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## Mass Media and Democratic Decline in Poland Using the Example of the State's Policy Towards Supervisory and Control Bodies

In contemporary Poland, there is ongoing struggle for control over the public media system. The current political conflict is the result of the democratic backsliding. In recent years, during the rule of the conservative Law and Justice party, Poland has experienced a democratic recession. Institutions studying the quality of democracy worldwide are pointing out the deteriorating quality of Polish democracy and the undermining of the achievements of the political transformation. This decline resulted from a deep social and political division as well as from the fact that the public space was dominated by ethno-populist rhetoric, which constituted the main element of the political appeal of the Law and Justice party, which ruled in Poland from 2015 to 2023. The democratic backsliding in Poland was particularly visible in two areas: justice and public media. Representatives of the Law and Justice party brought about the politicisation of the public media and the limiting of their role as a critic and controller of the actions of people in power. That led to a weakening of the democratic *check and balance* mechanisms. In this article, the authors analyse the process of the democratic decline in Poland, using the example of the Law and Justice party's policy towards public media.

**Key words:** democratic backsliding, ethno-populism, mass media, Poland, Law and Justice

### Introduction. The problem of democratic decline

Towards the end of the 20th century, the world saw a great democratic breakthrough connected with the so-called third wave of democratisation, which led to the expansion of democracy and civic freedoms worldwide. At the onset of the third wave in 1974, along with The Carnation

Revolution in Portugal, only about 30 per cent of the world's independent states enjoyed free and fair elections of political leaders, democracy being a relatively rare phenomenon beyond the rich West. In the years 1974-2007, the number of democracies remained at a stable level or grew year to year. Nothing similar to such continuous growth had ever happened in the world's history and, taking into consideration the fact that democracy has spread to many countries lacking the proper conditions for its functioning (poverty, neighbouring dictatorships), it can be considered a great success that democracy has survived in so many places to this day.

In recent decades, however, worrying phenomena can be observed related to the evolution of socio-political systems and undermining the achievements of the third wave of democratisation. The first is a significant and accelerating index of democratic erosion. Secondly, there is a decrease in the quality and stability of democracy in large and important countries of the so-called Global South, such as India, the Republic of South Africa, Thailand, and Bangladesh. Thirdly, authoritarianism is deepening and some countries, such as the Russian Federation, have returned to the traditional, authoritarian "path of dependence". Fourthly, advanced democracies, struggling with internal problems, are not coping very well, and lacking the will and confidence to effectively promote democracy abroad. These phenomena create a "wave of diversion from democracy" predicted, incidentally, by Samuel Huntington. The contemporary global democratic backsliding is not performed through open coups or upheavals but mostly through a gradual degradation of democratic rights and procedures which, as a result, move democracy towards semi-authoritarianism or authoritarianism. The most unsettling phenomenon related to the decline of democracy is the worsening of its quality in Western countries, i.e., the United States and the European Union. Problems with democracy in the West affect its quality worldwide.

One of the states which, in recent years, have undergone a remarkable democratic decline is Poland, where the democratic *check and balance* mechanisms were undermined and the achievements of the democratic political transformation of the 1990s were questioned. The democratic decline in Poland is mainly identified with the seizure of power by the conservative and populist Law and Justice (*Prawo i Sprawiedliwość*, PiS) party in 2015. According to all institutions analysing the state of democracy worldwide, the position of Poland has worsened. The V-Dem Institute – a project gathered around Göteborg University – publishes a ranking of states tumbling the fastest into autocracy (in which the pace of reaching the state autocracy is measured). The first two places of that not very honourable ranking for the decade 2010-2020 were occupied by two Central and Eastern-European countries: Poland and Hungary. Over that time, the Liberal Democracy Index (LDI) for Poland dropped from 0.83 (the highest level is represented as 1) to 0.49 (a decline of 0.34), which meant the fall from the higher level of liberal democracy to electoral democracy. Hungary, following Poland in the rating, fell by 0.31 (from 0.68 to 0.37) over the same period, which meant the country's descent from the electoral democracy to the electoral autocracy level (Autocratization Turns Viral. Democracy Report 2021). In 2019, a team of Scandinavian researchers conducted a detailed analysis of the LDI ranking. In the case of Poland, worse ratings can be observed from 2015 onwards in four categories: repressiveness towards civic society; partiality of the media; freedom of academic and cultural expression, and activities of governmental media censorship. For the key category of free and fair elections, a slump can be observed in Poland in 2018 (Maerz, et al. 2020, p. 909-927).

In a report of the U.S.-based NGO Freedom House, *Nations in Transit 2021: The Anti-democratic turn*, published in 2022, the researchers studied the years 2017-2021 and assessed that, among the 29 countries of Central and Eastern Europe (CEE) and Central Asia monitored by the organisation, it was Poland that experienced the most significant democratic decline over the period in question. It was emphasised that, in the last decade, an unprecedented decline in the quality of democracy has been observed in two CEE states, Poland and Hungary, but it is Poland that saw a more abrupt drop over five years. According to Freedom House, the parties that govern in Budapest and Warsaw have been copying each other for a long time, crushing the autonomy of the judiciary, independent media, the civic sector and minority groups. Both ruling parties – Fidesz (*Fiatat Demokraták Szövetsége*, Hungarian Civic Union) in Hungary and PiS in Poland – establish new norms and openly spread anti-democratic practices across the region. According to the report, the quality of democracy in Poland has deteriorated to such an extent that the country has lost the rating of a “consolidated democracy” to become attributed to the category of “semi-consolidated democracies” (Nations in Transit 2021. The Antidemocratic turn).

