematic follow-up has been noted to its findings, there has been no progress on the implementation of the recommendation made in the 2022 Rule of Law Report.

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<sup>196</sup> All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2023. See the Contribution from the European Implementation Network for the 2023 Rule of Law Report, p. 6.

<sup>197</sup> Judgment of the European Court of Human Rights of 1 February 2005, *Beller v. Poland*, 51837/99.

<sup>198</sup> Data according to the online database of the Council of Europe (HUDOC).

<sup>199</sup> See the 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 2.

<sup>200</sup> According to the information provided by the Supreme Audit Office on its official website: <https://www.nik.gov.pl/o-nik/kolegium-nik/>. According to the written submission of the Supreme Audit Office made in the context of the virtual country visit to Poland, the President of the Supreme Audit Office has so far made 34 requests for appointment of College members of which seven have been accepted.

<sup>201</sup> According to the information provided by representatives of the Supreme Audit Office.

<sup>202</sup> According to the written submission of the Supreme Audit Office made in the context of the virtual country visit to Poland. The submission explains that without the requested increase of the annual budget, the Supreme Audit Office is no longer in position to notably ensure an increase of salaries to align them with salaries offered for similar positions in other state institutions.

<sup>203</sup> According to the written submission of the Supreme Audit Office made in the context of the virtual country visit to Poland. The Marshal of the Sejm, without legal basis, requested from the Sejm’s Committee for State Audit an opinion on the candidate-Director-General proposed by the President of the Supreme Audit Office. According to the written submission, one of the main consequences of the refusal to appoint the Director-General ‘*is the institutional paralysis of the NIK [Supreme Audit Office] and the disruption of its activities not only in terms of audit (obstruction of audit activities) but also organizational (lack of Director General), which in a democratic state of law cannot take place*’.

<sup>204</sup> According to a letter of the President of the Supreme Audit Office of 29 December 2022 addressed to the Marshal of the Sejm (KPK-KPP.011.104.2022).

<sup>205</sup> Written input provided by the representatives of the Supreme Audit Office. On that point, see the 2022 Rule of Law Report, Country chapter on the rule of law situation in Poland, p. 28.

<sup>206</sup> According to a letter of the President of the Supreme Audit Office of 29 December 2022 addressed to the Marshal of the Sejm (KPK-KPP.011.104.2022).

**A law empowering an administrative committee to assess and decide whether individuals should be deprived of the right to hold public office related to the handling of public funds for up to 10 years, raises serious concerns and triggered amendments.** The new law<sup>207</sup> sets up a special state committee, as part of the public administration, tasked with conducting inquiries determining whether senior public officials and senior management members in companies with State Treasury's shares acted in the period of 2007-2022 under Russian influence to the detriment of the public interest. The Committee will be composed of nine members, all appointed by the Sejm<sup>208</sup>. It will be empowered to, amongst others, obtain classified information, change or repeal administrative decisions considered as adopted under Russian influence to the detriment of Polish State's interests and deprive individuals, by means of an administrative decision, of the right to hold public office related to the handling of public funds for up to 10 years (so-called remedial measure)<sup>209</sup>. Such remedial measure would become immediately applicable<sup>210</sup>, and could be subject only to a limited review by the administrative judiciary<sup>211</sup>. According to stakeholders, the new law gives rise to serious concerns related to the principle of division of powers, as it would grant *de facto* judicial competences to impose sanctions of criminal nature to a body of a strictly administrative character<sup>212</sup>. The Commission issued a statement that it is very concerned by the adoption of the law, as it raises concerns that it could be used to affect the possibility of individuals to run for public office<sup>213</sup>. On 2 June 2023, the President of the Republic tabled amendments to the law<sup>214</sup>. On 8 June 2023, the Commission decided to open an infringement procedure as regards the law, by sending a letter of formal notice to Poland<sup>215</sup>. On 30 June 2023, the Polish authorities sent a reply to the letter of formal notice, which is being assessed by the Commission.