In the case of Poland, we can talk about “democratic recession” which means the erosion of the principles forming the ideal of polyarchy. The democratic backsliding in Poland is primarily due to deep socio-political polarisation and personal conflict among the political elite. The main problem with the quality of democracy in Poland is that, in a situation of conflict, the political elite have begun to treat public institutions not as a common good but as a tool for political competition and for building an advantage over political opponents. One of the key public institutions for the existence of polyarchy is the free mass media. The politics of Law and Justice towards the public media between 2015 and 2022 and the attempts to take total control of them is one of the characteristic examples of the regression of democracy.

### **Aim of the article and methodology**

This article aims to analyse the processes of democratic backsliding in Poland from the perspective of the functioning of the media and public sphere. In contemporary Poland, there is an ongoing political struggle for control over the public media system. The current political dispute over control of the boards of Polish Television and Polish Radio is the result of the democratic backsliding in Poland that has taken place in recent years. The authors assume that the authorities’ attitude towards the public space, including the media, reflects the nature of the political system, and the limiting of the autonomy of the mass media is one of the manifestations of democratic decline. Modern researchers of media systems point out that it is impossible to understand the functioning of information media without understanding the nature of the state, the pattern of relations connecting economic and political interests, and the development of civil society (Hallin, Mancini 2004, p. 80). The organisation of the media system, and the public sphere in general, reflects the nature of the political system. Therefore, the regress of liberal democracy and the negation of the political ideal of *polyarchy* is associated with such phenomena as a restriction of freedom and independence of the public space. Analysing the processes of democratic backsliding in the contemporary world, it can be observed that they have common, universal features, the

undermining of the principle of media pluralism and freedom of speech being one of them. Due to this, the processes of democratic backsliding can be followed not only through an analysis of the changes which occur in the political system itself (limiting the *checks and balances*, concentration of power in one centre, limiting political pluralism, controlling electoral processes), but also through analysis of the authorities' actions concerning the public sphere, especially those aimed at limiting the possibility of independent organisation of citizens (NGOs, local governments), freedom of expression, and equal access to mass media.

This article aims to analyse the changes that have occurred in the Polish public sphere and media system, with particular emphasis on the rules of functioning of public media after the right-wing, conservative PiS party took power in 2015. The authors point out that the democratic backsliding that manifested in the sphere of public media resulted primarily from deep political and social polarisation. In contemporary political science, in the search for the sources and causes of democratic backsliding processes, attention is paid to factors including the negative effects of deep political and social polarisation (Orhan 2022, p. 714-735; Riaz 2021, p. 179-197; McCoy, Rahman, Somer 2018, p. 16-42; McCoy, Somer 2019, p. 234-271; Graham, Svolik 2020, p. 392-409; Svolik 2020, p. 3-31). The authors of the article put forward the thesis that the state's policy towards public media resulted from deep political and social polarization, the prevalence of ethno-populist rhetoric in the political appeal of Polish conservative right-wing circles, and the specific manner of interpreting the processes occurring in Polish society by the conservative political elites. The attitude towards public media shown by the Law and Justice party, which took power in Poland in 2015, was largely motivated by the belief that the public sphere was dominated by liberal media acting in the interests of the comprador socio-political elites. The democratic backsliding in Poland is therefore a "stowaway" of deep socio-political polarisation and conflict between the main political parties and their leaders. Control over the media has been recognised as the main tool for gaining and maintaining an advantage over political opponents.

The authors assume the following hypotheses:

- I. In connection with the key role of the public sphere and the media in the functioning of democracy, democratic backsliding manifests itself in the limiting of media pluralism and taking control of the mass media by the state.
- II. The democratic backsliding in Poland is primarily due to deep socio-political polarisation.
- III. In the opinion of the ruling Law and Justice party in 2015–2023, control over the media is perceived as a key element of the "cultural and political war".
- IV. Guided by ethno-populist rhetoric, the conservative-right Law and Justice party subjected the public media to its control, legitimising its actions with the need to defend the "national interest".

Due to the complexity and multifacetedness of the issues of democratic backsliding and actions aimed at limiting the autonomy of the public sphere and subordinating it to the ruling power, the authors focus on a selected aspect of government policy. They take into consideration actions aimed at limiting the autonomy of the bodies appointed to perform control and supervisory functions in the sphere of public media. This choice is related to the possibility of showing how the Polish authorities' actions were inconsistent with the standards of a democratic state,

regulated by such acts as the audiovisual directive of the European Union. At the same time, the authors also point out the characteristic manner of legitimising the authorities' actions: in their opinion, this shows the roots of democratic decline in Poland. They emphasise the meaning of certain political elites' reference to the ethno-populist rhetoric as one of the main causes of this decline.

The authors adopt an institutional approach as the basic method of analysis, in the formal and legal aspects, as well as in the context of informal practices. Therefore, they point out the main legal changes that the populist-conservative Law and Justice party has introduced into the Polish media system, primarily in relation to institutions in charge of control and supervision. Focusing on the formal and institutional aspects of the functioning of the public sphere, they also underline the fact that certain informal political practices also played an important role in limiting the freedom and pluralism of the public space. The analysis of legal changes and informal practices allows verification of the hypotheses put forward regarding democratic recession in Poland. The approach used encompasses both formal legal aspects and informal practices and aligns well with methodologies explored in institutional theory and legal studies. The authors emphasize the complementary relationship between formal rules and informal mechanisms in shaping institutional effectiveness and adaptability. They noticed, the informal practices are also valid in sustaining or undermining formal institutional arrangements (Helmke, Levitsky 2004, p. 725–740).

The analysis of legal acts, as well as actions taken by public and government administration, shows the functioning of democracy and the scope of compliance with the rules of democratic fair play. Through institutional analysis, they show the phenomenon of democratic decline in Poland, related to the violation of *check and balance* mechanisms and good practices that allow for the proper functioning of the institutions of liberal democracy. The main subject of the analysis is, primarily, the changes introduced in the functioning of the basic supervisory and control body for the media: the National Broadcasting Council. This is a Polish state body which, according to the Constitution of the Republic of Poland of 2 April 1997 (Art. 213–215), is to safeguard freedom of speech, the right to information, and the public interest regarding radio broadcasting and television. Referring to the case of the National Broadcasting Council is aimed at showing the main directions of the changes that occurred in the Polish media during the rule of the populist-conservative Law and Justice party.

One of the key elements of contemporary processes of democratic backsliding is the limiting of freedom in the public sphere and mass media and subjecting them to the authorities' control. The existence of free, independent media is considered a key element characterising Western liberal democracies. The first liberal thinkers – such as John Stuart Mill, who tackled the problem of media and political communication – have already perceived the existence and development of media (free press) as the key component of the liberal-democratic society. In their opinion, the media enable the expression of public opinion through a free press. Thanks to the freedom and diversity of the views presented, the media were supposed to limit the state authority's omnipotence and defend citizens against the tyranny of power. Thus, free and independent media were supposed to fulfil the role of an observer, critic, and controller of the deeds and actions of people who exercised power (Mill 2015). Alexis de Tocqueville wrote that the freedom of the press influences not only people's political views, but all their views. It shapes not only the laws,

but also customs, and the sovereignty of a nation and freedom of the press fully and mutually correspond to each other (Tocqueville 2002).

Today, Robert Dahl, analysing the conditions necessary for the realisation of the ideal of a polyarchy, emphasised the importance for democracy of the freedom of the public space; most of all, the freedom of speech, media, and assembly. As he wrote, citizens in Western polyarchies have a right, effectively enforced by governmental agents, to freedom of speech including criticism of and opposition to parties or leaders holding the highest state offices; they have access and an effectively enforced right to access sources of information that may not constitute the exclusive property of the government or any other specific group; they have an effectively enforced right to create and join political organisations including political parties and groups of interest (Dahl, Stinebrickner 2002).

Free and effective media are of key importance for every democratic system. Traditionally, in democracy, media are attributed to the role of the fourth power which can criticize other “powers” such as the government, parliament, or religious organisations. In well-functioning liberal democracies, media provide society with information, acting as an intermediary between citizens and politicians, and as a “watchdog” exposing authorities’ abuse of power and forcing public institutions to redress their policy. Naturally, there are some problems with this perceived role of the media, as well as numerous doubts about the real power that can be attributed to them; however, the rule in virtually every democracy functioning properly is that the media play an important role in making influential entities and public institutions act transparently and responsibly. The media’s task consists of enabling citizens to make conscious decisions by providing them with a balanced worldview.

However, along with the processes of democratic backsliding, this right to source and transmit information through an independent press is threatened. In recent years, free and independent media have faced increasing pressure. In many countries, legal and economic tools are used to silence media critical towards the authorities and to promote a message favourable towards them. The limitation of the freedom of the media and public sphere is a feature characteristic of democratic backsliding processes and the strengthening of solutions typical of semi-authoritarian or authoritarian systems. Such actions are aimed, in the first place, against the independence of the public sphere. The public sphere, as a space of communication and shaping public opinion, along with civic society – a space of action of independent social organisations – are elements of the functioning of liberal democracies. Therefore, all kinds of legal provisions aimed against the freedom of the media and the freedom of public associations’ activity prove that democratic backsliding is occurring. According to the Freedom House report *Freedom in the World 2023. Marking 50 Years in the Struggle for Democracy*, freedom of speech and of the press, a fundamental element of democracy, is under constant attack around the world. Of all the indicators *Freedom in the World* uses to assess political rights and civil liberties, freedom of the media and freedom of speech have declined most sharply since 2005. New forms of repression of independent media appear in open societies and authoritarian states alike, and this tendency is linked to global democratic decline. Even in certain influential democracies around the world, large segments of the population no longer receive independent news and information. To build the image of a disadvantaged majority, populist elites mobilise public opinion against liberal elites

and ethnic minorities whose loyalty they question, arguing also that the interests of the nation should take precedence over democratic principles such as freedom of the press, transparency and open debate (Freedom in the World. Marking 50 Years in the Struggle for Democracy 2023).