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<sup>207</sup> Law of 14 April 2023 on the State Committee to examine Russian influence on the internal security of the Republic of Poland in years 2007-2022. It entered into force on 31 May 2023.

<sup>208</sup> The Prime Minister will appoint the President of the Committee from among its members; cf. Article 9(1) and Article 11(1) of the Law.

<sup>209</sup> Cf. Article 16, Article 36(1) item 2 and Article 37(1), of the Law.

<sup>210</sup> According to Article 15(4) of the Law, 'administrative decisions, orders and resolutions of the Committee shall be final.'

<sup>211</sup> The judicial review of the administrative courts is limited to the requirement of respect of the law interpreted in a narrow way and would not extend to the review of the correctness of the assessment of facts and the weighing of evidence.

<sup>212</sup> See the opinion of the Ombudsperson of 28 December 2022 (II.510.1126.2022.MT); opinion of the Polish Cities' Association of 3 January 2023; opinion of the Association of the Regions of the Republic of Poland of 1 December 2022. The Law also includes shortcomings related to the criminal procedural law – see in that respect the opinion of the National Prosecutor of 12 December 2022 (1001-1.0280.326.202). Views have also been expressed by Members of Parliament that the committee could be used to unduly target political opponents ahead of the parliamentary elections scheduled for October 2023. Cf. Wp.pl of 11 January 2023, 'Prezydent Duda znów postawi się PiS? Komisja ds. wpływów rosyjskich może nie powstać' and Polish Press Agency of 11 January 2023, 'Opozycja o komisji ds. badania wpływów rosyjskich: bubel prawny. PiS: trzeba pokazać prawdę o złym postępowaniu poprzednich rządów'.

<sup>213</sup> Statement of the European Commission of 30 May 2023 on the Polish law establishing a State Committee for the Examination of Russian Impacts on internal Security.

<sup>214</sup> On 16 June 2023, the Sejm adopted the amendments which were subsequently transmitted to the Senate, where they remain pending. If adopted with final effect, the amendments would i.a. introduce judicial review of the Committee's decisions by ordinary courts instead of by the administrative judiciary suspending automatically the effects of the contested Committee's decisions, remove the Committee's competence to deprive individuals from the right to hold public office, and change the composition of the Committee which would consist of experts instead of Members of the Sejm. Cf. press release of the President of the Republic of 2 June 2023.

<sup>215</sup> The Commission considers that the new law violates: (i) the principle of democracy (Articles 2 and 10 TEU); (ii) the principles of legality and non-retroactivity of sanctions (Article 49 Charter) and general principles of



**Amendments have been adopted to the Criminal Code, which stakeholders consider incompatible with national and international law.** On 2 December 2022, the President of the Republic signed a law bringing substantive changes to the Criminal Code<sup>216</sup>. Certain amendments are considered by stakeholders as introducing disproportionate sanctions, incompatible with requirements of the ECHR, for instance life imprisonment without a possibility of parole. The Ombudsperson, the National Bar Council and an important number of specialists of criminal law criticised the amendments, considering them to be in violation with national and international law<sup>217</sup>.

**Some progress has been made to improve the framework in which the Ombudsperson operates in relation to funding.** The 2022 Rule of Law Report recommended to Poland to improve the framework in which [...] the Ombudsperson operate[s], taking into account European standards on Ombudsinstitutions<sup>218</sup>. On 7 December 2022, the Ombudsperson dismissed one of its deputies whose activities had focused on the situation related to migration at the Polish-Belarussian border, generating criticism from civil society organisations<sup>219</sup>. A new case of the use of Pegasus software was detected, and the Ombudsperson, in addition to the President of the Supreme Audit Office, raised concerns in that respect<sup>220</sup>. The budget allocated to the Ombudsperson's office was increased in 2023, but remains insufficient<sup>221</sup>. In the light of this increase, there has been some progress on the implementation of the recommendation made in the 2022 Rule of Law Report. The Ombudsperson was reaccredited

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legal certainty and *res judicata*; (iii) the rights to effective judicial protection (Article 47 Charter), *ne bis in idem* and the protection of professional secrecy (Article 7 Charter); (iv) the requirements of EU law relating to data protection (GDPR and Article 8 Charter). See press release IP/23/3134.