This element, characteristic of democratic regression processes, has also been observed in Poland in recent years. According to the World Press Freedom Index, developed by the non-governmental organisation Reporters Without Borders, in 2022 Poland fell to 66th place, its lowest position in history. At the same time, it should be emphasised that Poland was in 18th position in the ranking in 2015 (Reporters Without Borders, 2015). Such a steep decline in the independence of the media poses a threat to the remaining elements of the socio-political system, which are crucial for democracy. According to OSCE observers' reports on the 2019 parliamentary elections, media bias made it difficult for voters to make a balanced decision, based on available information, before election day. Freedom of expression and the freedoms guaranteed to the media were undermined by criminal sanctions for defamation and by limited access to public information (OSCE, 2020). Referring to the 2023 elections, the head of the OSCE delegation, Pere Joan Pons, said at a press conference: "We noted the erosion of checks and balances to gain further control over state institutions by the governing party, including the courts and the public media. This tilted the playing field, which meant the opposition did not have fully equal opportunities" (OSCE, 2023).

### **The mass media system in Poland during the political transformation. Liberalization of political system**

The contemporary media system in Poland was shaped in the late 1980s and early 1990s when talks between the communist authorities and the so-called democratic opposition led to a peaceful political transformation which was to become a symbol of the third wave of democratisation in Central and Eastern Europe. The media system of the Polish People's Republic (Polska Republika Ludowa, PRL), a country that found itself in the sphere of influence of the Union of Soviet Socialist Republics after the Second World War, was characterised by features typical of all totalitarian systems, consisting mainly in the authorities' control over the media market through the licensing of publishing activities (publishing a press title required permission from the authorities) and preventive censorship, i.e. preliminary control of the content of media messages exercised by a specially established institution: the Central Authority for Control of Publications and Spectacles. The press in the People's Republic of Poland belonged exclusively to the so-called socialised publishers (there was no private press), the market mechanisms being inactive as the press market, like the entire economy, was centrally controlled. It was the authorities who decided on the number of press titles (by giving permission to publish them) and their market position (allocating paper for printing) (Pokorna-Ignatowicz 2003 and 2013, p. 13-34).

During the so-called round-table talks, i.e. negotiations conducted by the authorities of the Polish People's Republic and the democratic opposition from 6 February to 5 April 1989, a special team of experts was appointed to dismantle the monopoly of the state and the PZPR (Polish United Workers' Party) in the mass media. The collapse of the communist system and system-

ic transformation gave rise to the creation of the Republic of Poland (*Rzeczpospolita Polska*): a democratic state referring in its tradition to the historical formations that had existed in this area. Freedom of the media was one of the main demands of the opposition during the round table; at the inaugural session of the working group dealing with the mass media, the opposition declared that if no progress was made at the relevant 'small table', no significant agreement could be reached in other expert groups. The democratic opposition stressed that the introduction of political pluralism would have no real significance without the guarantee of unconstrained use of the mass media. The new information order was to serve the free expression of all shades of public opinion; within it, the media were to function as an instrument of social control over political and social bodies (Goban-Klas 2009, p. 166-176).

As a result of the democratic transformation of the political system, the press became independent of political power: state control and preventive censorship were abolished by virtue of the Act of 29 May 1989 amending the Act on the control of publications and spectacles (Act of 29 May 1989 Amending the Act on the Control of Publications and Spectacles, Journal of Laws of 1989 No. 34, item 186). On April 11, 1990, the Act on the Control of Publications and Spectacles was repealed and changes were made to the Press Law Act (Act of 11 April 1990 on the Repeal of the Act on the Control of Publications and Spectacles, abolishing the bodies of this control and amendment of the Act – Press Law, Journal of Laws 1990 No. 29, item 173), which began a new chapter in the development of the media in Poland: ensuring freedom of speech and freedom of the press. A continuation of the activities aimed at regulating the principles of functioning of the public and media sphere was the adoption of the Broadcasting Act, concerning the electronic media market, on 29 December 1992. The Act, repeatedly amended, specified the public broadcasters' duties in Chapter 4, obliging them to "reliably present the entire diversity of events and phenomena from the country and abroad; promote the free shaping of citizens' views and the formation of public opinion; enable citizens and their organisations to participate in public life by presenting diverse views and positions, as well as by exercising the right to control and social criticism" (The Broadcasting Act of 29 December 1992, Journal of Laws No. 7 item 34). Enacted on 2 April 1997, the Constitution of the Republic of Poland (1997) introduced, in Art. 14, guarantees of ensuring freedom of the press and other mass media; in Art. 54, freedom to express their views, to obtain and disseminate information, and to ensure that "preventive censorship of the media and licensing of the press is prohibited", as well as the obligation to obtain a licence for radio or television broadcasting being regulated by separate acts (Constitution of the Republic of Poland of 2 April 1997, Journal of Laws 1997 No. 78, item 483).

The period of transformation in Poland was characterised by a massive influx of foreign capital into the media market. The result of these activities was the emergence of new entities, including transnational corporations investing in media development (Bajka 1998, p. 21-35; Klimkiewicz 2004, p. 97-100). In the 1990s, the entities operating in the electronic media market were: the public broadcaster Polskie Radio SA and the TVP SA television company which, besides broadcasting in the nationwide band, had regional companies as well. There were also two private nationwide television stations – TVN and Polsat – as well as numerous radio broadcasters of different coverage. In turn, the decreasing circulation of the printed press, with a simultaneous publication of an increasing number of titles, prompted editors to cooperate with



larger corporations in order to improve the issued product. The political transformation left the press market with only the strongest groups with the largest capital, which were able to cope with the processes of media convergence, i.e., “the flow of content (also adding: the flow of styles and genres) between various media platforms, the cooperation of various media industries and the migratory behaviour of media audiences who would go almost anywhere in search of the kinds of entertainment experiences they wanted” (Jenkins 2006). Owing to the tendency to concentrate ownership, Agora Spółka Akcyjna, currently operating under the name of Agora AS Media Group, an enterprise and the publisher of titles including “Gazeta Wyborcza” – one of Poland’s leading general information newspapers – owner of many weeklies and magazines, a network of cinemas, a publishing house, radio stations and the leader of the outdoor advertising market, grew to become the largest media corporation in this part of Europe<sup>1</sup>.

The emancipation of the mass media from political power – which constitutes a fundamental element of democratisation – is called media autonomy. This process encompasses five basic dimensions. The first is the emancipation of the media from political power. This is also related to the second dimension: gaining economic independence. In turn, the third dimension is characterised by the inclusion of society in the process of shaping the image of the media, thus becoming one of the stages of the formation of civil society. Another dimension is the media creators’ aspiration for the use of all technological tools available and exploitable in the process of media creation. This will ensure greater competitiveness in the media market and enable diversification of content-sharing channels, thus leading to the last dimension: the increase in professionalism of people involved in the process of creating content shared in the media should have positive consequences (Jakubowicz 1995, p. 74-75). The process described above presents the changes that should accompany mass media on the democratisation path. The media need to pass it to become part of the system of functioning of the media market independent of politics in terms of ideology, as well as simply striving for development following the principles binding in the world of pluralised access to information. As media researchers point out, in the countries which underwent political transformation in the 20th century (in Central and Eastern Europe and Latin America), hybrid media models were shaped. This means, on the one hand, the implementation of the principles known from liberal democracies, such as freedom of the media and independence of the journalism profession; on the other hand, however, these rules are often sidestepped and norms are adapted to the particular interests of a government (Voltmer 2008, p. 23-40). Such character of media systems facilitated the seizure of political control over public media under the rule of Central European populists.

<sup>1</sup> During the rule of PiS, Agora became, next to TVN, TVN24 (a nationwide, closed-access information channel created in 2001), and the Polsat television station, synonymous with the activities of ‘total opposition’ which allegedly threatens the stability of the state order implemented by the Law and Justice party. The editor-in-chief of “Gazeta Wyborcza”, well-known oppositionist, long-time political prisoner during the PRL period and participant in the round-table talks, Adam Michnik, almost immediately became one of the symbols of inappropriate social attitudes resulting from excessive Western influence during the first (2005–2007) and the second (2015–2023) rule of the Law and Justice party. The PiS government took a similar opinion about TVN/TVN24, which resulted in problems with the extension of its broadcasting licence. Both the creators and recipients of these media were pigeonholed by the government as members of the ‘fork-tongued elite’. The concept was coined by party leader Jarosław Kaczyński to describe people who contested the changes introduced by the Law and Justice party. wp.pl, *Łże-elity*, 19 December 2006, <https://wiadomosci.wp.pl/lze-elity-6036190976402049a>, accessed 20 November 2023.

One of the key elements of democratic regression in Poland during the rule of the populist-conservative Law and Justice party became the far-reaching politicisation of public television and its supervisory bodies, as well as an attempt to limit media pluralism by taking control over the largest broadcasters of media content. The actions of the populist-conservative PiS party towards the media were related to the growing socio-political polarisation – one of the main reasons for the democratic decline in the case of Poland. As Polish researchers point out, the year 2000, i.e., the moment of the establishment of the two currently largest Polish political parties: PiS (with its leader Jarosław Kaczyński) and PO (with its leader Donald Tusk), was the beginning of the growing polarization of not only Poland's political scene but also its media market, which became an area of political conflict over control of the media and public sphere (Dobek-Ostrowska 2010, p. 17). The political leader of PiS, Jarosław Kaczyński, building his political project, referred to the populist opposition of 'liberal elites' to 'ordinary people'. He also distinguished the media into two camps: one hostile to the 'national' vision of the state pursued by PiS and the other in its favour. This led to a conflict with the largest private broadcasters and media corporations: TVN and Polsat. It also prompted the right-wing leaders to action aimed at taking full control of the public media, to control political communication and propaganda, thus building an alternative to private broadcasters who did not share PiS's vision of the state, all by using the state's public resources.

After PiS took over all power in Poland – control of the office of the president, the parliament, and the government – it became characteristic of the ruling camp representatives to contest the socio-political order before the party had gained real influence on the shaping of the new socio-political reality. The leverage of personal dependencies between PiS, the main ruling party in 2015–2023, and the President of the Republic of Poland, Andrzej Duda, made it possible to exercise control over the presidential office. Andrzej Duda became a candidate for the presidency twice, selected from among the politicians operating within PiS structures; it was also twice – the first term in 2015–2020 and the second term in 2020–2025 – that he won the elections for the president of Poland. In turn, the takeover of legislative power was possible because the United Right, a coalition of right-wing parties, the most powerful of which is PiS, won the elections twice, exercising control over parliament and the government in 2015–2023.