<sup>216</sup> The law of 7 July 2022 amending the law – Criminal Code and certain other laws.

<sup>217</sup> The amendments would, among others, also prolong or abolish altogether the statute of limitations for specific criminal offences; lower from 15 to 14 years the threshold for bearing responsibility for murder on the basis of the Criminal Code; increase punishments for several criminal offences such as rape, causing serious bodily injury, robbery, directing a terrorist group. Amongst others the Ombudsman and the Supreme Court have underlined that the criminal sanctions introduced are disproportionate and are not warranted in view of the available data related to criminality. See the press release of the Ombudsperson of 18 July 2022. See also the Opinion of the Ombudsperson of 15 July 2022 (II.510.1043.2021.PZ); resolution No. 82/2022 of the National Bar Council of 19 November 2022; Prawo.pl of 26 November 2022, '*Karniści apelują o zawetowanie drakońskiego prawa*' where a statement signed by over 170 experts in criminal law.

<sup>218</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 2.

<sup>219</sup> See an open letter of 8 December 2022 signed by 90 NGOs, as published by the Batory Foundation (Batory.org.pl of 8 December 2022).

<sup>220</sup> The Pegasus software was reportedly used against a mayor of a city who, at the time was engaged in the preparation of the political campaign of one of the opposition parties ahead of the 2019 parliamentary elections. See Rzeczpospolita.pl of 3 March 2023, '*Prezydent Sopotu inwigilowany Pegasusem przed wyborami w 2019 r.*' The Ombudsperson addressed an open letter to the Minister for Interior and Administration, indicating that the Polish law does not permit the use of software such as Pegasus in view of its interference with the rights of individuals. The President of the Supreme Audit Office shared the same concerns: see Ombudsperson's press releases of 10 January 2023 and of 2 May 2023. See also the 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 17 and 24.

<sup>221</sup> Notably as regards the need to ensure that the salary of the Ombudsperson's employees match the raise of the inflation rate. Also the budget does not allow to fully cover expenses related to the aid necessary to deal with individual cases of persons from Ukraine. Information received from representatives of the Ombudsperson's Office in the context of the virtual country visit. See also a report of November 2022 by the Helsinki Foundation of Human Rights '*Ratownicy. Biuro Rzecznika Praw Obywatelskich w latach 2015-2022*', p. 53. See also written contribution from ENNHRI for the 2023 Rule of Law Report (p. 10).

with ‘A’ status in March 2023 by the UN Global Alliance of National Human Rights Institutions (GANHRI)<sup>222</sup>.

**There has been no progress to improve the framework for the civic space, while civil society remains vibrant.** The 2022 Rule of Law Report recommended to Poland to “[i]mprove the framework in which civil society [...] operate[s], taking into account European standards on civil society [...]”<sup>223</sup>. Poland continues to have a broad and vibrant civil society, consisting of more than 120 000 NGOs. According to CIVICUS, the civic space continues to be rated as obstructed<sup>224</sup>. On 9 June 2022, the Polish authorities increased the amount of tax which taxpayers may assign to public benefit organisations<sup>225</sup>. A draft law aimed at ensuring ‘transparency of non-governmental organisations’ and a draft law amending the offence of religious beliefs have not been withdrawn despite criticism expressed by stakeholders<sup>226</sup>. Stakeholders raised concerns about continued attacks on NGOs by representatives of public authorities, notably on organisations involved in providing humanitarian aid at the Polish-Belarusian border<sup>227</sup>, abortion activists<sup>228</sup>, and representatives of the LGBTIQ community<sup>229</sup>

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<sup>222</sup> Global Alliance of National Human Rights Institutions (GANHRI), Sub-Committee on Accreditation (SCA), Accreditation Status as of 26 April 2023.