The programme of creating a new socio-political order, based on legal changes pushed by PiS, was built in opposition not only to the communist system but also to the democratisation process seen in the 1990s and the early 21st century (Dąbrowka 2022, p. 75-92). In relation to the media sphere, this triggered a process of building a politicised media system with the lowest quality of democracy and democratic standards among the European Union countries, which resulted in Poland's gradual shift from the hybrid-liberal media model (2015) to the politicised media model (2021) (Dobek-Ostrowska 2022, p. 23-42). After the takeover of power, the extension of control over the public media became a key element of the populist-conservative Law and Justice party's policy, to control the nature of public discourse and impose a narrative consistent with the interests of the ruling political party. The elements characteristic of that process were: 1) Taking control of the public media and giving them the character of "national media"; 2) Attempts to buy or limit the possibility of the oppositional, private media (in particular, the attempt to take control over the private TVN24 news channel and offers to buy out internet portals Onet and Wirtualna Polska); 3) Buyout of local press by the state oil giant, Orlen.

## Discussion of the democratic decline. The policy of the “Law and Justice” party toward the bodies supervising public media

The infringement of the institutional framework of liberal democracy in Poland can be analysed based on such manifestations as the policy towards public media and taking full political control over them. In the case of Poland, the main supervisory and control body in the media sphere was the National Broadcasting Council (*Krajowa Rada Radiofonii i Telewizji, KRRiT*). The KRRiT was introduced into the Polish legal order under the Act of 15 October 1992 amending the Constitution of the Republic of Poland. The establishment of the National Broadcasting Council was one of the elements of the political transformation and initiated the democratisation of audiovisual media. The constitutional legislator included it among the state control bodies, giving it the task of safeguarding freedom of speech, exercising citizens’ right to information, and public interest in radio and television (Art. 36b clause 1 of the Constitution of the Republic of Poland). The National Broadcasting Council was conceived as an element of the systemic transformation process, as “an independent, specialised, self-governing regulatory body and at the same time a central institution of a new pluralistic system of electronic mass media based in particular on the abolition of censorship and demonopolisation” (Constitution of the Republic of Poland 1997). The main goal of the National Broadcasting Council was to protect the mass media against instrumental use by the authorities (Lis 2015, p. 157-192).

The functioning of the Council was in line with the EU Audiovisual Directive, which requires the Member States to ensure that national regulatory authorities are legally distinct from the government and functionally independent of their respective governments and of any other public or private body. National regulatory authorities are to exercise their powers impartially and transparently, under such principles as media pluralism, cultural and linguistic diversity, non-discrimination, and fair competition. They may not accept instructions from another entity, including the authorities. For the European Union, the requirement of independence of the bodies that regulate national media markets is intended, firstly, to ensure freedom of expression and information as well as freedom and pluralism of the media; secondly, the regulators’ independence is important for the proper functioning of the common European market. It is therefore an important issue in terms of guaranteeing democratic values and the rule of law as well as the functioning of the internal market.

One of the first decisions taken by the Law and Justice party after taking power was the withdrawal of the National Broadcasting Council’s authorisation to appoint boards of directors and supervisory boards in public media. Until 2015, the National Broadcasting Council had the prerogative to appoint and dismiss members of the management boards of TVP S.A. (Polish Television) and Polskie Radio S.A. (Polish Radio), as well as regional broadcasting companies and supervisory boards of all these entities [Art. 27 clause 3 of the Act of 29 December 1992 (uniform text Journal of Laws of 2015, item 1531)]. On 30 December 2015, amendments to the Broadcasting Act were adopted, under which the former competencies of the National Broadcasting Council were transferred to the minister in charge of the state treasury. An important sphere concerning the regulation of the activities of the media sphere passed from a distinct, independent body into the hands of the executive power and party nominees who would implement

the parliamentary majority's policy. The amendment to the Media Act entered into force on 8 January 2016; importantly, the legislator determined in advance the duration of the amendment, which was to be in force until 30 June 2016 [Art. 4 of the Act of 30 December 2015 amending the Broadcasting Act (Journal of Laws of 2016, item 25)]. The ruling party immediately took advantage of the new regulations adopted by parliament: at the beginning of the year 2016, the Minister of the Treasury appointed new members to the supervisory boards of Polish Television and Polish Radio. Jacek Kurski, a prominent party activist, became the head of TVP.

The amendment to the provisions on limiting the competencies of the National Broadcasting Council concerning ownership supervision over public media was only a temporary amendment, which was to allow the ruling party to immediately take control of the public media, until the development of comprehensive provisions regarding changes in the Polish media system, i.e., the package of regulations called the "National Media Act". In the public debate regarding the changes in the system of media supervision, which were a *de facto* violation of the provisions of the constitution<sup>2</sup>, the ruling party began to fall back on ethno-populism, the key element around which its political appeal had been built. Changes in the media were legitimised by the ruling conservatives as an action to build "national" media that would represent "Polish interests", as opposed to private media representing the interests of "foreign capital".

In 2016, a group of conservative MPs submitted a draft "National Media Act" on behalf of the Law and Justice party. Polish Radio, Polish Television, and the so-called national regional radio stations, i.e., regional branches of radio and television, were defined as "national media". By the planned changes in the sphere of public media, Telewizja Polska, Polskie Radio, and Polska Agencja Prasowa (Polish Press Agency) became "national media", and thus ceased to be commercial law companies: they were transformed into "state-owned legal entities". Supervision over them was transferred to the Rada Mediów Narodowych (National Media Council), which was to appoint directors, board members and programme boards. On the date of the transformation, all previous mandates of members of the management, supervisory, and programme boards in the former companies were to automatically expire. The draft law stated that these institutions were to respect the Christian system of values (Art. 4), and their duties included cultivating national tradition as well as patriotic and humanistic values (Art. 3), consolidating the national community and responsibility for the common good (Art. 9, point 2), enriching historical awareness and counteracting the distortion of the image of Polish history (Art. 9, point 3), contributing to the comprehensive development of the young generation and protecting children and adolescents against demoralisation (Art. 9 point 10). In the political debate on the reform of public media, representatives of the Law and Justice party presented their vision of public media as Christian, national, and consistent with the Polish national interest.