<sup>223</sup> See the 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 2.

<sup>224</sup> Rating given by CIVICUS. Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed. In 2020 and 2021, civic space was considered as ‘narrowed’. According to CIVICUS, Poland has not implemented the recommendations relating to the civic space addressed to Poland under the UN universal periodic review. See the CIVICUS press release of 28 March 2023 and the CIVICUS ‘People Power under Attack’ 2022 report, p. 43.

<sup>225</sup> Law of 9 June 2022 amending the Law on Personal Income Tax (Official Journal of 2022 item 1265). According to the amendments, since 1 January 2023, taxpayers may decide to transmit 1,5% of their Personal Income Tax to public benefit organisations, instead of 1% which applied prior to the amendment.

<sup>226</sup> They remain pending, while no significant development occurred since July 2022; see 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 29; see also written contribution provided by Client Earth – Prawnicy dla Ziemi (pp. 21-22) and by the Consortium of seven NGOs pp. 38-39.

<sup>227</sup> This reportedly concerns activists and journalists who report on allegedly illegal “push-backs” of refugees from Syria, Iraq or Afghanistan by the public authorities. See written contribution provided by Consortium of seven NGOs (p. 39) and a report of the Helsinki Foundation for Human Rights of June 2022, ‘Where law does not reach – 11 months of humanitarian crisis at Polish-Belarusian border’.

<sup>228</sup> On 14 March 2023, an activist who aided a woman to obtain an emergency contraception was convicted to eight months of limitation of liberty. Cf. Prawo.pl of 14 March 2023, ‘Pomoc w aborcji ukarana - aktywistka skazana na prace społeczne’. Concerns have also been raised as regards the possibility for women fleeing the war in Ukraine to have a safe access to legal abortion in Poland (see written contribution by Human Rights Watchdog (p. 20)) as well as over the misuse of the ‘conscience clause’ which allows doctors to refuse to carry out an abortion if this is against their religious belief (see Wyborcza.pl of 10 February 2023, ‘Ciotka zgwalczonej 24-latk, której odmówiono aborcji: Niedzielski i rzecznik praw pacjenta kłamią!’; DW of 2 May 2023, ‘Outcry in Poland over abortion law’). In June 2022, the Minister for Health issued a regulation extending the dataset mandatorily recorded by Polish doctors in a national register, including a record of pregnancy. Women’s and reproductive rights groups have raised concerns that such sensitive health data could be misused by authorities to intimidate or prosecute women who, for instance, experience spontaneous miscarriages.

<sup>229</sup> Cases continued against the creators of ‘Hate atlas’ (a platform containing an online map tracking municipalities that adopted the so-called ‘anti-LGBT ideology’ resolutions). Overall seven court cases were started before courts by local authorities in that respect. In October 2022, one charge was dropped and in December 2022, two district courts dismissed the lawsuits in favour of the ‘Hate atlas’ creators. See written contributions provided by Consortium of seven NGOs (p. 39-40) and by ILGA-Europe - the European Region of the International Lesbian, Gay, Bisexual, Trans, and Intersex Association (p. 20). The latter contribution (pp. 22-23) also refers to unfavourable statements of public officials against LGBTIQ initiatives, including by incentivising the police to carry out background checks on members of LGBTIQ NGOs. On 23 November 2022, an LGBTIQ activist was arrested for organising a protest against allegedly transphobic policies of his

and – more broadly – about shortcomings in the financing of NGOs in Poland<sup>230</sup>. As in 2022, civil society is playing a crucial role in providing help to refugees from Ukraine<sup>231</sup>, following the Russian war of aggression against Ukraine<sup>232</sup>. The President of the Republic vetoed for the second time a law seeking to substantially increase the control over schools' functioning by central government's representatives who would be in position to decide, amongst others, on admitting or refusing access of individual NGOs to extracurricular activities of schools<sup>233</sup>. Overall, there has been no progress on the implementation of recommendation made in the 2022 Rule of Law Report.

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university (the activist was convicted by a summary judgment, i.e. without trial). In September 2022, the Prosecutor-General requested the Supreme Court to rule that a transsexual person ought to take to court, in addition to parents, also the non-divorced spouse and children in any case related to the gender legal recognition. This would constitute an additional obstacle in such cases for transsexual persons, according to i.e. the NGO 'Campaign against Homophobia' in Poland (cf. Prawo.pl of 5 April 2023, '*W oczekiwaniu na decyzję SN: Uzgodnienie płci wymaga pozywania dzieci i małżonka?*').

<sup>230</sup> The concerns related to a reported continued practice of public authorities to allocate a significant part of NGOs' funds to entities ideologically close to the governing majority (see written contributions provided by Consortium of seven NGOs, p. 40). According to the Government, the Public Benefit Activity and Volunteering Act of 24 April 2003 lays down the following principles for cooperation between public administrations and NGOs: subsidiarity, sovereignty, partnership, efficiency, fair competition and openness.

<sup>231</sup> Financial support for the initiative aimed at helping refugees from Ukraine came, among others, from government programs supporting the development of civil society in Poland, and from the Commission (see press release of 28 October 2022).

<sup>232</sup> See the 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 28.

<sup>233</sup> The veto took place on 15 December 2022; as regards the law concerned, see 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 29.

## **Annex I: List of sources in alphabetical order\***

\* *The list of contributions received in the context of the consultation for the 2023 Rule of Law report can be found at [https://commission.europa.eu/publications/2023-rule-law-report-targeted-stakeholder-consultation\\_en](https://commission.europa.eu/publications/2023-rule-law-report-targeted-stakeholder-consultation_en).*

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## Annex II: Country visit to Poland<sup>234</sup>

The Commission services held virtual meetings in March 2023 with:

- Amnesty International
- Association of Judges ‘Iustitia’ (Stowarzyszenie Sędziów Polskich Iustitia)
- Association of Judges ‘Themis’ (Stowarzyszenie Sędziów Polskich Themis)
- Association of Prosecutors ‘Lex Super Omnia’ (Stowarzyszenie Prokuratorów Lex Super Omnia);
- Batory Foundation (Fundacja Batorego)
- Civic Development Forum (Forum Obywatelskiego Rozwoju)
- Free Courts (Wolne Sądy)
- Helsinki Foundation for Human Rights (Helsinki Fundacja Praw Człowieka)
- Chamber of Press Publishers (Izba Wydawców Prasy)
- National Television and Radio Broadcasting Council (Krajowa Rada Radiofonii i Telewizji)
- Ministry of Culture (Minsiterstwo Kultury)
- National Council for the Judiciary (Krajowa Rada Sądownictwa)
- National Chamber of Legal Councillors (Krajowa Izba Radców Prawnych)
- Ombudsperson’s Office (Biuro Rzecznika Praw Obywatelskich)
- Ordo Iuris
- National Media Council (Rada Mediów Narodowych)
- Polish Media Association (Stowarzyszenie Polskich Mediów)
- Supreme Administrative Court (Naczelny Sąd Administracyjny)
- Supreme Audit Office (Najwyższa Izba Kontroli)
- Supreme Bar Council (Naczelna Rada Adwokacka)
- Supreme Court (Sąd Najwyższy)
- Society of Journalists (Towarzystwo Dziennikarskie)
- Society of Polish Journalists (Towarzystwo Dziennikarzy Polskich)
- Watchdog Polska

\* The Commission also met the following organisations in a number of horizontal meetings:

- ALDA (European Association for Local Democracy)
- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Culture Action Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- Front Line Defenders

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<sup>234</sup> The Polish government did not provide written input and decided not to participate in relevant meetings of the country visit.

- ILGA Europe
- International Commission of Jurists
- International Federation for Human Rights (FIDH)
- International Planned Parenthood Federation European Network
- International Press Institute
- JEF Europe
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- SOLIDAR
- Transparency International EU