Despite Polish legislation providing for a media control body in the form of the National Broadcasting Council, the ruling party decided to increase political control over the media by

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<sup>2</sup> On 13 December 2016, the Constitutional Tribunal issued a judgment (ref. no. K 13/16) declaring the regulations that had deprived the National Broadcasting Council of the competence to appoint and dismiss members of the management and supervisory boards of public broadcasting companies as inconsistent with the Constitution of the Republic of Poland. The judgment of the Tribunal was not implemented by the legislature.

introducing another “supra-supervisory” body – called the National Media Council – into the Polish legal system; the Council was to perform ownership supervision over the public media. The creators of the act intended that the National Media Council would have two roles – Firstly, to manage the special National Media Fund as a legal entity, and secondly, to supervise 20 national media institutions in terms of proper performance of public mission, legality, and economy – becoming a *sui generis* joint supervisory board of national media institutions.

The procedural difficulties related to the so-called National Media Act led to its enactment in an abbreviated form as the National Media Council Act, adopted by the Parliament of the Republic of Poland on 22 June 2016. According to Art. 2 of the Act, the National Media Council is the authority competent in matters of appointing and dismissing the management boards of entities of public radio, television, and the Polish Press Agency [Art. 2 clause 1 of the Act of 22 June 2016 on the National Media Council (Journal of Laws of 2016, item 929, as amended)]. Other prerogatives of the National Media Council include the right to inspect the affairs of public broadcasting companies and the Polish Press Agency [Art. 12 of the Act of 22 June 2016 on the National Media Council (Journal of Laws of 2016, item 929, as amended)]. It is worth noting that the Council consists of five members. Three of them are elected by the Sejm (the lower house of parliament), and two are appointed by the President from among candidates nominated by opposition caucuses in the parliament [Art. 2 clause 2 of the Act of 22 June 2016 on the National Media Council (Journal of Laws of 2016, item 929, as amended)]. Thanks to such provisions, the National Media Council can be dominated by candidates elected by a parliamentary majority – in practice, by the ruling coalition. This poses serious threats to the fulfilment of the aforementioned premise – of the need to ensure that the companies reliably carry out their statutory tasks and to protect their independence and editorial independence – by the National Media Council.

The democratic decline in Poland was associated not only with the introduction of institutional and legal changes violating the *check and balance* mechanisms but also with the erosion of political “good practices”, which would ensure that the control bodies would be composed of independent experts related to the media market. The policy pursued by the Law and Justice party was aimed at gaining full control over public institutions by appointing active politicians, dependent on the government and fully involved in the political conflict, to be members of such bodies. Contrary to the recommendations contained in the European audiovisual directive, the composition of the Council on behalf of the ruling party included active political activists and MPs of PiS: Krzysztof Czabański – member of the Sejm of the 8th term, Secretary of State in the Ministry of Culture and National Heritage in 2015–2016, elected chairman of the Council in 2016 and 2022, as well as two women MPs: Joanna Lichočka (PiS), elected by the Sejm in 2016 and 2022, and Elżbieta Kruk (PiS), rapporteur of the Act on National Media, elected in 2016 and replaced in 2022 by Piotr Babinetz (PiS).

The nature of the appointments to the new supervisory body has caused a lot of controversy regarding preservation of the independence of public media. The Helsinki Foundation for Human Rights issued an appeal to hold elections for the Council in a way that would ensure the body’s independent and pluralistic nature. According to the Foundation, this will only be possible if persons not performing political or party functions are elected as members of the Council, their election being conducted in a transparent procedure, controlled by society. Despite the

controversies related to the politicisation of the Council, a mechanism of the same type was used by the ruling Law and Justice party to fill positions in the National Broadcasting Council at the end of its current members' term of office. Extremely conservative political activists, closely associated with the authorities, began to be appointed to the Council which, numbered five people after changes in the law. 1) In 2022, the chairman of the National Broadcasting Council was right-wing socio-political activist Maciej Świrski, whose biography included the founding of the Reduta Dobrego Imienia Foundation (*Polish League Against Defamation is the English version of the entity's name*). Its aim was to combat media publications that, according to Świrski, violated the dignity of Poland or defamed the Polish nation. The League Against Defamation became famous for such actions as a petition addressed to the President of the Republic of Poland, Andrzej Duda, to strip Prof. Tomasz Gross of the Knight's Cross of the Order of Merit of the Republic of Poland, due to the fact that, according to Świrski, Prof. Gross insulted Poles and the Polish nation in his publications devoted to the extermination of Jews during the Second World War. Under the rule of PiS, Maciej Świrski was appointed, among other offices, president of the Polish National Foundation (*Polska Fundacja Narodowa, PFN*), financed from the state budget, whose statutory objective is: "scientific, scientific-technological, educational, and cultural activities in the following scope: maintaining and disseminating the national tradition, cultivating Polishness as well as developing national, civic, and cultural awareness, especially the popularisation of knowledge about the history of the Republic of Poland nationwide and abroad, with particular emphasis on recent history, as well as dissemination of [knowledge about] the martyrdom and heroic deeds of the Polish Nation" (PNF, 2023). In July 2010, Świrski wrote about himself on his blog: "I'm a Taliban because, just like the real Taliban, I am attached to my faith and tradition, the foundation of Polish civilisation, and I don't consent to what's been done to my civilisation. That's why I'm a Taliban. Enough is enough. (...) There's no other way than religious radicalism. In these times of the threat to fundamental values, one can't be lukewarm. One has to be as hot as a red-hot sword" (Gądek, 2016). 2) In 2022, by a decision of the President of the Republic of Poland, Marzena Paczuska-Tętnik was appointed to the National Broadcasting Council; certain foreign reports mentioned her as the person who, nominated in 2016 as the head of the editorial office of *Wiadomości* (Polish Television's main information service), imposed on it an "ultra-conservative" political discourse, consistent with the political line of the Law and Justice party, ruling from 2015 (Chapmann 2017, p. 13; Bill 2020, p. 118-140). 3) In 2022, The President of the Republic of Poland appointed a controversial, ultra-conservative, Catholic journalist, Hanna Karp, PhD in theological sciences, associated with the Higher School of Social and Media Culture in Toruń, founded by a conservative Catholic clergyman, Fr. Tadeusz Rydzyk. Before her election to the Council, Hanna Karp became famous, inter alia, as the author of an expert opinion classified as secret by the National Broadcasting Council, based on which the National Broadcasting Council had imposed a fine of PLN 1.5 million on private broadcaster TVN, for how the TVN24 information programme had covered protests in and around the Sejm on 16–18 December 2016.

The line-up of the National Broadcasting Council affected its activities with the media market, as exemplified by financial penalties imposed on independent broadcasters. In early 2023, the chairman of the National Broadcasting Council imposed a penalty of PLN 80,000 on the TOK

FM radio station for a broadcast with an assessment of the textbook “History and the Present” by Wojciech Roszkowski, introduced into schools by the Minister of Education<sup>3</sup>. In August 2023, he imposed a fine of PLN 476,000 on the TOK FM station again, for material about the passage of Ukrainian President Volodymyr Zelensky through Poland. A TOK FM journalist said that Polish services did not participate in the protection of the route of the President of Ukraine, due to their politicisation and a decrease in trust in their professionalism. That statement was considered to be contrary to the Polish national interest and financially punished by the National Broadcasting Council. Such practices are considered to be intended to have a ‘freezing effect’, forcing independent journalists to self-censor for fear of financial punishment.

## Conclusion

In 2015–2023, there was democratic backsliding due to the violation of the liberal institutional framework in Poland. This violation concerned both formal legal provisions and informal practices related to the governance of the state. The reason for the decline was, primarily, deep social polarisation which caused a disintegration of the existing social consensus built around the idea of modernisation and democratisation of Polish society. Legal regulations introduced in the policy towards public media allowed the ruling conservatives to take control and politicise the supervisory bodies of public television, and then politicise the public media and subordinate media communication entirely according to the ruling party’s interests.

In the conditions of deep socio-political polarisation, the activity of the conservative-populist Law and Justice party was aimed at maintaining power, at the expense of social *consensus* and through violation of the *check and balance* mechanisms characteristic of liberal democracies developed during the political transformation. The democratic backsliding processes affected primarily the sphere of the judiciary and public media in Poland. In the case of the media, those processes led to the formation of a strongly politicised media system. Public media are controlled by ruling parties and power elites, thus undergoing high or very high politicisation. The political activity of many journalists and media managers is visible. Thus, the media are politicised not only by political entities but often by journalists themselves and their managers with clear political preferences.

Reversing the negative trends related to the functioning of public media seems very difficult in the current socio-political situation in Poland. In a situation of deep political conflict, the media

<sup>3</sup> The textbook introduced to schools by Minister of Education Przemysław Czarnek and criticised by journalists, contained statements considered controversial, such as: “Along with medical progress and the offensive of gender ideology, the 21st century brought further disintegration of family institutions. The currently promoted inclusive family model assumes the creation of discretionary groups of people, sometimes of the same sex, who will bring children into the world in isolation from the natural relationship of a man and a woman, preferably in a laboratory. Increasingly sophisticated methods of separating sex from love and fertility lead to treating the sphere of sex as entertainment, and the sphere of fertility as production of people, so-to-say breeding. This raises the fundamental question: who is going to love the children produced in this way? A state that takes such kind of >>production<< under its wing?” cf. W. Roszkowski, *Historia i terażniejszość*, Warsaw: Wydawnictwa Szkolne i Pedagogiczne, 2022: 226, considered by journalists as unacceptable in the educational system.

are treated as a “political booty” of key importance for maintaining power. After the elections of 15 October 2023, the Law and Justice party lost its parliamentary majority. The democratic opposition – a coalition consisting of many parties gathered in three blocs: Koalicja Obywatelska (the Civic Coalition), Trzecia Droga (the Third Way), and Lewica (the Left) – is getting ready to take power. Representatives of these groups, with the default candidate for prime minister, Donald Tusk, advocate the need to depoliticise the public media and return to democratic values in the public sphere. Perhaps, therefore, the model of heavily politicised public media will become modified to such an extent that public media will begin to fulfil their functions characteristic of liberal democracies. However, the years of the rule of the Law and Justice party show the weakness of democratic mechanisms in the face of the formation of new socio-political divisions and the associated wave of ethno-populism.

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